Passage of the

Police and Fire Reform (Scotland) Bill 2012

SPPB 177
Passage of the

Police and Fire Reform (Scotland) Bill 2012

SP Bill 8 (Session 4), subsequently 2012 asp 8

SPPB 177
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected. An exception is the groupings of amendments for Stage 2 and Stage 3 (a list of amendments in debating order was included in the original documents to assist members during actual proceedings but is omitted here as the text of amendments is already contained in the relevant marshalled list).

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:
• Introduction, followed by publication of the Bill and its accompanying documents;
• Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
• Stage 2: the Bill returns to a committee for detailed consideration of amendments;
• Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates followed the standard 3 stage process described above.

The annexes containing oral and written evidence to the Justice Committee were not published in hard copy as part of the Committee’s Stage 1 Report, but were available on the web only. This material (the oral evidence taken, and written evidence and supplementary evidence received by the Committee, along with correspondence) is reproduced in full in this volume after the Stage 1 Report.

The Justice Committee also did not publish reports from other committees in hard copy as part of its Stage 1 Report, but made them available on the web only. The Local Government and Regeneration Committee published its report to the Justice Committee in hard copy, but also made the evidence received by it available on the web only. The report of the Local Government and Regeneration Committee is included in this volume after the material relating to the Justice Committee’s Stage 1 Report. All of the evidence received by the Local Government and Regeneration
Committee is also included in this volume, including a briefing from Scottish Government officials that was not incorporated in the Committee's report.

The reports of the Finance Committee and the Subordinate Legislation Committee to the Justice Committee were made available on the web only. These reports, along with all oral and written evidence received by the committees, are included in this volume.

After Stage 1, at its meeting on 8 May 2012, the Subordinate Legislation Committee considered and noted the Scottish Government’s response to its report on the Bill at Stage 1. The response and the relevant extracts from the Official Report and from the Committee’s minutes are included in this volume.
Police and Fire Reform (Scotland) Bill
[AS INTRODUCED]

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Police and Fire Reform (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

PART 1
POLICE REFORM

CHAPTER 1
THE SCOTTISH POLICE AUTHORITY

1 The Scottish Police Authority

(1) There is established a body corporate to be known as the Scottish Police Authority.

(2) Schedule 1 makes provision about the Authority’s constitution, members and staff and other matters relating to it.

2 Functions of the Authority

(1) The Authority’s main functions are—

(a) to maintain the Police Service,

(b) to promote and support continuous improvement in the policing of Scotland,

(c) to hold the chief constable to account for the policing of Scotland.

(2) The Authority also has the additional functions conferred on it by virtue of this or any other enactment.

(3) The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.

3 Maintenance of the police

In pursuance of its function under section 2(1)(a)—

(a) the Authority must (in accordance with regulations made under section 49)—

(i) pay constables pay and allowances, and
reimburse any expenses reasonably incurred by a constable, and

(b) the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures.

4 General powers of the Authority

(1) The Authority may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) The Authority may in particular—

(a) enter into contracts,

(b) borrow money,

(c) acquire and dispose of land and other property,

(d) with the authorisation of the Scottish Ministers, purchase compulsorily land, and

(e) form or promote (whether alone or with another) companies under the Companies Act 2006.

(3) The Authority may not exercise the power in subsection (2)(b) without the consent of the Scottish Ministers.

(4) Such consent may be given—

(a) with respect to a particular case or a particular class of case,

(b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in subsection (2)(c) includes power to accept, on such terms and conditions as the Authority considers appropriate—

(a) gifts of money, and

(b) gifts or loans of other property.

(6) The powers in subsection (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to the compulsory purchase of land under subsection (2)(d) as if—

(a) that provision were contained in an Act in force immediately before the commencement of that Act, and

(b) the Authority were a local authority.

5 Directions

(1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers.

(2) A direction may not be given in respect of—

(a) a specific operation being or to be carried out by the Police Service, or

(b) the way in which the Police Service is carrying out (or is to carry out) a specific operation.
(3) The Scottish Ministers must—
   (a) publish a direction given under this section in such manner as they consider
       appropriate, and
   (b) lay a copy of it before the Scottish Parliament.

(4) The Scottish Ministers may vary or revoke a direction (and subsection (3) applies in
relation to an instrument varying or revoking a direction as it applies to a direction).

CHAPTER 2

THE POLICE SERVICE OF SCOTLAND

The Police Service of Scotland

There is to be a constabulary to be known as the Police Service of Scotland comprising—
   (a) a constable holding the office of chief constable,
   (b) one or more constables holding the office of deputy chief constable,
   (c) one or more constables holding the office of assistant chief constable, and
   (d) other individuals holding the office of constable.

Constables: appointment, ranks and terms of office

Senior officers

(1) The Authority must appoint—
   (a) the chief constable,
   (b) one or more deputy chief constables, and
   (c) one or more assistant chief constables.

(2) An appointment of a chief constable has effect only if approved by the Scottish
Ministers.

(3) The Authority must consult the chief constable before appointing a deputy or assistant
chief constable.

Regular constables

It is for the chief constable to appoint constables (other than senior officers).

Special constables

The chief constable may appoint special constables, being constables who are not
entitled to be paid but who may, in accordance with regulations made under section 49,
be entitled to receive—
   (a) allowances,
   (b) periodic payments which acknowledge the giving of, or a commitment to give,
       services.
10 Constable’s declaration

(1) An appointment of an individual as a constable has effect only where the individual has made a declaration in the following terms before a sheriff or justice of the peace—

"I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, according to law."

(2) The Scottish Ministers may by order modify the declaration.

11 Ranks

(1) The ranks which a constable may hold are—

(a) chief constable,
(b) deputy chief constable,
(c) assistant chief constable,
(d) chief superintendent,
(e) superintendent,
(f) chief inspector,
(g) inspector,
(h) sergeant,
(i) constable.

(2) Constables appointed as senior officers under section 7 are to hold the rank corresponding to the office to which they are appointed.

(3) It is for the chief constable to assign, and to make promotions to, ranks below that of assistant chief constable.

(4) A constable may be demoted in rank only—

(a) if the constable consents, or
(b) in accordance with regulations made under section 49.

(5) The Scottish Ministers may by regulations modify subsection (1) to add or remove any rank below that of assistant chief constable.

(6) Before making regulations, the Scottish Ministers must consult—

(a) the chief constable,
(b) the Authority,
(c) the representative committees of the Police Federation for Scotland,
(d) such persons as appear to them to be representative of senior officers,
(e) such persons as appear to them to be representative of superintendents (including chief superintendents), and
(f) such other persons as they consider appropriate.
Constables: terms of office

A constable is to hold and vacate office in accordance with—

(a) regulations made under section 49, and

(b) any other enactment (for example, the Police Pensions Act 1976 or section 14 of this Act) which makes provision in that regard.

Rewards

The Authority may, on the recommendation of the chief constable, pay such sums by way of reward as it thinks fit to—

(a) a constable (other than the chief constable) who in its opinion has carried out the constable’s functions with exceptional diligence or in a specially meritorious manner, or

(b) a person who in its opinion has made a substantial contribution to the carrying out of police functions.

Senior officers: retirement for efficiency or effectiveness

(1) The Authority may call on a senior officer to retire from office in the interests of efficiency or effectiveness.

(2) Before calling on a senior officer to retire, the Authority must—

(a) give the senior officer—

(i) an explanation of the reason why the Authority proposes to call on the senior officer to retire, and

(ii) an opportunity to make representations,

(b) consider any representations made, and

(c) where the chief constable is to be called on to retire, consult the Scottish Ministers.

(3) A senior officer called on to retire must retire with effect from—

(a) the date determined by the Authority when calling on the senior officer to retire, or

(b) such earlier date as may be agreed between the senior officer and the Authority.

Constables: service outwith the Police Service of Scotland

(1) The chief constable may make arrangements, or give consent, for constables to be engaged in service outwith the Police Service.

(2) The Scottish Ministers may by regulations—

(a) prescribe types of service in respect of which arrangements are made or consent is given under subsection (1) as being “temporary service” for the purposes of this section, and

(b) make such further provision in respect of constables on temporary service as they consider appropriate.
(3) A constable on temporary service is to continue to hold the office of constable but does not have the powers and privileges of a constable (except where the arrangements or consent provide for the constable to remain under the direction and control of the chief constable or where contrary provision is made by or under this section or any other enactment).

(4) Regulations made under subsection (2) may in particular make provision—

(a) applying any provision of this Act or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to constables on temporary service,

(b) about the liability for unlawful conduct of a constable while on temporary service.

(5) At the end of a period of temporary service outwith the Police Service, a constable—

(a) is entitled to revert to serve as a constable of the Police Service in the rank in which the constable was serving immediately before the period began, and

(b) is to be treated as if the constable has served as a constable of the Police Service during the period of temporary service for the purposes of any scale prescribed by virtue of regulations made under section 49 fixing the constable’s rate of pay by reference to length of service.

(6) Subsection (5) does not apply where a pension, allowance or gratuity becomes payable to the constable during the period of temporary service by virtue of regulations made under the Police Pensions Act 1976 or section 1 of the Police (Overseas Service) Act 1945.

(7) A constable may, during any period of temporary service, be promoted to a higher rank and in such a case—

(a) the reference in subsection (5)(a) to the rank in which the constable was serving immediately before the period began is to be construed as a reference to the rank to which the constable is promoted, and

(b) the constable is, for the purposes of subsection (5)(b), to be treated as having served in that rank from the time of promotion.

16 Temporary service as constable of the Police Service of Scotland

(1) The chief constable may make arrangements for any person falling within subsection (2) to be engaged on temporary service as a constable of the Police Service.

(2) A person falls within this subsection if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force,

(d) the Police Service of Northern Ireland,

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(f) the British Transport Police Force,

(g) the Civil Nuclear Constabulary,
(h) the States of Jersey Police Force,
(i) the salaried police force of the Island of Guernsey, or
(j) the Isle of Man Constabulary.

(3) An individual may be engaged on temporary service under arrangements made under this section only where the individual has made the declaration specified in section 10 before a sheriff or justice of the peace.

(4) An individual engaged on temporary service under such arrangements—
(a) is under the direction and control of the chief constable,
(b) has all the functions conferred on a constable by virtue of this or any other enactment or by rule of law, and
(c) has all the powers and privileges of a constable throughout Scotland.

Chief constable

17 Chief constable’s responsibility for the policing of Scotland

(1) The chief constable is responsible, and must account to the Authority, for the policing of Scotland.

(2) In particular, the chief constable—
(a) has direction and control of the Police Service (see section 21),
(b) is responsible for the day to day administration of the Police Service, including the allocation and deployment of resources received from the Authority,
(c) is to be involved in the preparation of the strategic police plan, annual police plans and the Authority’s annual report (see sections 36 and 40(4)),
(d) must seek to secure continuous improvement in the policing of Scotland (see section 38(2)),
(e) must designate local commanders and ensure that adequate arrangements are in place for the policing of each local authority area (see section 45), and
(f) may be required to provide the Authority with information relating to the Police Service, policing or the state of crime (see sections 41(3), 61(4) and 81(3)).

(3) The chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by—
(a) the appropriate prosecutor in relation to the investigation of offences,
(b) the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995 (c.46),
(c) the Lord Justice General, or
(d) the sheriff principal for the place in which the functions are to be carried out.

(4) The chief constable must seek to ensure that the policing of Scotland is done—
(a) with due regard to—
(i) the policing principles, and
(ii) any recommendations made or guidance issued by the Authority on the policing of Scotland, and

(b) in accordance with—

(i) the strategic police priorities,

(ii) the most recently approved strategic police plan, and

(iii) the relevant annual police plan.

(5) Any recommendation made or guidance issued by the Authority for the purposes of subsection (4)(a)(ii) must not be inconsistent with—

(a) the strategic police priorities,

(b) the most recently approved strategic police plan,

(c) the relevant annual police plan, or

(d) any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences.

18 Delegation of chief constable’s functions

15 (1) The chief constable may direct or authorise any other constable to carry out any of the chief constable’s functions.

(2) A direction or authorisation under subsection (1) does not affect the chief constable’s—

(a) responsibility for the carrying out of delegated functions, or

(b) ability to carry out delegated functions.

(3) The Authority must designate a deputy chief constable to carry out the chief constable’s functions where—

(a) the office of chief constable is vacant, or

(b) the chief constable is unable to carry out those functions by reason of being absent, incapacitated or suspended from duty.

(4) The Authority must designate an assistant chief constable to carry out the chief constable’s functions where—

(a) the offices of chief constable and deputy chief constable are vacant, or

(b) neither the chief constable nor a deputy chief constable is able to carry out those functions by reason of being absent, incapacitated or suspended from duty.

(5) Only one deputy chief constable or, as the case may be, assistant chief constable may be so designated to act at any one time.

(6) This section does not affect any restriction on delegation of the chief constable’s functions contained in any enactment which makes provision in that regard.

Functions of constables

19 Constables: functions and jurisdiction

(1) An individual holding the office of constable has—
(a) all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,

(b) all the powers and privileges of a constable throughout Scotland.

(2) A constable who is the chief constable, a deputy chief constable, an assistant chief constable or a local commander also has all the additional functions conferred on such a constable by virtue of this or any other enactment or by rule of law.

20 Constables: general duties

(1) It is the duty of a constable—

(a) to prevent and detect crime,

(b) to maintain order,

(c) to protect life and property,

(d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,

(e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and

(f) to attend court to give evidence.

(2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

(3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

21 Direction and control of the Police Service

(1) Constables are, in the carrying out of their functions (including any functions held by virtue of being a deputy chief constable, an assistant chief constable or a local commander), subject to the direction and control of the chief constable.

(2) A constable must—

(a) carry out lawful orders, and

(b) punctually and promptly perform all appointed duties and attend to all matters within the scope of that constable’s office.

(3) Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable.

22 Failure to perform duty

(1) It is an offence for a constable, without reasonable excuse, to be absent from duty.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(3) It is an offence for a constable to neglect or violate the constable’s duty.
A person who is guilty of an offence under subsection (3) is liable—
(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

23 Failure to return equipment

(1) It is an offence for a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, immediately upon being ordered to do so, any relevant item.

(2) It is an offence for a person who ceases to be a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, when ceasing to be a constable, any relevant item.

(3) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(4) Subsection (5) applies where a sheriff or a justice of the peace is satisfied on evidence on oath that—
(a) there has been a failure to return a relevant item, and
(b) the relevant item is in any place.

(5) The sheriff or, as the case may be, the justice of the peace, may grant a warrant to any constable named in the warrant to enter and search the place at any reasonable hour, if necessary by force, and to take any relevant item which is found in the place.

(6) For the purposes of this section, a “relevant item” is anything issued to a constable for the carrying out of the constable’s functions.

24 Liability for unlawful conduct

(1) The chief constable is liable in respect of any unlawful conduct on the part of any person falling within subsection (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(2) A person falls within this subsection if the person is—
(a) a constable under the direction and control of the chief constable, or
(b) a member of an international joint investigation team who is not—
(i) a constable,
(ii) a member of the Authority’s staff, or
(iii) a member of the police staff.

(3) The Authority must pay—
(a) any damages or expenses awarded against the chief constable in any proceedings brought by virtue of this section,
(b) any expenses incurred by the chief constable in relation to such proceedings (in so far as not recovered in the proceedings), and

(c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the Authority).

(4) Where the office of chief constable is vacant, references in subsections (1) to (3) to the chief constable are to be read as references to the person who is for the time being carrying out the chief constable’s functions.

(5) The Authority may, in such cases and to such extent as it thinks fit, pay—

(a) any damages or expenses awarded against a constable in proceedings arising in respect of any unlawful conduct on the part of that constable,

(b) any expenses incurred by the constable concerned in relation to such proceedings (in so far as not recovered in the proceedings),

(c) any sum required in connection with the settlement of any claim which has or might have given rise to such proceedings.

Police cadets

(1) The chief constable may appoint police cadets to undergo training with a view to becoming constables.

(2) Subject to section 21 and any other contrary enactment, police cadets are to be treated as employees of the Authority.

Police staff

(1) The Authority may appoint individuals to assist constables in the carrying out of police functions.

(2) Individuals appointed under subsection (1) may be—

(a) employed by the Authority, or

(b) provided to the Authority under arrangements between the Authority and a third party.

(3) The chief constable has power to make appointments under subsection (1) on behalf of the Authority.

Terms and conditions of police staff

(1) Police staff may be employed on terms and conditions determined by the Authority.

(2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of police staff.

(3) The arrangements mentioned in subsection (2) may include—
(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

28 Police custody and security officers

5 (1) The chief constable may certify a member of the police staff appointed under section 26(1) as having been authorised to assist constables by carrying out functions in relation to custody and security.

(2) An individual so certified is to be known as a “police custody and security officer”.

(3) A police custody and security officer has—

(a) for the purposes of the functions which the officer is authorised to carry out, the powers and duties set out in schedule 2, and

(b) all other functions conferred on police custody and security officers by virtue of this or any other enactment or by rule of law.

(4) A police custody and security officer is to be regarded as acting in accordance with the officer’s powers and duties only if the officer is readily identifiable as such an officer when so acting (whether or not by means of a uniform or badge worn).

(5) Sections 22(3) and (4), 23 and 89 apply in relation to a police custody and security officer as they apply in relation to a constable (and when so applied, a reference to a constable is to be read as a reference to such an officer).

29 Certification of police custody and security officers

(1) The chief constable may issue a certificate under section 28(1) only if satisfied that the member of the police staff concerned—

(a) is a fit and proper person to carry out a police custody and security officer’s functions, and

(b) has received training to such standard as the chief constable considers appropriate for the carrying out of those functions.

(2) The chief constable may revoke a certificate if the certified person appears to the chief constable not to be a fit and proper person to carry out a police custody and security officer’s functions.

(3) The chief constable may (pending consideration of whether to revoke a certificate) suspend the certificate where it appears to the chief constable that the certified person may not be a fit and proper person to carry out a police custody and security officer’s functions.

(4) A certificate is otherwise to continue in force until such date or occurrence as it may specify.

30 False statements in relation to certification

(1) It is an offence for a person to provide information for the purpose of enabling or assisting the person or any other person to be certified as a police custody and security officer if the person knows that, or is reckless as to whether, the information is false or misleading in a material respect.
(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 3
FORENSIC SERVICES

31 Forensic services
The Authority must provide forensic services to the Police Service, the Lord Advocate and procurators fiscal (and may provide forensic services to such other persons as it thinks fit).

CHAPTER 4
PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

32 Policing principles
The policing principles are—
(a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and
(b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—
(i) is accessible to, and engaged with, local communities, and
(ii) promotes measures to prevent crime, harm and disorder.

33 Strategic police priorities
(1) The Scottish Ministers may determine strategic priorities for the Authority (“strategic police priorities”).
(2) Strategic police priorities may relate to—
(a) the policing of Scotland, or
(b) the carrying out of the Authority’s functions.
(3) Before determining strategic police priorities, the Scottish Ministers must consult—
(a) the Authority,
(b) such persons as appear to them to be representative of local authorities, and
(c) such other persons as they consider appropriate.
(4) When determining strategic police priorities, the Scottish Ministers must have regard to the policing principles.
(5) The Scottish Ministers must arrange for the strategic police priorities to be published in such manner as they consider appropriate.

34 Strategic police plan
(1) The Authority must prepare a strategic police plan.
(2) A strategic police plan is a plan which—
(a) sets out the main objectives for the Authority and for the policing of Scotland,

(b) explains the reasons for selecting each main objective,

(c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,

(d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and

(e) includes any other information connected with the Authority’s functions, or policing, which the Authority considers appropriate.

(3) Before preparing a strategic police plan, the Authority must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in policing.

(4) When preparing a strategic police plan, the Authority must—

(a) send a copy of a draft plan to—

   (i) each local authority,

   (ii) the inspectors of constabulary, and

   (iii) such other persons as the Authority considers likely to have an interest in the plan,

(b) invite the recipients to comment on the draft plan within such reasonable period as the Authority may specify, and

(c) have regard to any comments received within that period.

(5) The Authority must—

(a) submit its strategic police plan to the Scottish Ministers, and

(b) use its best endeavours to secure their approval of the plan (with or without modifications).

(6) If the Scottish Ministers approve a strategic police plan submitted to them, the Authority must—

(a) publish the approved plan in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), and

(b) lay a copy of it before the Scottish Parliament.

(7) The Authority—

(a) must review an approved strategic police plan at least once every 3 years (and must, in particular, do so where the strategic police priorities have been significantly revised), and

(b) following such a review, must—

   (i) prepare a replacement strategic police plan, or

   (ii) notify the Scottish Ministers that, having undertaken a review, the Authority has concluded that there is no need to replace the existing strategic police plan.
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(8) Subsections (3) to (7), and sections 36 and 37, apply in relation to a replacement strategic police plan as they applied in relation to the plan being replaced.

35 Annual police plans

(1) The Authority must prepare an annual police plan for each yearly period beginning on 1 April.

(2) An annual police plan is a plan which—
   (a) sets out the proposed arrangements for—
      (i) the carrying out of the Authority’s functions during the yearly period, and
      (ii) the policing of Scotland during the yearly period,
   (b) describes how those arrangements are expected to contribute towards the achievement of the main objectives set out in the strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
   (c) includes any other information connected with the Authority’s functions, or policing, which the Authority considers appropriate.

(3) The Authority must—
   (a) publish the annual police plan before the start of the yearly period to which it relates in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), and
   (b) lay a copy of it before the Scottish Parliament.

36 Planning: role of chief constable etc.

The Authority must involve the chief constable in the preparation of a strategic police plan and each annual police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.

37 Planning functions: considerations

In carrying out their respective functions in relation to the preparation of the strategic police plan and each annual police plan, the Authority and the chief constable must—

(a) have regard to the policing principles,
(b) have regard to, and ensure that the strategic police plan and each annual police plan is not inconsistent with, the strategic police priorities, and
(c) ensure that an annual police plan is not inconsistent with the most recently approved strategic police plan.
CHAPTER 5
BEST VALUE

38 Best value

(1) It is the duty of the Authority to make arrangements which secure best value for the Authority (that is, a continuous improvement in the carrying out of the Authority’s functions).

(2) It is the duty of the chief constable to make arrangements which secure best value for the Police Service (that is, a continuous improvement in the carrying out of police functions).

(3) In securing best value, the Authority and the chief constable must maintain an appropriate balance among—
   (a) the quality of the carrying out of functions,
   (b) the cost of carrying out functions,
   (c) the cost to persons of any service provided for them on a wholly or partly rechargeable basis by the Authority or, as the case may be, under arrangements made by the chief constable.

(4) In maintaining that balance, the Authority and the chief constable must have regard to—
   (a) efficiency,
   (b) effectiveness,
   (c) economy, and
   (d) the need to meet the equal opportunity requirements.

(5) The Authority and the chief constable must carry out their duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

39 Best value: further provision

(1) In carrying out their respective duties under section 38(1) and (2), the Authority and the chief constable must have regard to—
   (a) any relevant guidance issued by the Scottish Ministers, and
   (b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of subsection (1) or, as the case may be, (2) of section 38 (or purposes which include those purposes).

(2) In the event of a conflict in any respect between any matters to which the Authority or the chief constable is to have regard under subsection (1), the Authority or the chief constable must in that respect have regard only to those falling within paragraph (a).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—
(a) the Authority,
(b) the chief constable, and
(c) such other persons as they consider appropriate.

(4) The Scottish Ministers may vary or revoke relevant guidance.

(5) In this section “relevant guidance”—
(a) means guidance on the carrying out of the duties imposed by subsections (1) or (2) of section 38,
(b) includes, in particular, guidance on—
   (i) how to make, and what is to be included in, the arrangements mentioned in those subsections,
   (ii) how to implement the duties imposed by those subsections.

CHAPTER 6

ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

40 The Scottish Police Authority’s annual report

(1) The Authority must prepare an annual report as soon as practicable after the end of each reporting year.

(2) An annual report is a report setting out—
   (a) an assessment of the Authority’s performance during the reporting year in carrying out its functions,
   (b) an assessment of the Police Service’s performance during the reporting year in the policing of Scotland, and
   (c) such other information relating to the Authority’s functions, or to policing, as the Authority considers appropriate.

(3) An annual report must, in particular, contain an assessment of the performance by the Authority and the Police Service during the reporting year—
   (a) in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
   (b) in implementing the proposed arrangements set out in the annual police plan for the period to which the report relates.

(4) The Authority must involve the chief constable in the preparation of an annual report and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.

(5) The Authority must—
   (a) publish each of its annual reports in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it),
   (b) provide a copy of each of its annual reports to the Scottish Ministers, and
   (c) lay a copy of each of its annual reports before the Scottish Parliament.
(6) In this section “reporting year” means a yearly period ending on 31 March.

41 Accounts

(1) The Authority must—
   (a) keep proper accounts and proper records in relation to the accounts, and
   (b) as soon as practicable after the end of each yearly period ending on 31 March, prepare a statement of accounts in respect of that period.

(2) A statement of accounts so prepared must be in such form and contain such information as the Scottish Ministers may determine.

(3) Without prejudice to the generality of section 81, the chief constable must—
   (a) provide the Authority with such assistance and information as it may reasonably require for the purposes of subsection (1), and
   (b) seek to ensure that sufficient information is kept for those purposes.

(4) In particular, the Authority is entitled to require the chief constable to provide, within such reasonable time as it may specify, accounts of such of the transactions relating to the Police Service as it may specify.

(5) The Authority must send a copy of each statement of accounts to the Scottish Ministers.

(6) The Scottish Ministers must lay a copy of each statement of accounts before the Scottish Parliament.

42 Audit

The Authority must send a copy of each statement of accounts to the Auditor General for auditing.

43 Examination of Police Service by Auditor General

(1) The Auditor General may initiate examinations into—
   (a) the economy, efficiency and effectiveness of the Police Service, and
   (b) the arrangements made by the chief constable under section 38(2).

(2) In determining whether to initiate an examination, the Auditor General must take into account any proposals made by the Scottish Parliament.

(3) It is for the Auditor General personally to initiate an examination under this section and to decide who is to carry it out.

(4) In carrying out the examination that person (“the examiner”)—
   (a) is not entitled to question the merits of the policy objectives of the chief constable or the Police Service, but
   (b) may consider the appropriateness of any criteria used to assess the use of resources available to the Police Service.

(5) The examiner (if not the Auditor General) must report the results to the Auditor General, who may report the results to the Scottish Parliament and the Authority.

(6) The Auditor General may publish the results of an examination.
(7) Sections 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) apply in relation to an examination under this section as they apply in relation to an examination under section 23 of that Act.

44 Examinations of Scottish Police Authority by Auditor General

The reference in section 23 of the Public Finance and Accountability Act 2000 to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to the Authority, to include a reference to examinations into the arrangements made by the Authority under section 38(1).

CHAPTER 7

LOCAL POLICING

45 Local policing

(1) The chief constable must ensure that there are adequate arrangements in place for the policing of each local authority area (and any adjacent territorial waters).

(2) For each local authority area, the chief constable must designate a constable as local commander.

(3) A constable may be designated as local commander in relation to more than one local authority area.

46 Local authority role in policing

(1) A local commander must involve the local authority in the setting of priorities and objectives for the policing of its area.

(2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander—
   (a) its views on any matter concerning or connected to the policing of its area, and
   (b) any recommendations for the improvement of the policing of its area that it thinks fit.

(3) A local commander must provide to the local authority such—
   (a) reports on the carrying out of police functions in its area (including by reference to any local policing plan in force for the area),
   (b) statistical information on complaints made about the Police Service in, or the policing of, its area, and
   (c) other information about the policing of its area, as the local authority may reasonably require.

47 Duty to participate in community planning

In section 16(1) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning)—

(a) paragraph (c) is repealed, and
(b) for paragraph (e) substitute—
“(e) a local commander within the meaning of Part 1 of the Police and Fire Reform (Scotland) Act 2012 (asp 00),”.

48 Local police plans

(1) A local commander must prepare and submit a local police plan to the relevant local authority for approval.

(2) A local police plan is a plan which—
   (a) sets out the main priorities and objectives for the policing of the local authority’s area,
   (b) explains the reasons for selecting each of those priorities and objectives,
   (c) sets out the proposed arrangements for the policing of the local authority’s area (and how those arrangements are expected to achieve the main priorities and objectives),
   (d) where reasonably practicable, identifies outcomes by reference to which the achievement of those priorities and objectives may be measured,
   (e) describes how those priorities, objectives and arrangements are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning, and
   (f) includes any other information connected with the policing of the local authority’s area which the local commander considers relevant.

(3) In preparing a local police plan, the local commander must—
   (a) have regard to the most recently approved strategic police plan, and
   (b) consult such persons as the local commander considers appropriate.

(4) If the local authority approves a local police plan submitted to it, the local commander must publish it in such form and manner as the Authority may specify.

(5) The local commander must—
   (a) review the local police plan at least once every 3 years, and
   (b) following such a review, prepare and submit a replacement local police plan to the local authority for approval.

(6) Subsections (3) to (5) apply in relation to a replacement local police plan as they apply in relation to the plan being replaced.

(7) The local commander and the local authority may (after such consultation as they agree is appropriate) agree to modify an approved local police plan at any time.

(8) Where a local police plan is modified under subsection (7), the local commander must publish the modified plan in the same manner as if it were an approved replacement local police plan.

(9) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).
49 Governance and administration of police

The Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets.

50 Appointments, promotions etc.

(1) Regulations made under section 49 may in particular make provision relating to—

(a) eligibility for appointment as constable or police cadet or for appointment or promotion to a particular rank,

(b) the procedure for appointment of senior officers or for the appointment or promotion of other constables,

(c) periods of service on probation,

(d) the efficiency or effectiveness of constables or police cadets,

(e) restrictions on the private life or business interests of constables or police cadets,

(f) resignation or retirement of constables.

(2) Such regulations—

(a) may provide for appointments of senior officers to be for fixed terms, but

(b) must not provide for fixed term appointment to any rank below that of assistant chief constable.

51 Conditions of service

(1) Regulations made under section 49 as to conditions of service may in particular make provision about—

(a) pay, allowances and expenses,

(b) public holidays and leave,

(c) the issue, use and return of police clothing and equipment.

(2) In relation to special constables, such regulations must not entitle them to pay but may make provision entitling them to receive periodic payments in acknowledgment of the giving of services (including provision about the minimum aggregate length of service needed within a period in order to give rise to an entitlement to receive a periodic payment in respect of that period).

(3) Regulations made under section 49—

(a) may make retrospective provision about pay or allowances, but

(b) must not retrospectively reduce any pay or allowance payable to or in respect of any person.
52 Regulations: duties

(1) Regulations made under section 49 may make provision relating to duties of constables or police cadets.

(2) Such regulations may in particular make provision about—

(a) duties which are or are not to be performed,

(b) hours of duty,

(c) the treatment as occasions of police duty of attendance at meetings of the Police Federations and any other body recognised for the purposes of section 64 of the Police Act 1996 (c.16) as representing members of police forces.

53 Disciplinary procedures: conduct and performance

(1) Regulations made under section 49 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.

(2) Such regulations may make provision—

(a) setting out—

(i) standards of behaviour which, if breached, may be treated as misconduct,

(ii) standards of performance which, if breached, may be treated as being unsatisfactory performance,

(iii) other circumstances in which a constable’s behaviour may be treated as misconduct or in which a constable’s performance may be treated as unsatisfactory (for example, where performance is inefficient or where there has been a failure to perform functions),

(b) for circumstances in which a constable may be suspended from duty pending investigation into whether the constable has been engaged in misconduct,

(c) subject to subsection (3), for a constable who is found to have been engaged in misconduct or whose performance is found to have been unsatisfactory to be dealt with by being—

(i) dismissed (with or without notice),

(ii) demoted in rank,

(iii) warned that future misconduct or unsatisfactory performance may lead to further disciplinary action,

(iv) admonished, or

(v) dealt with in any other way,

(d) conferring functions on the Police Investigations and Review Commissioner in relation to investigations of whether a constable has been engaged in misconduct or whether a constable’s performance has been unsatisfactory,

(e) applying the procedures (with or without modifications) in relation to a constable engaged on temporary service outwith the Police Service (see section 15).
(3) Such regulations must provide for the Authority to decide how to deal with any case in which a senior officer is found to have been engaged in misconduct or in which a senior officer’s performance is found to have been unsatisfactory.

(4) A constable suspended by virtue of regulations made under section 49 is not entitled to carry out any functions as a constable unless the regulations otherwise specify.

54 Personal records

Regulations made under section 49 may make provision relating to—

(a) the keeping of personal records about constables and police cadets,

(b) the taking of fingerprints and samples from constables and police cadets and the retention, use and destruction of such fingerprints and samples or of information derived from such samples.

55 Consultation on regulations

(1) Before making regulations under section 49 about any matter mentioned in section 61(1) of the Police Act 1996 (c.16), the Scottish Ministers must—

(a) share a draft of the regulations with the Police Negotiating Board for the United Kingdom, and

(b) consider any representations made.

(2) Before making any other regulations under section 49, the Scottish Ministers must—

(a) consult and share a draft of the regulations with—

(i) the chief constable,

(ii) the Authority,

(iii) the representative committees of the Police Federation for Scotland,

(iv) such persons as appear to them to be representative of senior officers,

(v) such persons as appear to them to be representative of superintendents (including chief superintendents), and

(vi) such other persons as they consider appropriate, and

(b) consider any representations made.

56 Regulations: supplementary

(1) Regulations made under section 49 may—

(a) make provision for the delegation of functions to—

(i) the Scottish Ministers,

(ii) the Authority,

(iii) the chief constable,

(iv) a local commander,

(v) the Police Investigations and Review Commissioner, or

(vi) any other person,
(b) authorise or require the delegation of functions by any person.

(2) In the absence of express contrary intention, nothing in this Part affects the generality of the power conferred by section 49.

CHAPTER 9

POLICE APPEALS TRIBUNALS

57 Right to appeal to police appeals tribunal

(1) A constable may appeal to a police appeals tribunal against any decision to dismiss the constable, or to demote the constable in rank, taken in pursuance of regulations made under section 49.

(2) An appeal is competent only if the constable has exhausted any available process of review or appeal provided for in such regulations.

(3) Schedule 3 makes provision about police appeals tribunals, the rules relating to appeals, and other relevant matters.

58 Representation

(1) Before determining an appeal, a police appeals tribunal must—

(a) give both the appellant and the respondent a chance to make representations (whether by way of written submissions or oral hearing), and

(b) consider such representations.

(2) Either party may require that the representations are to be made by way of oral hearing.

(3) Where an oral hearing is to be held, the parties may elect to be represented (including by a legally qualified person).

59 Determinations by tribunal

(1) A police appeals tribunal may determine an appeal by—

(a) confirming the decision being appealed, or

(b) replacing that decision with any less severe decision which could have been made by the person who made it.

(2) Where the determination replaces the decision appealed against, it takes effect from the date of the decision which resulted in the dismissal or demotion in rank of the appellant.

(3) Subsection (4) applies where a determination made by a police appeals tribunal reinstates the appellant—

(a) as a constable,

(b) in—

(i) the rank previously held by the appellant, or

(ii) a different rank.
(4) The appellant is to be deemed, for the purposes of reckoning service for pension and to such extent (if any) as may be determined by the tribunal for the purposes of pay, to have served as a constable, or in the reinstated or different rank, continuously from the date of the decision which resulted in the dismissal or demotion in rank of the appellant to the date of the tribunal’s determination.

(5) In determining an appeal, the tribunal may deal with such other matters relating to the appellant’s reinstatement or period of service as the tribunal thinks fit including, in particular, any periods where the appellant was suspended in consequence of the proceedings which led to the appellant’s dismissal.

60 Powers to obtain information

(1) The person appointed to chair a police appeals tribunal (the chairing member) may require the appellant, respondent or any other person—

(a) to attend a hearing of the tribunal, at such time and such place as the chairing member may specify, for the purposes of giving evidence,

(b) to give to the tribunal, by such day as the chairing member may specify, such documents or information as the tribunal may reasonably require.

(2) Subsection (1) does not authorise the chairing member or the tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in the Court of Session.

(3) It is an offence for any person on whom a requirement under subsection (1) is served to—

(a) fail to attend a hearing of the tribunal as required by the citation,

(b) refuse or fail, while attending such a hearing as so required, to answer any question,

(c) refuse or fail to give the tribunal any document or information so required,

(d) knowingly or recklessly make any statement in respect of any information so required which is false or misleading in a material respect, or

(e) deliberately alter, suppress, conceal or destroy any document so required.

(4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) It is a defence for a person charged with an offence under subsection (3)(a), (b) or (c) to show that the person had a reasonable excuse for the refusal or failure.

CHAPTER 10

COMPLAINTS AND INVESTIGATIONS

61 Complaints handling

(1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.

(2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.
(3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.

(4) Without prejudice to the generality of section 81 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).

(5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).

(6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

62 The Police Investigations and Review Commissioner

(1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.

(2) Accordingly—

(a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute—

“The Police Investigations and Review Commissioner”

(b) for the title of that section substitute—

“The Police Investigations and Review Commissioner”.

(c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

63 General functions of the Police Investigations and Review Commissioner

After section 33 of the 2006 Act, insert—

“33A General functions of the Commissioner

(1) The Commissioner’s general functions are—

(a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—

(i) the handling of relevant complaints; and

(ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;

(b) where directed to do so by the appropriate prosecutor—
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(i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence;

(ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);

(c) to investigate and report on certain serious incidents involving the police (see section 41B);

(d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C); and

(e) to perform any functions imposed on the Commissioner by regulations made under section 49 of the Police and Fire Reform (Scotland) Act 2012 (asp 00) in relation to procedures for dealing with constables whose standard of behaviour or performance is unsatisfactory.

An offence is a “serious criminal offence” for the purposes of subsection (1)(b)(i) if—

(a) the conduct constituting the offence results in death or serious injury; or

(b) it is an offence of such other description as the Scottish Ministers may by regulations prescribe.”.

Investigations under supervision of Lord Advocate or procurator fiscal

After section 41 of the 2006 Act, insert—

“Investigations

41A Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A(1), must comply with—

(a) any lawful instruction given by the appropriate prosecutor who issued the direction, and

(b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

Serious incidents involving the police

After section 41A of the 2006 Act (inserted by section 64), insert—
“41B Serious incidents involving the police

(1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A(1) is—

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—

(i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and

(ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;

(b) any other circumstance in or in consequence of which—

(i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

(ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or

(c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.

(2) But a matter is not a “serious incident involving the police” if it is—

(a) a matter which is, or has been, the subject of a relevant complaint;

(b) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (b) of section 33A(1); or

(c) a matter which is being, or has been, investigated by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

66 Investigations of other matters in the public interest

After section 41B of the 2006 Act (inserted by section 65), insert—

“41C Investigation of matters in the public interest

(1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.

(2) A relevant police matter is any matter relating to the Authority, the Police Service or a person serving with the police other than—

(a) a matter which is, or has been, the subject of a relevant complaint;

(b) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (b) of section 33A(1);

(c) a matter which is being, or has been, investigated by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);
(d) a matter which is being, has been or is capable of being investigated by
the Commissioner by virtue of paragraph (c) of section 33A(1).”.

67 Investigations: procedure etc.

After section 41C of the 2006 Act (inserted by section 66), insert—

“41D Investigations: procedure etc.

(1) The Scottish Ministers may by regulations make such provision about
investigations by the Commissioner in pursuance of paragraph (c) or (d) of
section 33A(1) as they consider appropriate.

(2) Regulations may, in particular, make provision—

(a) requiring the chief constable or the Authority to refer matters to the
Commissioner;

(b) about circumstances in which the Commissioner—
(i) must, must not or need not carry out an investigation; or
(ii) may discontinue an investigation;

(c) about the form and procedure of an investigation;

(d) imposing restrictions on the extent of any investigation;

(e) setting time limits within which matters must be investigated;

(f) requiring the chief constable, the Authority or other persons to assist and
co-operate with the Commissioner when carrying out an investigation
(by providing evidence, attending hearings or otherwise);

(g) lifting obligations of secrecy or other restrictions on disclosure of
information which may otherwise prevent information being disclosed
for the purposes of an investigation;

(h) for the delegation of functions to the Commissioner.

(3) Before making regulations under this section, the Scottish Ministers must
consult—

(a) the Commissioner;

(b) the Authority;

(c) the chief constable; and

(d) such other persons as they think appropriate.”.

68 Reports on investigations

After section 41D of the 2006 Act (inserted by section 67), insert—

“41E Reports on investigations

(1) The Commissioner must prepare a report of each investigation carried out in
pursuance of paragraph (c) or (d) of section 33A(1).

(2) The Commissioner must—
(a) publish a report prepared under subsection (1) in such manner as the Commissioner considers appropriate; and

(b) provide a copy of the report to—

(i) the person (if any) who requested the investigation;

(ii) the Authority; and

(iii) any other person whom the Commissioner considers appropriate.

(3) Apart from identifying the Authority or the Police Service, a report must not—

(a) mention the name of any person; or

(b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

69 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 68), insert—

“41F Investigations: obstruction and contempt

(1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—

(a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A(1); or

(b) is doing or has done any act, or is failing or has failed to take any action, in relation to such an investigation which, if the investigation were a proceeding in the Court of Session, would constitute contempt of court.

(2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.

70 Complaints against the Commissioner

Before section 43 of the 2006 Act insert—

“42A Complaints against the Commissioner

(1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner by or on behalf of a member of the public expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner’s staff.

(2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.
CHAPTER 11
HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

71 Her Majesty’s inspectors of constabulary in Scotland

(1) There are to continue to be inspectors of constabulary in Scotland.

(2) Her Majesty may by Order in Council appoint such number of inspectors of constabulary as the Scottish Ministers may determine.

(3) The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary.

(4) An inspector of constabulary is to hold and vacate office at Her Majesty’s pleasure.

(5) An inspector of constabulary is otherwise—

(a) to be paid such remuneration or allowances as the Scottish Ministers may determine, and

(b) to hold office in accordance with such other terms and conditions as may be so determined.

72 Assistant inspectors of constabulary

(1) The Scottish Ministers may—

(a) appoint assistant inspectors of constabulary on such terms and conditions as they may determine, or

(b) make arrangements for constables to serve as assistant inspectors of constabulary.

(2) A constable engaged on service as an assistant inspector of constabulary is under the direction and control of the inspectors of constabulary.

(3) The Scottish Ministers are liable in respect of any unlawful conduct on the part of any constable engaged on service as an assistant inspector of constabulary in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

73 Staff officers

(1) The inspectors of constabulary may—

(a) appoint staff officers, on such terms and conditions as they may determine, for the purpose of assisting them in the carrying out of their functions, or

(b) make arrangements for constables to serve as staff officers for that purpose.

(2) A constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary.

(3) The inspectors of constabulary are liable in respect of any unlawful conduct on the part of any constable engaged on service as a staff officer in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.
74 **Functions of inspectors**

The Scottish Ministers may direct the inspectors of constabulary—

(a) to make inquiries about any matter relating to the Authority or the Police Service as they consider appropriate;

(b) to inspect annually (or at such other intervals as the Scottish Ministers think fit)—

(i) the state, efficiency and effectiveness of the Authority and the Police Service, and

(ii) the arrangements made by the Authority and the chief constable under section 38(1) and (2).

10 **HMICS powers**

(1) The inspectors of constabulary have power to do anything which they consider necessary or expedient for the purposes of, or in connection with, the carrying out of their functions.

(2) The inspectors of constabulary may authorise any assistant inspector of constabulary, or any of their staff officers, to carry out on behalf of the inspectors of constabulary such of their functions as they may determine to the extent so authorised.

(3) Subsection (2) does not affect the inspectors of constabulary’s—

(a) responsibility for carrying out delegated functions, or

(b) ability to carry out delegated functions.

20 **Duty to assist and co-operate with HMICS**

The Authority and the chief constable must provide the inspectors of constabulary with such assistance and co-operation as they may require for the purposes of, or in connection with, the carrying out of their functions (and must, in particular, comply with any reasonable request made by the inspectors of constabulary in that regard).

25 **HMICS reports**

(1) The inspectors of constabulary must give the Scottish Ministers—

(a) a report of any inquiry or inspection carried out in pursuance of section 74, and

(b) any other information relating to the inquiry or inspection that the Scottish Ministers may request.

(2) As soon as is reasonably practicable after giving the report to the Scottish Ministers, the inspectors of constabulary must—

(a) give a copy of the report to the Authority and, where the report relates to the Police Service, to the chief constable, and

(b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of a report given to them under this section.
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Chapter 12—Co-operation, exchange of information etc.

(4) In carrying out their respective functions, the Authority and the chief constable must have regard to any reports given to them under this section and, having done so, must take such measures (if any) as they think fit in relation to the report.

78 Power to give directions after adverse HMICS report

(1) This subsection applies where a report given to the Scottish Ministers under section 77 states that the inspectors of constabulary are of the opinion—

(a) that the Authority or Police Service—

(i) is not efficient or effective, or

(ii) will, unless remedial measures are taken, cease to be efficient or effective, or

(b) that best value for the Authority or the Police Service—

(i) has not been secured in pursuance of subsection (1) or, as the case may be, (2) of section 38, or

(ii) will not, unless remedial measures are taken, be so secured.

(2) Where subsection (1) applies, the Scottish Ministers may direct the Authority to take such measures as may be specified in the direction.

(3) The Authority must comply with any direction given under this section.

79 HMICS annual report

(1) As soon as is practicable after the end of each yearly period ending on 31 March, the inspectors of constabulary must prepare an annual report on the carrying out of their functions during that period.

(2) The inspectors of constabulary must—

(a) give a copy of each of their annual reports to the Scottish Ministers, the Authority and the chief constable, and

(b) publish each of their annual reports in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report given to them under this section.

CHAPTER 12
CO-OPERATION, EXCHANGE OF INFORMATION ETC.

80 Co-operation between Scottish Police Authority and Police Service

(1) The Authority and the chief constable may make arrangements under which—

(a) the Authority is to provide assistance to the Police Service, or

(b) the Police Service is to provide assistance to the Authority.

(2) Such assistance may involve—

(a) members of the Authority’s staff providing services for the Police Service, or
81 Police information

(1) The Authority must provide the Scottish Ministers with such reports, statistics or other information relating to the Authority or the Police Service as they may reasonably require.

(2) Such information may, in particular, relate to—
   (a) the Authority or its functions,
   (b) the Police Service or police functions,
   (c) the state of crime.

(3) The chief constable must provide the Authority with such reports, statistics or other information relating to the Police Service, police functions or the state of crime as it may reasonably require.

(4) The chief constable may refer a requirement made under subsection (3) to the Scottish Ministers if the chief constable considers that complying with the requirement would or might prejudice—
   (a) the carrying out of any operation by the Police Service, or
   (b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the Scottish Ministers.

(6) The chief constable must provide the Lord Justice General or a sheriff principal with such reports relating to policing as may be reasonably required.

(7) A requirement by the sheriff principal may relate only to the policing of places in which the sheriff principal has jurisdiction.

(8) The chief constable must seek to ensure that sufficient information about the state of crime is kept to enable the compliance with any requirement made under this section for the provision of information in that regard.

(9) The clerk of any court having criminal jurisdiction must comply with any requirement made by the chief constable to provide any information available to the clerk which the chief constable may require for the purposes of subsection (8).

(10) Nothing in this section requires anyone to provide any report, statistic or other information before the earliest time at which it is reasonable for that person to do so.

82 Scrutiny and investigations: co-operation and information sharing

(1) The inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner must—
   (a) co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service, and
   (b) in particular, must together make arrangements with a view to—
(i) securing the exchange of information between them about the Authority and the Police Service, and

(ii) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service.

(2) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay any of the persons to whom it applies in taking any action which the person considers to be necessary as a matter of urgency.

(3) In complying with the duty in subsection (1), the inspectors of constabulary and the Police Investigations and Review Commissioner must—

(a) comply with any direction (general or specific) given by the Scottish Ministers, and

(b) have regard to any guidance given by the Scottish Ministers.

(4) A direction or guidance may relate to all the functions of the inspectors of constabulary and the Police Investigations and Review Commissioner or to such of those functions (or to such functions of any or all of them) as are specified in the direction or guidance.

(5) The Scottish Ministers may vary or revoke any direction or guidance.

(6) No obligation as to secrecy or other restriction on disclosure of information prevents the inspectors of constabulary, the Auditor General or the Police Investigations and Review Commissioner from disclosing information to each other—

(a) for any purpose connected with the carrying out of their respective functions, or

(b) for the purpose of enabling or assisting each other to carry out any of their respective functions.

CHAPTER 13

PROVISION OF GOODS AND SERVICES

83 Provision of police services

(1) The Authority may authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services.

(2) An authorisation under subsection (1) may be of a general or specific nature and may, in particular, set out a scale by reference to which charges for police services are to be made.

(3) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the police services concerned.

(4) The Authority, when making such an authorisation, must comply with any code about charging for police services issued by the Scottish Ministers.

(5) Any such code—

(a) may be of a general or specific nature,

(b) may be varied or revoked at any time.
(6) The chief constable must ensure that all sums received by way of charges for police services are paid to the Authority.

(7) Nothing in this section permits the making of any charge for police services which exceeds the cost of providing those services.

(8) Except in so far as authorised or required by any other enactment or rule of law, the chief constable may not make charges in respect of the carrying out of police functions otherwise than in accordance with an authorisation under subsection (1).

(9) In this Part, “police services” means services in connection with the maintenance of order, or the protection of persons or property from harm, which are provided on or in relation to land owned or occupied by the person who requests those services.

84 Provision of other goods and services

(1) The Authority may—

(a) provide goods and services to any other public body or office-holder,

(b) provide goods and services of such type as the Scottish Ministers may by order specify to such other persons as may be so specified.

(2) Goods and services may be provided in pursuance of subsection (1) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of its functions.

(3) The Authority may, with the consent of the chief constable, make arrangements for the Police Service—

(a) to provide goods and services (other than police services) to any other public body or office-holder,

(b) to provide goods and services (other than police services) of such type as the Scottish Ministers may by order specify to such other persons as may be so specified.

(4) Goods and services may be provided in pursuance of subsection (3) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of police functions.

(5) The Authority may make charges in respect of any goods or services provided by it, or by the Police Service, in pursuance of subsection (1) or (3).

(6) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the goods or services concerned.

(7) Nothing in this section permits the Authority—

(a) to make any charge for forensic services it provides to the Lord Advocate or procurators fiscal, or

(b) to make any charge for goods or services which exceeds the cost of providing the goods or services.

(8) Goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) include—
(a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),

(b) services involving the inspection, testing, maintenance or repair of vehicles,

(c) any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority’s functions or, as the case may be, police functions.

CHAPTER 14

GRANTS

85 Police grants

(1) The Scottish Ministers may make grants to the Authority of such amounts as they determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

86 Grants to other persons

(1) The Scottish Ministers may make grants of such amounts as they determine, or provide such other financial assistance as they think appropriate, to such persons as they think fit for the purposes of providing services to, or otherwise assisting or supporting, the Authority or the Police Service in the carrying out of the Authority’s functions or, as the case may be, police functions.

(2) Grants may be made or financial assistance provided under this section only where the Scottish Ministers consider it is necessary or expedient to do so for promoting the efficiency or effectiveness of, or securing best value for, the Authority or the Police Service.

(3) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

(4) Any financial assistance provided is subject to any conditions specified by the Scottish Ministers.

CHAPTER 15

OFFENCES

87 Assaulting or impeding police

(1) It is an offence for a person to assault, resist, obstruct or hinder—

(a) a person (“A”) acting in a capacity mentioned in subsection (2), or

(b) a person assisting A while A is acting in such capacity.

(2) The capacities are—

(a) that of a constable,

(b) that of a member of police staff.
(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(d) that of a person who—

(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and

(ii) is carrying out functions as a member of that team.

(3) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

(4) In this section and section 88, a reference to a member of a relevant police force is a reference to a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force, or

(d) the Police Service of Northern Ireland.

88 Escape from custody

(1) It is an offence for a person—

(a) to remove a person from custody, or

(b) to assist the escape of a person in custody.

(2) The reference in subsection (1) to a person in custody is to be construed as a reference to a person—

(a) who is in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (3) or a person assisting A while A is acting in such capacity, or

(b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested.

(3) The capacities are—

(a) that of a constable,

(b) that of a police custody and security officer,

(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(d) that of a person who—

(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and

(ii) is carrying out functions as a member of that team.

(4) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
Impersonation etc.

(1) It is an offence for a person (not being a constable)—
(a) to impersonate a constable with an intent to deceive, or
(b) to do anything calculated to suggest that the person is a constable.

(2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.

(3) It is a defence for a person charged under subsection (2) to prove that the article—
(a) was obtained lawfully, and
(b) is in the person’s possession for a lawful purpose.

(4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.

(5) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 4 on the standard scale.

(6) In this section an “article of police uniform” means—
(a) any article of uniform or any distinctive badge or mark usually issued to constables, or
(b) any article having the appearance of such article, badge or mark.

CHAPTER 16
INDEPENDENT CUSTODY VISITING

Purpose of custody visiting

The provisions in this Chapter are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Independent custody visiting

(1) The Authority must make arrangements to ensure that independent custody visitors may—
(a) visit detainees,
(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must—
(a) provide for the appointment as independent custody visitors of suitable persons who are independent of both the Authority and the Police Service,
(b) authorise independent custody visitors to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained, and

(c) provide for reporting on each visit.

(3) The arrangements may, in particular, authorise independent custody visitors to—

(a) access, without prior notice, any place in which a detainee is held,

(b) examine records relating to the detention of persons there,

(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,

(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and

(e) meet such other persons that the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.

(4) The arrangements may allow access to a detainee to be refused only where—

(a) the Scottish Ministers have determined grounds on which access to detainees (or to a category of detainee) can be so refused,

(b) it appears to a constable of the rank of inspector (or above) that such a ground is satisfied in relation to the detainee, and

(c) any other procedural requirements the Authority considers necessary have been met.

(5) The Authority must—

(a) keep the arrangements under review and revise them as it thinks fit,

(b) prepare and publish such reports on independent custody visiting as the Scottish Ministers may reasonably require.

(6) The Authority and members of its staff, the Police Service and police staff and independent custody visitors must have regard to any guidance issued by the Scottish Ministers about independent custody visiting.

(7) Before issuing guidance, or making a determination for the purposes of subsection (4)(a), the Scottish Ministers must consult—

(a) the Authority,

(b) the chief constable,

(c) independent custody visitors or such persons as appear to them to be representative of independent custody visitors, and

(d) such other persons as they consider appropriate.

(8) The Scottish Ministers must lay a copy of guidance issued or any determination made before the Scottish Parliament.

92 SPT visits

(1) The Authority must make arrangements to ensure that members of the SPT may—
(a) visit detainees,
(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must authorise members of the SPT to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.

(3) The arrangements may, in particular, authorise members of the SPT to—
(a) access, without prior notice, any place in which a detainee is held (accompanied by such experts as the SPT members think fit),
(b) examine records relating to the detention of persons there,
(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
(e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.

(4) The arrangements may allow access to a detainee to be refused only—
(a) where there are urgent and compelling grounds of public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit, and
(b) the Scottish Ministers have notified the Authority that such grounds exist and that access should accordingly be refused.

(5) The Authority must keep the arrangements under review and revise them as it thinks fit.

(6) The Authority and members of its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits.

93 Interpretation of Chapter 16

(1) For the purposes of this Chapter, a reference to a detainee is a reference to a person in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (2) or a person assisting A while A is acting in such a capacity.

(2) The capacities are—
(a) that of a constable,
(b) that of a police custody and security officer,
(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
(d) that of a person who—
   (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
(ii) is carrying out functions as a member of that team.

(3) For the purpose of subsection (2) a reference to a member of a relevant police force is a reference to a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),
(b) the metropolitan police force,
(c) the City of London police force, or
(d) the Police Service of Northern Ireland.

(4) In this Chapter—

“SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT, and

“OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

CHAPTER 17
MISCELLANEOUS AND GENERAL

94 Dissolution of the Police Advisory Board for Scotland

(1) The Police Advisory Board for Scotland is dissolved.

(2) In section 63 of the Police Act 1996 (c.16) (Police Advisory Boards for England and Wales and for Scotland)—

(a) in subsection (1)—

(i) repeal “and a Police Advisory Board for Scotland”, and

(ii) repeal “in those countries respectively”,

(b) repeal subsection (1ZA), and

(c) in subsection (2), for “each of the Police Advisory Boards” substitute “the Police Advisory Board for England and Wales”.

95 Transfer of constables, staff, property etc.

Schedule 4 contains provision about the transfer of constables, inspectors of constabulary, police cadets, staff, property, rights, liabilities and obligations.

96 Key police definitions

(1) In this Part—

“constable” means an individual holding the office of constable of the Police Service (including the chief constable, other senior officers and any special constable),

“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),
“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,
“local commander” means a constable designated under section 45(2),
“police custody and security officer” means an individual certified under section 28(1),
“Police Service of Scotland” is the constabulary maintained by the Scottish Police Authority, and
“Scottish Police Authority” means the body established under section 1.

(2) Except where the context otherwise requires, a reference in any enactment to the chief officer of a police force includes a reference to the chief constable of the Police Service of Scotland.

97 Meaning of other words and expressions used in Part 1

(1) In this Part, unless the context otherwise requires—
“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),
“annual police plan” has the meaning given by section 35,
“appropriate prosecutor” means the Lord Advocate or procurator fiscal,
“assistant chief constable” means a constable appointed to the office of assistant chief constable under section 7,
“Auditor General” means the Auditor General for Scotland,
“Authority” means the Scottish Police Authority,
“deputy chief constable” means a constable appointed to the office of deputy chief constable under section 7,
“international joint investigation team” means any investigation team formed in accordance with—
(a) Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams,
(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with Article 34 of the Treaty on European Union,
(c) the Convention implementing the Schengen Agreement of 14 June 1985,
(d) the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, or
(e) any international agreement to which the United Kingdom is a party and which is specified for the purposes of (as the case may be) section 24, 87, 88 or 93 in an order made by the Scottish Ministers.
“local police plan” has the meaning given by section 48,
“member of the Authority’s staff” means an individual appointed under paragraph 7(1) of schedule 1,
“police appeals tribunal” means a tribunal constituted in accordance with schedule 3,
“police cadet” means an individual appointed under section 25;
“police functions” means the functions of constables (including the chief
constable’s functions and any functions of a deputy chief constable, an assistant
chief constable or a local commander),
“policing” means the carrying out of police functions (and references to the
policing of Scotland are references to the carrying out of police functions in or as
regards Scotland),
“the Police Investigations and Review Commissioner” means the Commissioner
established by section 33 of the 2006 Act and renamed by section 62,
“Police Service” means the Police Service of Scotland,
“police services” has the meaning given by section 83(9),
“police staff” means staff appointed under section 26(1) (and “member of the
police staff” is to be construed accordingly),
“senior officer” means a constable who holds the office of chief constable, deputy
chief constable or assistant chief constable,
“strategic police priorities” has the meaning given by section 33,
“strategic police plan” has the meaning given by section 34,
“terms and conditions” includes terms and conditions about payment of
remuneration or allowances or about reimbursement of expenses.

(2) In this Part, references to securing best value are to be construed in accordance with
section 38.

98  Crown application

(1) No contravention by the Crown of any provision made by or under this Part makes the
Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers or any public
body or office-holder having responsibility for enforcing that provision, declare
unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to persons in
the public service of the Crown as it applies to other persons.

(4) The power conferred by section 4(2)(d) does not apply in relation to Crown land.

(5) In this section, “Crown land” means land held or used by or on behalf of the Crown (and
includes an interest belonging to Her Majesty in right of Her private estates).
PART 2

FIRE REFORM

The Scottish Fire and Rescue Service

The Scottish Fire and Rescue Service

(1) After section 1 of the 2005 Act, insert—

“1A The Scottish Fire and Rescue Service

(1) There is established a body corporate to be known as the Scottish Fire and Rescue Service (referred to in this Act as “SFRS”).

(2) SFRS has the functions conferred on it by or under this Act or any other enactment.

(3) Schedule 1A makes further provision about SFRS.”.

(2) After schedule 1 to the 2005 Act, insert—

“SCHEDULE 1A

(introduced by section 1A(3))

THE SCOTTISH FIRE AND RESCUE SERVICE

Status

1 (1) SFRS—

(a) is not a servant or agent of the Crown, and

(b) has no status, immunity or privilege of the Crown.

(2) SFRS’s property is not property of, or property held on behalf of, the Crown.

Membership

2 (1) SFRS is to consist of not fewer than 7 nor more than 11 members.

(2) The members are to be appointed by the Scottish Ministers.

(3) The Scottish Ministers may appoint as members only persons who they consider to have skills and expertise relevant to the functions of SFRS.

(4) The Scottish Ministers may by order modify sub-paragraph (1) by substituting for the minimum or maximum number of members for the time being specified such other number as they think fit.

Disqualification

3 A person is disqualified from appointment, and from holding office, as a member of SFRS if that person is or becomes—

(a) a member of staff of SFRS,

(b) a member of—

(i) the Scottish Parliament,

(ii) the House of Lords,

(iii) the House of Commons, or
(iv) the European Parliament,

(c) disqualified from standing for election as a member of—
   (i) the Scottish Parliament,
   (ii) the House of Commons, or
   (iii) a local authority,

(d) a person of such other description as may be prescribed by order made by the Scottish Ministers.

**Tenure**

4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.

(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(3) On ceasing to be a member, a person is eligible for reappointment.

(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

**Chairing member and deputy**

5 (1) The Scottish Ministers must appoint one of the members of SFRS to chair meetings of SFRS (“the chairing member”).

(2) The chairing member is to be appointed for a period not exceeding 4 years specified in the appointment.

(3) If a person is appointed as the chairing member for a period that extends beyond the period of the person’s appointment as a member, the person’s appointment as a member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member ends.

(4) Members of SFRS must elect from their number a member to act as deputy to the chairing member.

**Removal from office**

6 (1) The Scottish Ministers may remove a member from office if—

   (a) the member is an undischarged bankrupt,

   (b) the member is incapacitated by physical or mental illness,

   (c) the member has, without reasonable excuse, been absent from meetings of SFRS for a period longer than 4 consecutive months,

   (d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of SFRS,

   (e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,

   (f) the member has failed to comply with the terms or conditions of the member’s appointment,
(g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

(e) who has been adjudged bankrupt (and has not been discharged), or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those mentioned in paragraphs (a) to (d), anywhere in the world.

Remuneration, allowances and expenses of members

7 SFRS may pay to its members such remuneration, allowances and expenses as the Scottish Ministers may determine.

The Chief Officer

8 (1) SFRS must employ a Chief Officer.

(2) The Chief Officer may not be a member of SFRS.

(3) The first Chief Officer is to be appointed by the Scottish Ministers on such terms and conditions as they may determine.

(4) Each subsequent appointment of a person as the Chief Officer is to be made by SFRS.

(5) The appointment of a person under sub-paragraph (4) is subject to the approval of the Scottish Ministers.

(6) The terms and conditions of a person appointed under sub-paragraph (4) are to be determined by SFRS.

SFRS’s employees

9 (1) SFRS may employ staff.

(2) Staff are to be employed on terms and conditions determined by SFRS.

(3) SFRS may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who is, or has ceased to be, a member of staff (including the Chief Officer).
(4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.

(5) The arrangements mentioned in sub-paragraph (3) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

Committees and sub-committees

10 (1) SFRS may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

(3) The members of any committee or sub-committee may include persons who are not members of SFRS but such persons are not entitled to vote at meetings.

(4) A committee or sub-committee must not consist entirely of persons who are not members of SFRS.

(5) SFRS may pay such remuneration, allowances and expenses as are determined by SFRS to a member of a committee or sub-committee who is not—

(a) a member of SFRS, or

(b) a member of staff of SFRS.

Procedure

11 (1) SFRS may regulate—

(a) its own procedure (including quorum), and

(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of SFRS is not affected by any—

(a) vacancy in its membership,

(b) defect in the appointment of a member,

(c) disqualification of a person as a member after appointment.

SFRS’s general powers

12 (1) SFRS may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) SFRS may in particular—

(a) enter into contracts,

(b) borrow money,

(c) acquire and dispose of land and other property,

(d) with the authorisation of the Scottish Ministers, purchase compulsorily land,

(e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).
(3) SFRS may not exercise the power in sub-paragraph (2)(b) without the consent of the Scottish Ministers.

(4) For the purposes of sub-paragraph (3) consent may be given—
   (a) with respect to a particular case or class of case,
   (b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in sub-paragraph (2)(c) includes the power to accept, on such conditions as SFRS considers appropriate—
   (a) gifts of money, and
   (b) gifts or loans of other property.

(6) The powers in sub-paragraph (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under sub-paragraph (2)(d) as if—
   (a) that sub-paragraph were contained in an Act in force immediately before the commencement of that Act, and
   (b) SFRS were a local authority.

Delegation of functions

13 (1) SFRS may delegate any of its functions to a person mentioned in sub-paragraph (2).

(2) Those persons are—
   (a) the Chief Officer,
   (b) any other member of staff of SFRS,
   (c) any of its committees.

(3) Sub-paragraph (1) does not affect—
   (a) SFRS’s responsibility for the carrying out of the delegated functions, or
   (b) SFRS’s ability to carry out the delegated functions.

Location of principal office premises

14 Any determination by SFRS as to the location of the principal office premises of its members or its Chief Officer is subject to the approval of the Scottish Ministers.

Grants

15 (1) The Scottish Ministers may make grants to SFRS of such amounts as they may determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).
Accounts

16 (1) SFRS must—
   (a) keep proper accounts and accounting records, and
   (b) prepare for each financial year a statement of accounts.

(2) Each statement of accounts must comply with any directions given by the Scottish Ministers as to—
   (a) the information to be contained in it,
   (b) the manner in which the information is to be presented,
   (c) the methods and principles according to which the statement is to be prepared.

(3) SFRS must send each statement of accounts to the Scottish Ministers by such time as they may direct.

(4) SFRS must send each statement of accounts to the Auditor General for Scotland for auditing.

(5) The Scottish Ministers must lay a copy of each statement of accounts before the Scottish Parliament.

(6) In this paragraph, “financial year” means—
   (a) the period beginning on the day on which SFRS is established and ending—
      (i) on 31 March next occurring, or
      (ii) if that period is of less than 6 months’ duration, on 31 March next occurring after that, and
   (b) each subsequent period of a year ending on 31 March.”.

Functions

100 Promotion of fire safety

In section 8 of the 2005 Act (fire safety)—
   (a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and
   (b) in subsection (2)—
      (i) for “a relevant authority shall” substitute “SFRS must”, and
      (ii) for “the authority” substitute “it”.

101 Fire safety: enforcement

(1) In section 61 of the 2005 Act (enforcing authorities)—
   (a) in each of subsections (7) and (8)—
      (i) for “A relevant authority” substitute “SFRS”, and
      (ii) for “the authority” substitute “SFRS”, and
   (b) in subsection (9), for paragraphs (b) and (c) substitute—
      “(b) in relation to any other relevant premises, SFRS.”.
(2) In section 67 of the 2005 Act (enforcement of Chapter 1 of Part 3 of the 2005 Act: determination of disputes)—

(a) for subsection (1), substitute—

“(1) Subsections (1A) and (1B) apply where—

(a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, and

(b) in relation to the duty in question, the person and the authority cannot agree on the action that requires to be taken to comply with the duty.

(1A) The person and the authority may refer the matter to the person appointed under section 43A(1)(a) for determination.

(1B) If the enforcing authority is SFRS, it or the person may refer the matter to the person appointed under section 43A(1)(a) for determination.”, and

(b) in subsection (4), for “(1) or (2)” substitute “(1A) or (1B)”.}

102 Fire-fighting
In section 9 of the 2005 Act (fire-fighting)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

103 Road traffic accidents
In section 10 of the 2005 Act (road traffic accidents)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

104 Conferral of functions in relation to other emergencies
In section 11 of the 2005 Act (conferral of functions in relation to other emergencies)—

(a) in subsection (1), for “a relevant authority (the “specified authority”)” substitute “SFRS”, and

(b) in each of subsections (2) and (3), for “the specified authority”, in each place where it occurs, substitute “SFRS”.

105 Power to respond to other eventualities
In section 13 of the 2005 Act (power to respond to other eventualities)—

(a) in subsection (1), for “A relevant authority” substitute “SFRS”, and

(b) in subsection (2)(b), for “an authority” substitute “SFRS”.

106 Provision of other services
In section 14 of the 2005 Act (provision of other services)—

(a) in subsection (1)—

(i) for “A relevant authority” substitute “SFRS”, and
(ii) for “the authority” substitute “SFRS”, and
(b) in subsection (2), for “An authority” substitute “SFRS”.

107 **Provision of centres for education and training**

In section 15 of the 2005 Act (provision of centres for education and training)—

(a) for “A relevant authority” substitute “SFRS”, and
(b) for “relevant authorities have” substitute “it has”.

108 **Charging**

In section 16 of the 2005 Act (charging)—

(a) in subsection (1)—

(i) for “a relevant authority” substitute “SFRS”, and
(ii) for “the authority” substitute “SFRS”,
(b) in subsection (2), for “the authority” substitute “SFRS”,
(c) in subsection (3), for the words from “the”, where it secondly occurs, to the end substitute “SFRS at sea beyond the low water mark”,
(d) in subsection (4)—

(i) for “a relevant authority” substitute “SFRS is”,
(ii) after “description” insert “and it”, and
(iii) for “the authority”, in both places where it occurs, substitute “SFRS”, and
(e) in subsection (5)—

(i) for “a relevant authority shall” substitute “SFRS must”,
(ii) for “the authority’s” substitute “its”, and
(iii) for “the authority” substitute “SFRS”.

Further amendments of 2005 Act

109 **Assistance**

In section 35 of the 2005 Act (the title of which becomes “Assistance”)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for securing the provision by that person of assistance for SFRS in the carrying out by SFRS of a relevant function.

(2) A person may provide assistance under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to provide assistance for SFRS in the carrying out by SFRS of the relevant function.”, and

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.
110 Delegation

In section 36 of the 2005 Act (power to make arrangements for delegating functions)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for the carrying out by that person of a relevant function.

(2) A person may carry out a relevant function under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to carry out the relevant function.

(2A) SFRS may enter into arrangements under this section in relation to its function of extinguishing fires only if the person employs fire-fighters.”;

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

111 Best value

Before section 40 of the 2005 Act (and the italic cross-heading immediately preceding it), insert—

“Best value

39A Best value

(1) It is the duty of SFRS to make arrangements which secure best value.

(2) Best value is continuous improvement in the carrying out of SFRS’s functions.

(3) In securing best value, SFRS must maintain an appropriate balance among—

(a) the quality of its carrying out of its functions,

(b) the cost to SFRS of that carrying out of its functions,

(c) the cost to persons of any service provided by SFRS for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, SFRS must have regard to—

(a) efficiency,

(b) effectiveness,

(c) economy, and

(d) the need to meet the equal opportunity requirements.

(5) SFRS must carry out its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of SFRS’s functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).
39B Best value: further provision

In carrying out its duties under section 39A, SFRS must have regard to the matters mentioned in subsection (2).

(2) The matters are—

(a) any relevant guidance issued by the Scottish Ministers,

(b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of section 39A(1) (or purposes which include those purposes).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—

(a) SFRS, and

(b) such other persons as they think appropriate.

(4) In the event of a conflict in any respect between the matter to which SFRS is to have regard under paragraph (a) of subsection (2) and the matter to which it is to have regard under paragraph (b) of that subsection, SFRS must in that respect have regard only to matters within paragraph (a).

(5) In this section “relevant guidance”—

(a) means guidance on the carrying out of the duties imposed by section 39A,

(b) includes in particular guidance on—

(i) how to make and what is to be included in the arrangements mentioned in section 39A(1),

(ii) how to implement the duty imposed by that section.

39C Examinations of SFRS by Auditor General

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to SFRS, to include a reference to examinations into the arrangements made by SFRS under section 39A.”.

112 Strategic plan

After section 41 of the 2005 Act, insert—

“CHAPTER 8A
PLANNING, REPORTS AND INFORMATION

Strategic plan

41A SFRS’s first strategic plan

(1) SFRS must prepare a strategic plan.

(2) A strategic plan is a plan—

(a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the day appointed by order under subsection (6),
(b) setting out outcomes by reference to which the carrying out of its functions may be measured, and
(c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

(3) In preparing the strategic plan, SFRS must—
(a) have regard to the framework document, and
(b) consult the persons mentioned in subsection (4).

(4) Those persons are—
(a) each local authority,
(b) such persons as SFRS considers represent local authorities,
(c) such persons as SFRS considers represent employees of SFRS,
(d) such other persons as SFRS considers appropriate.

(5) SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Ministers for approval.

(6) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to the strategic plan (with or without modifications) before such day as the Scottish Ministers may by order appoint.

(7) If the Scottish Ministers approve the strategic plan, SFRS must—
(a) publish the plan, and
(b) lay before the Scottish Parliament a copy of the plan.

41B Review of plan

(1) This section applies where—
(a) a strategic plan is approved under section 41A, or
(b) a new strategic plan is approved under subsection (4) or (6).

(2) SFRS may at any time review the plan.

(3) SFRS must review the plan—
(a) if the Scottish Ministers make an order under section 40(4), and
(b) before the end of the period of 3 years to which the plan relates.

(4) Following a review under subsection (2) or (3)(a), SFRS may prepare and submit to the Scottish Ministers for approval a new strategic plan.

(5) If, following a review under subsection (3)(a), SFRS decides not to prepare a new strategic plan, it must notify the Scottish Ministers of that fact.

(6) Following a review under subsection (3)(b), SFRS must, before the end of the period of 3 years mentioned in that subsection, prepare and submit to the Scottish Ministers for approval a new strategic plan.

(7) A new strategic plan is a plan—
(a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the plan commencement day,
(b) setting out outcomes by reference to which the carrying out of its functions may be measured, and
(c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

(8) In preparing a new strategic plan, SFRS must—
(a) have regard to the framework document, and
(b) consult the persons mentioned in section 41A(4).

(9) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to a new strategic plan (with or without modifications) before the plan commencement day for that plan.

(10) If the Scottish Ministers approve a new strategic plan, SFRS must—
(a) publish the plan, and
(b) lay before the Scottish Parliament a copy of the plan.

(11) In this section, “plan commencement day” means—
(a) in the case of a strategic plan prepared under subsection (4), the day 8 weeks after the day on which SFRS submits a new strategic plan to the Scottish Ministers (or such earlier day as SFRS and the Scottish Ministers may agree),
(b) in the case of a strategic plan prepared under subsection (6), the day after the end of the period of 3 years to which the previous strategic plan relates.

41C Consideration

(1) This section applies where a strategic plan or a new strategic plan has been approved by the Scottish Ministers under section 41A or, as the case may be, section 41B.

(2) In carrying out its functions, SFRS must have regard to the strategic plan in so far as that plan is not inconsistent with the framework document."

113 Local fire and rescue plans

After section 41C of the 2005 Act (inserted by section 112), insert—

“Local fire and rescue plans

41D Provision of local services

(1) SFRS must ensure that there are adequate arrangements in place for the carrying out of its functions in each local authority area.

(2) SFRS must involve each local authority in determining priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions.
Local fire and rescue plans

1. As soon as is reasonably practicable after a strategic plan is approved under section 41A, SFRS must prepare a local fire and rescue plan for each local authority area.

2. A local fire and rescue plan is a plan setting out—
   a. priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions,
   b. the reasons for selecting each of those priorities and objectives,
   c. how SFRS proposes to deliver those priorities and objectives,
   d. in so far as is reasonably practicable, outcomes by reference to which delivery of those priorities and objectives can be measured,
   e. how those priorities and objectives are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning,
   f. such other matters relating to the carrying out of SFRS’s functions in the local authority’s area as SFRS thinks fit.

3. In preparing the local fire and rescue plan, SFRS must—
   a. have regard to the framework document and the strategic plan approved under section 41A,
   b. consult such persons as SFRS thinks fit.

4. SFRS must submit a plan prepared under subsection (1) for approval to the local authority for the area to which the plan relates.

5. If the plan is approved under subsection (4), SFRS must publish it.

6. In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

Power to review plan

1. This section applies where a local fire and rescue plan is published under section 41E(5), subsection (4) or section 41G(5).

2. SFRS may at any time review the plan.

3. Following a review, SFRS may revise the plan.

4. Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) as they apply in relation to a plan prepared under subsection (1) of that section but subject to the modification in subsection (5).

5. The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.
41G **Mandatory review**

(1) This section applies where a local fire and rescue plan is published under section 41E(5), section 41F(4) or subsection (5).

(2) SFRS must review the local fire and rescue plan if—

(a) the Scottish Ministers make an order under section 40(4),

(b) a new strategic plan is approved under section 41B, or

(c) the plan is not revised under section 41F(3) or subsection (3) during the period of 3 years beginning with the publication of the plan.

(3) Following a review under subsection (2)(a) or (b), SFRS may revise the plan.

(4) Following a review under subsection (2)(c), SFRS must revise the plan.

(5) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) or (4) as they apply in relation to a plan prepared under subsection (1) of that section (but subject to the modification in subsection (6)).

(6) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

41H **Provision of information to local authority**

SFRS must give to a local authority such information or reports relating to the carrying out of SFRS’s functions in the authority’s area as the authority may reasonably request.

41J **Local Senior Officers**

(1) SFRS must designate an employee of SFRS as Local Senior Officer for each local authority area for the purpose of carrying out on behalf of SFRS the delegated functions.

(2) The delegated functions are—

(a) SFRS’s functions under sections 41E to 41H,

(b) SFRS’s functions under section 16(1)(d) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning),

(c) any other functions of SFRS which SFRS delegates to the Local Senior Officer.

(3) The duty imposed on SFRS by subsection (1) must be carried out by the Chief Officer in relation to the delegated functions mentioned in subsection (2)(a) and (b).

(4) A person may be designated under subsection (1) in relation to more than one local authority area.

(5) Subsection (1) does not affect—

(a) SFRS’s responsibility for the carrying out of the delegated functions,

(b) SFRS’s ability to carry out the delegated functions.
Police and Fire Reform (Scotland) Bill
Part 2—Fire reform

41K Monitoring by local authority

(1) A local authority may keep under review—
   (a) the manner in which SFRS carries out its functions in the authority’s area,
   (b) whether SFRS is carrying out the priorities and objectives set out in the local fire and rescue plan for the authority’s area,
   (c) whether SFRS is otherwise complying with the local fire and rescue plan for the authority’s area.

(2) A local authority may—
   (a) make representations or observations to SFRS in relation to anything arising under subsection (1),
   (b) offer advice or recommendations to SFRS in relation to anything arising under that subsection.”.

114 Annual report

After section 41K of the 2005 Act (inserted by section 113), insert—

“41L Annual report

(1) As soon as is reasonably practicable after the end of each reporting year, SFRS must—
   (a) prepare and publish an annual report, and
   (b) lay a copy of the report before the Scottish Parliament.

(2) An annual report is a report setting out—
   (a) an assessment of SFRS’s performance during the reporting year in acting in accordance with the framework document,
   (b) an assessment of SFRS’s performance during the reporting year in achieving the outcomes set out in the strategic plan approved under section 41A or, as the case may be, 41B, and
   (c) such other information as SFRS thinks fit.

(3) In this section, “reporting year” means—
   (a) the period beginning on the day on which SFRS is established and ending—
      (i) on 31 March next occurring, or
      (ii) if that period is of less than 6 months’ duration, on 31 March next occurring after that, and
   (b) each subsequent period of a year ending on 31 March.”.

115 Provision of information

After section 41L of the 2005 Act (inserted by section 114), insert—
“41M Provision of information

(1) SFRS must provide the Scottish Ministers with such reports, statistics and other information relating to SFRS or its functions as the Scottish Ministers may require.

(2) Information provided under this section may in particular relate to the outcomes of fires, events and other situations in relation to which SFRS makes provision or takes action.

(3) Information to be provided under this section must be provided at the times, and in the form, specified by the Scottish Ministers.”.

116 Directions by Scottish Ministers

After section 42 of the 2005 Act, insert—

“Directions

42A Directions

(1) The Scottish Ministers may give SFRS general or specific directions.

(2) SFRS must comply with a direction under this section.

(3) Directions under this section may vary or revoke earlier directions under this section.

(4) Directions under this section must be in writing.

(5) The Scottish Ministers must—

(a) publish a direction given under this section, and

(b) lay a copy of it before the Scottish Parliament.

(6) Nothing in this section enables the Scottish Ministers to give a direction in circumstances to which subsection (3) or (4) of section 41 applies.”.

117 Inspectors of SFRS

After section 43 of the 2005 Act, insert—

“CHAPTER 8B

INSPECTION

Inspectors of SFRS

43A Inspectors of SFRS

(1) Her Majesty may by Order in Council appoint—

(a) a Chief Inspector of the Scottish Fire and Rescue Service, and

(b) such number of Inspectors of the Scottish Fire and Rescue Service as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of the Scottish Fire and Rescue Service.

(3) The Scottish Ministers must pay to persons appointed under this section such remuneration as the Scottish Ministers may determine.
(4) The Scottish Ministers may authorise an Inspector to carry out any of the functions conferred on the Chief Inspector by or under this Act or any other enactment if—

(a) there is a temporary vacancy in the office of Chief Inspector, or

(b) the Scottish Ministers consider that the Chief Inspector is temporarily unable to carry out the Chief Inspector’s functions.

(5) A person who, immediately before the coming into force of section 117 of the Police and Fire Reform (Scotland) Act 2012 (asp 00), is by virtue of section 43—

(a) the Chief Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(a),

(b) an Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(b), and

(c) an Assistant Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (2).

(6) In this Act—

“Chief Inspector” means a person appointed under subsection (1)(a), and

“Inspector” means a person appointed under subsection (1) or (2).

43B Inquiries by Inspectors

(1) An Inspector may inquire into a matter mentioned in subsection (3).

(2) If directed to do so by the Scottish Ministers, an Inspector must inquire into a matter mentioned in subsection (3).

(3) The matters are—

(a) the state and efficiency of SFRS,

(b) whether in carrying out its functions SFRS is complying with its duty under section 39A to make arrangements which secure best value,

(c) the manner in which SFRS is carrying out any of its functions.

(4) In carrying out an inquiry under this section an Inspector may—

(a) require SFRS to provide any information or documents relating to the functions of SFRS that the Inspector may require,

(b) enter and inspect any premises which are used by SFRS,

(c) inspect any equipment which is used by SFRS.

(5) If an Inspector exercises a power of entry by virtue of subsection (4)(b), the Inspector may—

(a) take onto the premises—

(i) such other persons, and

(ii) such equipment,

as the Inspector considers necessary,
(b) require any person present on the premises to provide the Inspector with any information or documents that the Inspector may reasonably request.

(6) An Inspector may not under subsection (4)(b)—

(a) enter or inspect premises occupied as a private dwelling,

(b) enter premises by force.

(7) SFRS must provide such facilities, assistance and co-operation as an Inspector may reasonably request for the purposes of, or in connection with, an inquiry under this section.

43C Inquiries under section 43B(1): reports

(1) This section applies where an inquiry under section 43B(1) has been completed.

(2) The Chief Inspector must give SFRS a report of the inquiry.

(3) If a report given to SFRS under subsection (2) relates to a matter mentioned in section 43B(3)(a) or (b), the Chief Inspector must—

(a) as soon as is reasonably practicable after giving the report to SFRS, give the Scottish Ministers a copy of the report, and

(b) give the Scottish Ministers any other information relating to the inquiry that they may request.

(4) If a report given to SFRS under subsection (2) does not relate to a matter mentioned in section 43B(3)(a) or (b) the Chief Inspector —

(a) may give the Scottish Ministers a copy of the report if the Chief Inspector thinks fit,

(b) may give the Scottish Ministers any other information in relation to the report that the Chief Inspector thinks fit,

(c) must give the Scottish Ministers any information relating to the inquiry that the Scottish Ministers may request.


43D Inquiries under section 43B(2): reports

(1) This section applies where an inquiry under section 43B(2) has been completed.

(2) The Chief Inspector must give the Scottish Ministers—

(a) a report of the inquiry, and

(b) any other information relating to the inquiry that the Scottish Ministers may request.

(3) As soon as is reasonably practicable after giving the report to the Scottish Ministers under subsection (2)(a), the Chief Inspector must give a copy of the report to SFRS.
(4) If the report relates to a matter mentioned in section 43B(3)(a) or (b), the Scottish Ministers must lay before the Scottish Parliament a copy of the report given to them under subsection (2)(a).

### 43E Inquiry reports: SFRS consideration

In carrying out its functions, SFRS must have regard to a report given to it under section 43C(2) or 43D(3) and, having done so, must take such measures (if any) as it thinks fit in relation to the report.

### 43F Chief Inspector’s plan

1. The Chief Inspector must prepare a plan setting out—
   - (a) priorities for inquiries to be carried out by Inspectors, and
   - (b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

2. The Chief Inspector—
   - (a) must keep the plan under review, and
   - (b) may from time to time revise the plan.

3. The Chief Inspector must, in preparing a plan (and any revised plan), consult such persons as the Chief Inspector considers appropriate.

4. The Chief Inspector must publish the plan (and any revised plan) in such manner as the Chief Inspector thinks fit.

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### Co-operation and information-sharing

#### 43G Co-operation and information-sharing: Auditor General

1. The Inspectors and the Auditor General must co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to SFRS.

2. In particular, the Inspectors and the Auditor General must together make arrangements with a view to—
   - (a) securing the exchange of information between them about SFRS,
   - (b) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to SFRS.

3. The duties imposed by subsections (1) and (2) do not apply in so far as compliance with them would prevent or delay any of the persons on whom they are imposed in taking any action which the person considers to be necessary as a matter of urgency.

4. No obligation as to secrecy or other restriction on disclosure of information prevents the Inspectors or the Auditor General from disclosing information to each other—
   - (a) for any purpose connected with the carrying out of their respective functions, or
(b) for the purpose of enabling or assisting each other to carry out any of their respective functions.”.

**General**

118 **Transfer of staff, property etc.**

Schedule 5 makes provision about the transfer of staff, property, rights, liabilities and obligations.

119 **Meaning of “the 2005 Act”**

In this Part, “the 2005 Act” means the Fire (Scotland) Act 2005 (asp 5).

**PART 3**

**GENERAL**

120 **Subordinate legislation**

(1) Any power of the Scottish Ministers to make an order, regulations or rules under this Act includes power to make—

(a) different provision for different purposes (for example, for different types or ranks of constable),

(b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

(2) An order made under section 10(2) or 11(5) is subject to the affirmative procedure.

(3) An order made under section 121 containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) All other orders, and any regulations or rules, made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 124(2) or paragraph 2(1)(b) of schedule 4.

121 **Ancillary provision**

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.

(2) An order under this section may modify this or any other enactment.

122 **Transitional provision etc.**

(1) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider appropriate for purposes of, or in connection with, the coming into force of any provision of this Act.

(2) An order under this section may modify this or any other enactment.
123 Minor and consequential amendments and repeals

(1) Schedule 6 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column in schedule 7, (which include enactments that are spent) are repealed to the extent set out in the second column.

124 Commencement

(1) This Part (other than section 123) comes into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

125 Short title

The short title of this Act is the Police and Fire Reform (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 1)

THE SCOTTISH POLICE AUTHORITY

PART 1

STATUS, STRUCTURE AND GOVERNANCE

Status

1 (1) The Authority—
   (a) is not a servant or agent of the Crown, and
   (b) has no status, immunity or privilege of the Crown.

10 (2) The Authority’s property is not property of, or property held on behalf of, the Crown.

Membership

2 (1) The Authority is to consist of not fewer than 7 and no more than 11 members.
   (2) The members are to be appointed by the Scottish Ministers.
   (3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority.

15 (4) The Scottish Ministers may by order modify sub-paragraph (1) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.

Disqualification

20 3 A person is disqualified from appointment, and from holding office, as a member of the Authority if that person is or becomes—
   (a) a member of—
      (i) the Scottish Parliament,
      (ii) the House of Lords,
      (iii) the House of Commons, or
      (iv) the European Parliament,
   (b) disqualified from standing for election as a member of—
      (i) the Scottish Parliament,
      (ii) the House of Commons,
      (iii) a local authority,
   (c) a constable,
   (d) a member of—
      (i) a police force maintained under section 2 of the Police Act 1996 (c.16),
      (ii) the metropolitan police force,
(iii) the City of London police force,
(iv) the Police Service of Northern Ireland,
(v) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
(vi) the British Transport Police Force,
(vii) the Civil Nuclear Constabulary,
(viii) the States of Jersey Police Force,
(ix) the salaried police force of the Island of Guernsey, or
(x) the Isle of Man Constabulary,
(e) a member of police staff,
(f) a member of the Authority’s staff,
(g) the Police Investigations and Review Commissioner or any member of the Commissioner’s staff, and
(h) a person of such other description as may be prescribed by order made by the Scottish Ministers.

Tenure

4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.
(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
(3) On ceasing to be a member, a person is eligible for reappointment.
(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

Chairing member and deputy

5 (1) The Scottish Ministers must appoint one of the members of the Authority to chair meetings of the Authority (“the chairing member”).
(2) The chairing member is to be appointed for a period not exceeding 4 years specified in the appointment.
(3) If a person is appointed as the chairing member for a period that extends beyond the period of the person’s appointment as a member, the person’s appointment as a member is taken to have been extended so that it ends on the same day as the period of appointment as chairing member ends.
(4) Members of the Authority must elect, from their number, a member to act as deputy to the chairing member.

Removal from office

6 (1) The Scottish Ministers may remove a member from office if—
(a) the member is an undischarged bankrupt,
(b) the member is incapacitated by physical or mental illness,
(c) the member has, without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months,
(d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of the Authority,
(e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,
(f) the member has failed to comply with the terms or conditions of the member’s appointment, or
(g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—
(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),
(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
(e) who has been adjudged bankrupt (and has not been discharged), or
(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

Staff of the Authority

7 (1) The Authority may appoint individuals to assist the Authority in the carrying out of its functions.

(2) Individuals appointed under sub-paragraph (1) may be—
(a) employed by the Authority,
(b) provided to the Authority under arrangements between the Authority and a third party, or
(c) engaged on temporary service with the Authority in accordance with arrangements made under paragraph 8(1).

Constables: temporary service with the Scottish Police Authority

8 (1) The Authority may make arrangements for a constable, or any person falling within sub-paragraph (2), to serve as a member of the Authority’s staff in order to assist it in the carrying out of its functions.

(2) A person falls within this sub-paragraph if the person is a member of—
(a) a police force maintained under section 2 of the Police Act 1996 (c.16),
(b) the metropolitan police force,
(c) the City of London police force,
(d) the Police Service of Northern Ireland,
(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
(f) the British Transport Police Force,
(g) the Civil Nuclear Constabulary,
(h) the States of Jersey Police Force,
(i) the salaried police force of the Island of Guernsey, or
(j) the Isle of Man Constabulary.

(3) An individual engaged on service with the Authority under arrangements made under this paragraph is under the direction and control of the Authority.

(4) The Authority is liable in respect of any unlawful conduct on the part of any individual to whom sub-paragraph (3) applies in the carrying out (or purported to carrying out) of that individual’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

Terms and conditions of the Authority’s staff

9 (1) A member of the Authority’s staff may be employed on terms and conditions determined by the Authority.

(2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of the Authority’s staff.

(3) The arrangements mentioned in sub-paragraph (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and
(b) the establishment and administration of pension schemes.

Committees and sub-committees

10 (1) The Authority may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

(3) The members of any committee or subcommittee may include persons who are not members of the Authority but such persons are not entitled to vote at meetings.

(4) A committee or sub-committee must not consist entirely of persons who are not members of the Authority.

(5) The Authority may pay such remuneration, allowances and expenses as are determined by the Authority to a member of a committee or sub-committee who is not—

(a) a constable,
(b) a member of the Authority,
(c) a member of police staff, or
(d) a member of the Authority’s staff.

Procedure

11 (1) The Authority may regulate—
(a) its own procedure (including quorum), and
(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of the Authority is not affected by any—
(a) vacancy in its membership,
(b) defect in the appointment of a member, or
(c) disqualification of a person as a member after appointment.

Delegation of functions

12 (1) The Authority may authorise—
(a) any of its committees, or
(b) any member of the Authority’s staff,

to perform on behalf of the Authority such of its functions as it may determine to the extent so authorised.

(2) A committee of the Authority may authorise—
(a) any of its sub-committees, or
(b) any member of the Authority’s staff,

to perform on behalf of the committee such of its functions as it may determine to the extent so authorised.

(3) Sub-paragraphs (1) and (2) do not affect the Authority’s—
(a) responsibility for performance of delegated functions, or
(b) ability to perform delegated functions.

Location of principal offices

13 Any determination by the Authority as to the location of the principal office premises of its members or of the chief constable is subject to the approval of the Scottish Ministers.
PART 2

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

14 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Freedom of Information (Scotland) Act 2002 (asp 13)

15 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities) after paragraph 50 insert—

“50A The Scottish Police Authority.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

16 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Public Services Reform (Scotland) Act 2010 (asp 8)

17 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Public Records (Scotland) Act 2011 (asp 12)

18 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

SCHEDULE 2
(introduced by section 28(3))

POLICE CUSTODY AND SECURITY OFFICERS: POWERS AND DUTIES

1 A police custody and security officer has power—

(a) to transfer persons in legal custody from one set of relevant premises to another,

(b) to have custody of persons held in legal custody on court premises (whether or not such persons would otherwise be in the custody of the court) and to produce them before the court,

(c) to have custody of persons temporarily held in legal custody in relevant premises while in the course of transfer from one set of such premises to another,
(d) to apprehend a person who was in the custody of the officer in relevant premises or in such course of transfer but who is unlawfully at large,
(e) to remove from relevant premises any person—
   (i) who the officer has reasonable grounds to believe has committed or is committing an offence, or
   (ii) who is causing a disturbance or nuisance,
(f) in any place to search any person who is in legal custody or is unlawfully at large,
(g) to search—
   (i) any relevant premises or any other place in which there is a person in the officer’s custody who is being transferred from one set of relevant premises to another,
   (ii) any person in such premises or other place who the officer has reasonable grounds to believe has committed or is committing an offence or who is seeking access to a person in the officer’s custody or to relevant premises,
(h) in relevant premises, or in any other place in which a person in legal custody is or may be, to require any person who the officer has reasonable grounds for suspecting has committed or is committing an offence—
   (i) to give the person’s name and address, and
   (ii) either to remain there with the officer until a constable arrives or, where reasonable in all the circumstances, to go with the officer to the nearest police station, but only if before imposing any such requirement the officer informs the person concerned of the nature of the suspected offence and of the reason for the requirement,
(i) in fulfilment of the officer’s duties under paragraph 2(1)(d), to apprehend any person and to detain that person in custody in the premises of the court in question,
(j) at a constable’s direction, to photograph or take relevant physical data from any person held in legal custody, and
(k) to use reasonable force (which may include the use of handcuffs and other means of restraint) where and in so far as it is requisite to do so in exercising any of the other powers,

and either (but not both) of the sets of premises mentioned in any of paragraphs (a), (c) and (g) may be situated in a part of the British Islands outwith Scotland.

2 (1) It is the duty of a police custody and security officer—

(a) to attend to the well-being of a person in the officer’s custody,
(b) to prevent such a person from escaping from custody,
(c) to prevent, or detect and report on, the commission or attempted commission by such a person of any other unlawful act,
(d) to act with a view to preserving good order in the premises of any court and in land connected with such premises,
(e) to ensure good order and discipline on the part of a person in the officer’s custody (whether or not in the premises of any court or in land connected with such premises), and

(f) to give effect to any order of a court.

(2) A police custody and security officer provided to the Authority by virtue of section 26(2)(b) does not have the powers and duties mentioned in this schedule in the premises of any court or in land connected with such premises.

(3) In this schedule—

(a) “legal custody” has the meaning given by section 295 of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) “relevant physical data” has the meaning given by section 18(7A) of that Act, and

(c) “relevant premises” means—

(i) the premises of any court, prison, police station or hospital (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or

(ii) the premises of any other place from or to which a person may be required to be taken under that Act of 1995 or that Act of 2003.

SCHEDULE 3
(introduced by section 57)

POLICE APPEALS TRIBUNALS

Constitution and membership

1 (1) A police appeals tribunal is to consist of 3 members, one of whom is to be appointed to chair the tribunal.

(2) The Lord President of the Court of Session must—

(a) establish and maintain a panel of persons who may be appointed as members of a police appeals tribunal, and

(b) from that panel, appoint the members (including the chairing member) of the tribunal.

(3) Every member of the panel must be, and have been for the period of 5 years immediately prior to the member’s appointment, either—

(a) a solicitor holding a practising certificate in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c.46), or

(b) a member of the Faculty of Advocates practising as an advocate in Scotland.

Member remuneration, allowances and expenses

2 The Authority is to pay to the members of a police appeals tribunal such remuneration, allowances and expenses as the Scottish Ministers may determine.

Expenses of proceedings

3 (1) The appellant is liable for the expenses incurred by the appellant in making an appeal.
Police and Fire Reform (Scotland) Bill

Schedule 4—Transfer of constables, staff and property etc.

(2) But the police appeals tribunal may direct that some or all of the appellant’s expenses must be paid by the Authority.

(3) The other expenses of the appeal (including the expenses of the respondent) must be paid by the Authority.

5 Police appeals tribunal rules

4 The Scottish Ministers may make rules about the procedure on appeals to a police appeals tribunal including, in particular, provision about—

(a) the notices required to start an appeal,
(b) the identity of the respondent, and
(c) holding hearings in private.

SCHEDULE 4
(introduced by section 95)

TRANSFER OF CONSTABLES, STAFF AND PROPERTY ETC.

Interpretation

15 1 In this schedule—

“appointed day” has the meaning given by paragraph 2,
“joint police board” means a joint police board constituted by an amalgamation scheme made under the 1967 Act,
“member of the Authority’s staff” means a member of police staff appointed to assist the Authority in the carrying out of its functions,
“police authority” has the same meaning as in the 1967 Act,
“police force” means a police force maintained under the 1967 Act,
“police member of the SCDEA” means an individual appointed in accordance with paragraph 7 of schedule 2 to the 2006 Act,
“SCDEA” means the Scottish Crime and Drug Enforcement Agency,
“SPSA” means the Scottish Police Services Authority,
“the 1967 Act” means the Police (Scotland) Act 1967 (c.77),
“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

Appointed day

2 (1) The “appointed day”, for the purposes of this schedule, means—

(a) the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6), or
(b) such other day as the Scottish Ministers may by order appoint.

(2) An order under sub-paragraph (1)(b) may appoint different days for different purposes.
Constables to continue to hold office and rank

3 (1) Sub-paragraphs (2) to (6) apply to an individual who, immediately before the appointed day, holds the office of constable by virtue of being appointed in accordance with the 1967 Act.

5 (2) An individual to whom this sub-paragraph applies is, on and after the appointed day—

(a) to continue to hold the office of constable,

(b) to be treated as having made the declaration required by section 10, and

(c) to otherwise be treated as having been appointed in accordance with this Act as a constable of the Police Service.

10 (3) Paragraphs 5 to 7 make provision for the transfer of an individual to whom this sub-paragraph applies on the appointed day.

15 (4) Subject to paragraph 4(2), an individual to whom this sub-paragraph applies is, on the appointed day, to be transferred in accordance with this schedule at the same rank as the individual holds immediately before the appointed day.

20 (5) Sub-paragraph (4) does not affect any temporary promotion arrangements which are in place immediately before the appointed day.

(6) Any contractual terms on which an individual to whom this sub-paragraph applies is appointed to serve as a constable to a police force (for example, in relation to fixed periods of tenure of constables holding the rank of superintendent or above) are, on and after the appointed day, to have effect as if the appointment were originally an appointment to serve as a constable of the Police Service.

Senior officers

4 (1) Sub-paragraph (2) applies to an individual who—

(a) holds the rank of chief constable immediately before the appointed day,

(b) is not appointed to the office of chief constable of the Police Service in accordance with section 7, and

(c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.

(2) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of deputy chief constable in accordance with section 7 but, despite section 11(2), is to continue to hold the rank of chief constable and is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the chief constable of the police force which has ceased to exist.

(3) Sub-paragraph (4) applies to an individual who—

(a) holds the rank of deputy chief constable immediately before the appointed day,

(b) is not appointed to the office of chief constable, or to the office of deputy chief constable, of the Police Service in accordance with section 7, and

(c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.
An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of deputy chief constable in accordance with section 7 but is to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the deputy chief constable of the police force which has ceased to exist or, as the case may be, the Director General of the SCDEA.

An individual who is, in accordance with this schedule, transferred to serve as a constable of the Police Service at the rank of assistant chief constable is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.

**Constables serving in police forces**

Any individual serving as a constable of a police force immediately before the appointed day (including anyone on temporary service from another police force) is, on the appointed day, to transfer to serve as a constable of the Police Service.

**Constables serving in SPSA or SCDEA**

(1) An individual who, immediately before the appointed day, is the Director General or Deputy Director General of, or is a police member of, the SCDEA is, on the appointed day, to transfer to serve as a constable of the Police Service.

(2) Sub-paragraph (1) does not apply to a police member of the SCDEA serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act (see sub-paragraphs (5) and (6)(a) below).

(3) Sub-paragraph (4) applies where, immediately before the appointed day, an individual—

(a) is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(2) of schedule 1 to the 2006 Act, and

(b) is not a police member of the SCDEA.

(4) Where this sub-paragraph applies, it is for the Scottish Police Authority to determine whether the individual concerned is, on the appointed day, to transfer—

(a) to serve as a constable of the Police Service, or

(b) to be engaged on temporary service as a member of the Authority’s staff.

(5) Sub-paragraph (6) applies where, immediately before the appointed day, an individual is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act.

(6) Where this sub-paragraph applies, the arrangement is, on and after the appointed day, to have effect as if made by the Scottish Police Authority under section 16 and—

(a) where the individual concerned is a police member of the SCDEA, the individual is, on the appointed day, to transfer to be engaged on temporary service as a constable of the Police Service, or

(b) where the individual concerned is not a police member of the SCDEA, it is for the Scottish Police Authority to determine whether the individual is, on the appointed day, to transfer—

(i) to be engaged on temporary service as a constable of the Police Service, or
(ii) to be engaged on temporary service as a member of the Authority’s staff.

**Constables – temporary service arrangements**

7 (1) Sub-paragraph (2) applies where, by virtue of any arrangement made or consent given, an individual is, immediately before the appointed day, engaged in service as a constable of a police force.

(2) Where this sub-paragraph applies—

(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service as a constable of the Police Service, and

(b) the individual concerned is, on the appointed day, accordingly to transfer to be engaged in such service.

(3) Sub-paragraph (4) applies where, by virtue of any arrangement made or consent given, a constable of a police force is, immediately before the appointed day, engaged in service outwith that force which is “relevant service” for the purposes of section 38A of the 1967 Act.

(4) Where this sub-paragraph applies—

(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service outwith the Police Service,

(b) the individual concerned is, on the appointed day, accordingly to continue to be engaged in such service, and

(c) the individual’s rights under section 38(3)(a) of the 1967 Act are, on and after the appointed day, to be treated as having arisen under section 15 of this Act.

(5) An individual who reverts to the Police Service by virtue of sub-paragraph (4)(c) at the rank of deputy chief constable or assistant chief constable is, on and after the day of reversion, to be treated as having been appointed to the office corresponding to that rank in accordance with section 7 (but, where the individual is a deputy chief constable who has not otherwise been appointed in accordance with that section to the office of deputy chief constable of the Police Service, the individual is to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the deputy chief constable of the police force which has ceased to exist).

(6) This paragraph does not apply in relation to an individual transferred under paragraph 5 or 6.

**Acts done before transfer**

8 (1) Anything done before the appointed day by or in relation to a police authority, a joint police board, the SPSA or the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

(2) Anything done before the appointed day by or in relation to a chief constable of a police force or the Director General of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the chief constable of the Police Service.
(3) Anything done before the appointed day by or in relation to a constable of a police force or a police member of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to a constable of the Police Service.

**Limitation on mobility of transferred constables**

9 (1) Sub-paragraph (2) applies to a constable of the Police Service who, immediately before the appointed day, is a constable of a police force (including any such constable who is, at that time, engaged in service outwith that force).

(2) A constable to whom this sub-paragraph applies must not be assigned duties which, in the opinion of the Scottish Ministers, would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist.

(3) Sub-paragraph (2) does not apply to a constable who, immediately before the appointed day, is engaged in service outwith that constable’s force until—

(a) in the case of a constable who is not, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the constable reverts to so serve, and

(b) in the case of a constable who is, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the chief constable may determine.

(4) Sub-paragraph (2) ceases to apply to a constable if, on or after the appointed day, the constable—

(a) is or becomes a senior officer of the Police Service,

(b) is promoted to a higher rank,

(c) gives the chief constable written consent to the lifting of the limitation imposed by sub-paragraph (2).

**Transfer of police staff**

10 (1) An individual is a “police employee” for the purposes of this paragraph if the individual—

(a) is employed, immediately before the appointed day—

(i) by a joint police board under section 9 of the 1967 Act (or is otherwise employed by a joint police board),

(ii) by the SPSA under paragraph 9(1) or 10(1) of schedule 1 to the 2006 Act, or

(b) being an employee of a local authority, is identified by a staff transfer scheme made under paragraph 11 as an individual, or type of individual, who is to be treated as a police employee.

(2) A police employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and the Scottish Police Authority.

(3) It is for the Scottish Police Authority to determine whether a police employee is, on and after the appointed day, to be treated as having been appointed as a member of the police staff under section 26 or as a member of the Authority’s staff under paragraph 7 of schedule 1.
Police and Fire Reform (Scotland) Bill
Schedule 4—Transfer of constables, staff and property etc.

(4) The rights, powers, duties and liabilities of the relevant authority under or in connection with the contract of employment are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(5) Anything done before the appointed day by or in relation to the relevant authority in respect of the contract of employment or the police employee is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

(6) If, before the appointed day, a police employee informs the relevant authority that the person does not wish to become an employee of the Scottish Police Authority—

(a) sub-paragraphs (2), (4) and (5) do not apply in relation to the police employee, and

(b) the employee’s contract of employment is terminated on the appointed day.

(7) A police employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.

(8) Nothing in this paragraph affects any right of a police employee to terminate the police employee’s contract of employment if a substantial detrimental change in the police employee’s working conditions is made.

(9) No such right arises by reason only that, by virtue of this paragraph, the identity of the police employee’s employer changes.

(10) In this paragraph “relevant authority” means the joint police board or authority which employs the individual concerned immediately before the appointed day.

Staff transfer scheme

11 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme which—

(a) identifies or prescribes methods for identifying individuals, or types of individuals, employed by local authorities who are to be treated as police employees for the purposes of paragraph 10,

(b) makes such further provision (including any incidental, consequential, supplementary, transitional, transitory or saving provision) for or in connection with the transfer of individuals identified by or under the scheme to the Scottish Police Authority as the Scottish Ministers think fit.

(3) Before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

Police staff appointed under contract for services

12 (1) A contract for services entered into by a police authority or a joint police board for the purposes of section 9(1)(b) of the 1967 Act has effect on and after the appointed day as if originally entered into by the Scottish Police Authority.

(2) Accordingly, any individual who, immediately before the appointed day, is appointed by a police authority or a joint police board under section 9(1)(b) of the 1967 Act is, on and after the appointed day, to be treated as having been provided to the Scottish Police Authority in accordance with arrangements made by virtue of section 26(2)(b).
(3) The rights, powers, duties and liabilities of the police authority or the joint police board under or in connection with the contract for services are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(4) Anything done before the appointed day by or in relation to the police authority or the joint police board in respect of the contract for services or an individual falling with sub-paragraph (2) is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

Police cadets

An individual who, immediately before the appointed day, is a police cadet by virtue of appointment under section 8 of the 1967 Act is, on and after the appointed day, to be treated as having been appointed in accordance with section 25 of this Act.

Police custody and security officers

An individual who is, immediately before the appointed day, certified as a police custody and security officer under section 9(1A) of the 1967 Act is, on and after the appointed day, to be treated as having been certified as such an officer under section 28(1).

Her Majesty’s inspectorate of constabulary in Scotland

(1) An individual who, immediately before the day on which section 71 comes into force, holds office as an inspector of constabulary by virtue of appointment under section 33 of the 1967 Act is, on and after that day, to be treated as having been appointed under section 71.

(2) An individual who, immediately before the day on which section 72 comes into force, is an assistant inspector of constabulary by virtue of appointment under section 34(1) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 72.

(3) An individual who, immediately before the day on which section 73 comes into force, is a staff officer to the inspectors of constabulary by virtue of appointment under section 34(2) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 73.

Police property transfer scheme: transfers to Scottish Police Authority

(1) The Scottish Ministers may make a police property transfer scheme.

(2) A police property transfer scheme is a scheme making provision for or in connection with the transfer to the Scottish Police Authority of property, rights, liabilities and obligations of—

(a) the Scottish Ministers,
(b) a local authority,
(c) a joint police board, or
(d) the SPSA.
(3) A police property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to the Authority’s functions or police functions.

(4) On the transfer date—

(a) any property or rights to which a police property transfer scheme applies transfers to and vests in the Scottish Police Authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the Scottish Police Authority.

(5) A police property transfer scheme may make provision for the payment by the Scottish Police Authority of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer scheme: transfers to local authorities

17 (1) The Scottish Ministers may make a local authority property transfer scheme.

(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a joint police board.

(3) On the transfer date—

(a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

Property transfer schemes: general

18 (1) This paragraph applies in relation to a scheme under paragraph 16 or 17.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.
(6) A requirement or condition specified under sub-paragraph (5) may include in particular—
    (a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,
    (b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a police property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may make provision about the continuation of legal proceedings.

(9) The scheme may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

Transfer of liabilities of chief constables etc.

By virtue of this paragraph, any liabilities of a chief constable of a police force under section 39 of the 1967 Act and of the Director General of the SCDEA under section 22 of the 2006 Act are, on and after the appointed day, to be treated as liabilities of the chief constable of the Police Service under section 24 of this Act.

SCHEDULE 5
(introduced by section 118)

TRANSFER OF STAFF, PROPERTY ETC.

Interpretation

In this schedule—

“appointed day” means such day as the Scottish Ministers may by order appoint (and different days may be appointed for different purposes),

“joint board” means a joint fire and rescue board constituted by a scheme made under section 2(1) of the 2005 Act,

“relevant employer”, in relation to—

(a) a person employed by a local authority, means the local authority with which the person has a contract of employment,

(b) a person who is a member of the staff of the Scottish Ministers, means the Scottish Ministers,

“transfer day”, in relation to a person, means the day on which a staff transfer scheme comes into force in relation to the person

“transferring employee” means a person who, immediately before the appointed day, is an employee of a joint board.

Joint board staff

(1) A transferring employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and SFRS.
(2) The rights, powers, duties and liabilities of the joint board under or in connection with
the contract of employment are by virtue of this paragraph transferred to SFRS on the
appointed day.

(3) Anything done before the appointed day by or in relation to the joint board in respect of
the contract of employment or the transferring employee is to be treated on and after that
day as having been done by or in relation to SFRS.

(4) If, before the appointed day, a transferring employee informs the joint board that the
person does not wish to become an employee of SFRS—
(a) sub-paragraphs (1) to (3) do not apply in relation to the transferring employee, and
(b) the transferring employee’s contract of employment is terminated on the
appointed day.

(5) A transferring employee is not to be treated for any purpose as being dismissed by
reason of the operation of any provision of this paragraph in relation to the employee.

(6) Nothing in this paragraph affects any right of a transferring employee to terminate the
employee’s contract of employment if a substantial detrimental change in the
employee’s working conditions is made.

(7) No such right arises by reason only that, by virtue of this paragraph, the identity of the
transferring employee’s employer changes.

Local authority staff and civil servants

3 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the
transfer to SFRS of persons who are—
(a) employed by a local authority, or
(b) members of the staff of the Scottish Ministers.

(3) A staff transfer scheme may in particular—
(a) prescribe rules by which the transfer of specified persons, or classes of specified
person, can be determined,
(b) provide that specified persons, or classes of specified person, are to become
employees of SFRS.

(4) A staff transfer scheme may make provision only in relation to persons whose
employment relates to the carrying out of functions conferred on SFRS by or under the
2005 Act or any other enactment.

(5) In this paragraph, “specified” means specified in a staff transfer scheme.

Transfers under paragraph 3: effect on contract of employment

4 (1) This paragraph applies where—
(a) a person is to be transferred by virtue of a staff transfer scheme, and
(b) immediately before the transfer day the person has a contract of employment with
a relevant employer.

(2) The contract of employment has effect on and after the transfer day as if originally made
between the person and SFRS.
(3) The rights, powers, duties and liabilities of the relevant employer under or in connection with the contract of employment are by virtue of this paragraph transferred to SFRS on the transfer day.

(4) Anything done before the transfer day by or in relation to the relevant employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to SFRS.

(5) If, before the transfer day, the person informs the relevant employer that the person does not wish to become an employee of SFRS—
   (a) sub-paragraphs (2) to (4) do not apply in relation to the person, and
   (b) the person’s contract of employment is terminated on the day before the appointed day.

(6) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.

(7) Nothing in this paragraph affects any right of a person to terminate the person’s contract of employment if a substantial detrimental change in the person’s working conditions is made.

(8) No such right arises by reason only that, by virtue of this paragraph, the identity of the person’s employer changes.

(9) Before making a staff transfer scheme under paragraph 3, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

**Property transfer scheme: transfers to SFRS**

5 (1) The Scottish Ministers may make an SFRS property transfer scheme.

(2) An SFRS property transfer scheme is a scheme making provision for or in connection with the transfer to SFRS of property, rights, liabilities and obligations of—
   (a) the Scottish Ministers,
   (b) a local authority,
   (c) a joint board.

(3) An SFRS property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to functions of SFRS conferred by or under the 2005 Act or any other enactment.

(4) On the transfer date—
   (a) any property or rights to which an SFRS property transfer scheme applies transfers to and vests in SFRS,
   (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of SFRS.

(5) An SFRS property transfer scheme may make provision for the payment by SFRS of compensation in respect of property and rights transferred by virtue of the scheme.

**Property transfer scheme: transfers to local authorities**

6 (1) The Scottish Ministers may make a local authority property transfer scheme.
(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a specified joint board.

(3) On the transfer date—

(a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

Property transfer schemes: general

7 (1) This paragraph applies in relation to a scheme under paragraph 5 or 6.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of obligations or liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of the scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may in particular make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

8 A staff transfer scheme or a property transfer scheme under paragraph 5 or 6 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
SCHEDULE 6
(introduced by section 123(1))
MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1
AMENDMENTS RELATING TO PART 1

Police (Scotland) Act 1967 (c.77)

1 (1) The Police (Scotland) Act 1967 is amended as follows.
(2) In section 32A (grants for expenditure on safeguarding national security), in subsection (1), for “a police authority or joint police board” substitute “the Scottish Police Authority”.
(3) In section 42 (causing disaffection)—
   (a) in subsection (1), for “any police force” substitute “the Police Service of Scotland”,
   (b) in subsection (3), for “any police force” substitute “the Police Service of Scotland”.

Police Pensions Act 1976 (c.35)

2 (1) The Police Pensions Act 1976 is amended as follows.
(2) In section 11 (interpretation)—
   (a) in the opening words of subsection (2), for “the Police (Scotland) Act 1967” substitute “the Scottish Police Authority”,
   (b) in the opening words of subsection (3), for “the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Criminal Procedure (Scotland) Act 1995 (c.46)

3 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
(2) In section 12 (instructions by Lord Advocate as to reporting of offences)—
   (a) for first “a” substitute “the”,
   (b) the words from “within” to “therewith” are repealed.

 Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)

4 (1) The Regulation of Investigatory Powers (Scotland) Act 2000 is amended as follows.
(2) In section 5 (lawful surveillance etc.), in subsection (3)(b), for “a police force” substitute “the Police Service”.
(3) In section 8(3) (entitlement to grant authorisations)—
   (a) for paragraph (a) substitute—
      “(aa) the Police Service;”.


(b) after paragraph (c) insert—

“(ca) the Police Investigations and Review Commissioner;”.

(4) In section 10(1A) (persons who may authorise intrusive surveillance)—

(a) in paragraph (a), for “every police force” substitute “the Police Service”,

(b) after paragraph (a) insert—

“(aa) the Police Investigations and Review Commissioner;”.

(5) In section 11 (rules for grant of authorisations)—

(a) in subsection (1)—

(i) for “a police force” substitute “the Police Service”,

(ii) for “member of the same force” substitute “constable of the Police Service”,

(b) in subsection (2)—

(i) for the words from “Subject” to “force” (where it first occurs) substitute “The chief constable of the Police Service”,

(ii) for the words from “member” to the end of paragraph (b) “constable of the Police Service”,

(c) after subsection (2) insert—

“(2A) The Police Investigations and Review Commissioner shall not grant an authorisation for the carrying out of intrusive surveillance except—

(a) on an application by one of the Commissioner’s staff officers, and

(b) where the intrusive surveillance is to be carried out in relation to an investigation carried out in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

(d) in subsection (4)—

(i) in paragraph (a)—

(A) for the words from “by” to “Agency” substitute “—

(i) by, or on the application of, a constable of the Police Service;”,

(B) after the words inserted by paragraph (A) insert—

“(ii) by the Police Investigations and Review Commissioner; or

(iii) by, or on the application of, a staff officer of the Police Investigations and Review Commissioner”,

(ii) in paragraph (b)(i), for the words from “member” to “or” substitute “constable of the Police Service, the Police Service, or

(ia) where that individual is the Police Investigations and Review Commissioner or a staff officer of that Commissioner, the Commissioner”.

(6) In section 12 (grant of authorisations in cases of urgency)—
(a) in subsection (1), repeal the words “(other than application to which section 12A below applies)”,

(b) in subsection (2)—
   (i) in paragraph (a), for “police force in question” substitute “Police Service”,
   (ii) in paragraph (b), repeal the words “of that chief constable” (in both places where the expression occurs),
   (iii) in the closing words, for “that chief constable” substitute “the chief constable”,

(c) in subsection (4)—
   (i) repeal the words “of a police force”, and
   (ii) repeal the words “in that force”,

(d) in subsection (5)—
   (i) in the opening words for “a chief constable” substitute “the chief constable of the Police Service”,
   (ii) before paragraph (a) insert—
       “(aa) deputy chief constable or assistant chief constable and who is authorised to act for the purposes of this section by the chief constable under section 18(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00), or”,
   (iii) for paragraphs (a) and (b) substitute—
       “(ab) deputy chief constable or assistant chief constable and who is designated to act under section 18(3) or (4) of the Police and Fire Reform (Scotland) Act 2012.”.

(7) After section 12 insert—

“12ZA Grant of authorisation in cases of urgency: Police Investigations and Review Commissioner

(1) This section applies in the case of an application to the Police Investigations and Review Commissioner for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Police Investigations and Review Commissioner, the application may be made to and considered by any staff officer of the Commissioner whom the Commissioner designates for the purposes of this section.”.

(8) In section 14(5)(a) (approval required for authorisations to take effect), for the words from “member” to “and” substitute “constable of the Police Service, the chief constable of the Police Service; and

(aa) in relation to an authorisation granted on an application by a staff officer of the Police Investigations and Review Commissioner, the Police Investigations and Review Commissioner.”.

(9) In section 16 (appeals against decisions by Surveillance Commissioners)—
(a) in the opening words of subsection (1), for the words from “A” to “Agency” substitute “The chief constable of the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or the Police Investigations and Review Commissioner”,
(c) in subsection (2), for “a chief constable” substitute “the chief constable”,
(d) after subsection (2) insert—
“(2A) A person designated by the Police Investigations and Review Commissioner under subsection (2) of section 12ZA, who granted an authorisation under that section, shall also be entitled to appeal under this section.”.

10 (10) In section 18 (information to be provided to the Surveillance Commissioners)—
(a) in paragraph (a), for “member of a police force” substitute “constable of the Police Service”,
(b) after that paragraph insert—
“(aa) the Police Investigations and Review Commissioner and every staff officer of the Commissioner.”.

15 (11) In section 20(6) (cancellation of authorisations)—
(a) in paragraph (a), for “a chief constable of a police force” substitute “the chief constable of the Police Service”,
(b) after that paragraph insert—
“(aa) in relation to the Police Investigations and Review Commissioner, to any person designated for the purposes of section 12ZA(2).”.

20 (12) In section 23(5)(b) (complaints to the Tribunal)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,
(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(13) In section 24(2)(b) (issue and revision of codes of practice)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,
(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(14) In section 26(4)(c) (effect of codes of practice)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or the Police Investigations and Review Commissioner”.

(15) In section 31 (interpretation)—
(a) in subsection (1), for the definition of “police force” substitute—
“Police Service” means the Police Service of Scotland;”,
(b) after subsection (4) insert—
“(4A) References in this Act to a staff officer of the Police Investigations and Review Commissioner are references to any person who—

(a) is a member of the Commissioner’s staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or

(b) is a member of the Commissioner’s staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.

Transport (Scotland) Act 2001 (asp 2)

5 (1) The Transport (Scotland) Act 2001 is amended as follows.

10 (2) In section 5(4) (consultation as to proposed quality partnership scheme), for paragraph (f) substitute—

“(fa) the chief constable of the Police Service of Scotland;”.

(3) In section 15(4) (consultation as to proposed quality contract scheme), for paragraph (g) substitute—

“(ga) the chief constable of the Police Service of Scotland;”.

International Criminal Court (Scotland) Act 2001 (asp 13)

6 In section 15(2) of the International Criminal Court (Scotland) Act 2001 (service of process), for “for the area in which the person appears to be” substitute “of the Police Service of Scotland”.

Protection from Abuse (Scotland) Act 2001 (asp 14)

7 In section 3 of the Protection from Abuse (Scotland) Act 2001 (notification to police), in the closing words of subsection (1), for the words from “any” to “recalled,” substitute “the Police Service of Scotland.”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

8 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

25 (2) In schedule 2 (listed authorities), for paragraph 32A substitute—

“32A The Police Investigations and Review Commissioner,”.

(3) In paragraph 1 of schedule 4 (matters which the Ombudsman must not investigate) for sub-paragraph (c) substitute—

“(c) by the Police Investigations and Review Commissioner,.”.

Freedom of Information (Scotland) Act 2002 (asp 13)

9 (1) In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities)—

(a) in paragraph 50, for “a police force in Scotland” substitute “the Police Service of Scotland”,

(2)
(b) for paragraph 75A (as inserted by paragraph 11(b) of schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 and relating to the Police Complaints Commissioner for Scotland), substitute—

“75AB The Police Investigations and Review Commissioner.”.

Criminal Justice (Scotland) Act 2003 (asp 7)

10 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 56(4) (retaining sample or relevant physical data where given voluntarily)—

(a) in paragraph (a), for the words from “police” to “provided;” substitute “Police Service of Scotland;”,

(b) in paragraph (b)—

(i) in the opening words, repeal the words “within the area of that force”,

(ii) in sub-paragraph (i), repeal the words “of the force”.

Dog Fouling (Scotland) Act 2003 (asp 12)

11 In section 3 of the Dog Fouling (Scotland) Act 2003 (exceptions to offence), in subsection (1)(c)—

(a) for “Forces,” substitute “Forces or”, and

(b) for “the police force for any area” insert “by a constable of the Police Service of Scotland”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

12 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 8(3) (duty to bring specific matters to attention of Scottish Ministers and others etc.), for paragraph (l) substitute—

“(la) the Police Service of Scotland;”.

(3) In section 17(2) (duties of the Scottish Ministers, local authorities and others as respects Commission), for paragraph (f) substitute—

“(fa) the Police Service of Scotland;”.

(4) In section 35(2)(a) (warrants relating to inquiries into individual cases), for sub-paragraph (iii), substitute—

“(iiia) any constable of the Police Service of Scotland;”.

(5) In section 292(3) (warrant to enter premises for purposes of taking patient)—

(a) in paragraph (a), for sub-paragraph (iii) substitute—

“(iiia) any constable of the Police Service of Scotland;”,

(b) in paragraph (b), for the words from “of” where it first occurs to “situated” substitute “of the Police Service of Scotland”.

(6) In section 293(3) (removal to place of safety), in paragraph (a), for paragraph (iii) substitute—
“(iiiia) any constable of the Police Service of Scotland.”.

**Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)**

13 (1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.

(2) In section 1 (antisocial behaviour strategies)—

(a) in subsection (1), for “relevant” substitute “the”,

(b) in subsection (11), for the entry for “relevant chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland.”.

(3) In section 2(6) (reports and information), for “relevant chief constable” substitute “chief constable”.

(4) In section 15(4) (records of orders), for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland;”.

(5) In section 18 (interpretation), in the entry for “relevant consultees”—

(a) in paragraph (a), for sub-paragraphs (i) and (ii) substitute—

“(ia) the chief constable of the Police Service of Scotland;”,

(b) in paragraph (b)—

(i) for sub-paragraph (i) substitute—

“(i) the chief constable of the Police Service of Scotland;”,

(ii) in sub-paragraph (ii), for “that person” substitute “the person in respect of whom the order is sought or made”.

(6) In section 31(4) (enforcement), for “for the area in which the premises are situated” substitute “of the Police Service of Scotland”.

(7) In section 35 (reimbursement of expenditure)—

(a) in subsection (1), for “a police authority” substitute “the Scottish Police Authority”,

(b) in subsection (3)(a)—

(i) in sub-paragraph (i), for the words from “police” to “situated;” substitute “Scottish Police Authority;”,

(ii) in sub-paragraph (ii), for “a police authority” substitute “the Scottish Police Authority”.

(8) In section 119(4) (records of antisocial behaviour orders made in criminal courts), for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland;”.

(9) In section 139(5) (disclosure and sharing of information), for paragraph (b) substitute—

“(b) the chief constable of the Police Service of Scotland;”.


14 In the Emergency Workers (Scotland) Act 2005, for section 7 (saving for certain other offences) substitute—

“7A **Interaction with offence of assaulting or impeding police**

Nothing in this Act affects (or is affected by) section 87(1) of the Police and Fire Reform (Scotland) Act 2012 (assaulting or impeding police).”.

15 (1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 is amended as follows.

(2) In section 2(1) (risk of sexual harm orders: applications, grounds and effect)—

(a) for “a police force” substitute “the Police Service of Scotland”,
(b) repeal the words from “who” where it first occurs to the word “area” where it second occurs.

(3) In section 4 (RSHOs: variations, renewals and discharges)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) the chief constable of the Police Service of Scotland.”,
(b) in subsection (3)(a)—

(i) repeal the words from “, except” to “above”,
(ii) for the word “that” where it second occurs substitute “the”,

(c) in subsection (3)(b), for the words “any of the other persons” insert “the other person”.

16 In section 86(2) of the Charities and Trustee Investment (Scotland) Act 2005 (local authority consents), for “police force for the area” substitute “Police Service of Scotland”.

17 In section 10(7) of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders), for paragraph (a) substitute—

“(a) the chief constable of the Police Service of Scotland;”.

18 (1) The Licensing (Scotland) Act 2005 is amended as follows.

(2) In each of the provisions mentioned in subsection (3), for each occurrence of the expression “appropriate chief constable” substitute “chief constable”.

(3) The provisions are—
section 6(5)(a),
section 7(4)(a),
section 21(1)(d), (2)(a), (3),
section 22(2A),
section 23(6)(a) and (b),
section 24(5)(b), (6) and (10)(a),
section 24A(1) and (2),
section 26(3),
section 27A(9)(b)(i),
section 33(4), (5) and (7),
section 40A(3),
section 44(2), (3), (6) and (7),
section 47(4A),
section 48(2A),
section 49(2A),
section 51(1)(b),
section 56(10),
section 57(1)(a),
section 61(1)(b),
section 67(4)(a)(i),
section 69(1)(a) and (2),
section 70(1)(a) and (4)(b),
section 73(1), (2) and 73(4),
section 74(2)(b), (5)(b), (5A)(b) and (7),
section 75(4)(b) and 75(5),
section 79(2)(b),
section 83(2), (3), (5), (6), (7), (8)(b)(ii) and (10)(b).

(4) In section 12A(1) (chief constables’ reports to Licensing Boards and Local Licensing Forums)—

(a) for “Every” substitute “The”,

(b) repeal the words “whose area falls within the police area of the chief constable”.

(5) The title to section 12A becomes “Chief constable’s reports to Licensing Boards and Local Licensing Forums”.

(6) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives)—

(a) in subsection (1), for “a chief constable” substitute “the chief constable”,

(b) repeal the words “whose area falls within the police area of the chief constable”.

(7) The title to section 84A becomes “Chief constable’s reports to Licensing Boards and Local Licensing Forums”.

(8) In section 84A, subsections (2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35), (36), (37), (38), (39), (40), (41), (42), (43), (44), (45), (46), (47), (48), (49), (50), (51), (52), (53), (54), (55), (56), (57), (58), (59), (60), (61), (62), (63), (64), (65), (66), (67), (68), (69), (70), (71), (72), (73), (74), (75), (76), (77), (78), (79), (80), (81), (82), (83), (84), (85), (86), (87), (88), (89), (90), (91), (92), (93), (94), (95), (96), (97), (98), (99), (100).
(b) in subsection (2), for “a chief constable” substitute “the chief constable”.

(7) In section 105(3) (purchase of alcohol by or for a child or young person), for “A chief constable” substitute “The chief constable”.

(8) In section 147(1) (interpretation), for the entry for “appropriate chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland,”.

(9) In section 148 (index of defined expressions) for the words “appropriate chief constable” substitute “chief constable”.

(10) In paragraph 2(6) of schedule 2 (membership of local licensing forums), for paragraph (b) substitute—

“(ba) the chief constable,”.

Housing (Scotland) Act 2006 (asp 1)

In section 166 of the Housing (Scotland) Act 2006 (interpretation of Part relating to houses in multiple occupation), for the entry for “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland,.”.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

In section 62(1) of the Edinburgh Tram (Line Two) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Edinburgh Tram (Line One) Act 2006 (asp 7)

In section 62(1) of the Edinburgh Tram (Line One) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

(1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

(2) In section 34 (“relevant complaint” and “person serving with police”)—

(a) in subsection (1), after “is” insert “made,”.
(b) in subsection (2)—
   (i) for “written statement” substitute “statement (whether oral, written or
       electronic)”,
   (ii) for paragraphs (a) to (e) substitute—
       “(a) by the Authority;
       (b) by the Police Service; or”,
(c) after subsection (2), insert—
   “(2A) A “complaint” may relate to—
   (a) any action taken, or failed to be taken, by or on behalf of the subject of
       the complaint;
   (b) the standard of any service which the subject of the complaint has
       provided or failed to provide.”.

(3) In section 35 (examination of manner of handling of complaint)—
   (a) in subsection (8)(b), for the words from “any” to “authority” substitute “the
       Authority where the appropriate authority is the chief constable”,
   (b) in subsection (10), for the words from “proceedings” to “procedures)” substitute
       “procedures made by regulations made under section 49 of the Police and Fire
       Reform (Scotland) Act 2012 for dealing with constables whose standard of
       behaviour or performance is unsatisfactory”.

(4) After section 40, insert—

   “40A Arrangements for handling relevant complaints
   (1) The Commissioner must—
       (a) keep under review all arrangements maintained by the Commissioner,
           the Authority and the chief constable for the handling of relevant
           complaints; and
       (b) seek to secure that those arrangements—
           (i) are efficient and effective;
           (ii) contain and manifest an appropriate degree of independence; and
           (iii) are adhered to.
   (2) The Commissioner may make such recommendations, or give such advice, for
       the modification of—
       (a) the arrangements mentioned in subsection (1); or
       (b) the practice of the Authority or the chief constable in relation to other
           matters,
       as appear from the carrying out of the Commissioner’s other functions to be
       necessary or desirable.”.

(5) In section 41 (appropriate authority in relation to complaint), for paragraphs (a) to (j) of
    subsection (1) substitute—
    “(a) the Authority in cases where the complaint is about an act or omission
        by—
(i) the Authority;
(ii) a senior officer of the Police Service; or
(iii) a member of the Authority’s staff; and

(b) the chief constable in cases where the complaint is about an act or omission by—

(i) the Police Service;
(ii) a constable of the Police Service who is not a senior officer; or
(iii) a member of the police staff.”.

6 In section 43 (reports to Scottish Ministers)—

(a) in subsection (4), for “42(d)” substitute “40A(2)”,

(b) in subsection (6)—

(i) in paragraph (a), for the words from “all” to “Act” substitute “the Authority, the chief constable and the inspectors of constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012”,

(ii) in paragraph (b), for “all relevant authorities and to” substitute “the Authority, the chief constable and”,

(c) after subsection (7) insert—

“(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1).”.

7 In section 44 (provision of information to the Commissioner)—

(a) in subsection (1), for “A relevant authority” substitute “The Authority and the chief constable”,

(b) in subsection (2)—

(i) for “A relevant authority” substitute “The Authority and the chief constable”,

(ii) for “that person” (in paragraph (a)) substitute “the Authority or, as the case may be, the chief constable”,

(c) in subsection (3), for “any person” substitute “the Authority or the chief constable”,

(d) in subsection (4)—

(i) for “a relevant authority” substitute “the Authority or the chief constable”,

(ii) for “the authority” substitute “the Authority or, as the case may be, the chief constable”.

8 In section 45 (power of Commissioner to issue guidance)—

(a) in subsection (1)(a), for “relevant authorities” substitute “the Authority or the chief constable”,

(b) in subsection (2), for paragraph (a) substitute—

“(a) the Authority and the chief constable;”.

9
(9) In section 46, after subsection (5) insert—

“(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to such disclosure).”.

(10) For section 47 substitute—

“47 Interpretation of Chapter 2

In this Chapter—

“appropriate prosecutor” means the Lord Advocate or procurator fiscal;

“the Authority” means the Scottish Police Authority;

“chief constable” means the chief constable of the Police Service;

“the Commissioner” means the Police Investigations and Review Commissioner;

“constable” means a constable of the Police Service;

“financial year” means each yearly period ending with 31 March;

“firearm” has the meaning given by section 57(1) of the Firearms Act 1968;

“member of the Authority’s staff” and “member of the police staff” have the same meanings as in the Police and Fire Reform (Scotland) Act 2012;

“person serving with the police” means—

(a) a constable of the Police Service;

(b) a member of the police staff; or

(c) a member of the Authority’s staff;

“Police Service” means the Police Service for Scotland;

“relevant complaint” has the meaning given by section 34;

“senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012.”.

(11) In section 103(4)(a) (subordinate legislation)—

(a) “or”, where second occurring, is repealed, and

(b) after “schedule 2” insert “or paragraph 7A(8) or 7B(4) of schedule 4 or regulations under section 41D(1)’’.

(12) For the title of schedule 4 substitute—

“THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER”.

(13) In schedule 4—

(a) in paragraph 2—

(i) in sub-paragraph (1)(b), for “a police force” substitute “the Police Service (or of a police force previously maintained under the 1967 Act)”,
(ii) after sub-paragraph (d) insert—

“(da) is or has been a member of the Authority;”;

(iii) in sub-paragraph (e), after “Authority” insert “or has been a member of
staff of the body which was known as the Scottish Police Services
Authority”,

(iv) in paragraph (g) after “been” insert “employed as a member of police staff
or as a member of the Authority’s staff or has been”,

(b) after paragraph 7 insert—

“Staff officers

7A (1) The Commissioner may make arrangements for constables of the Police
Service to be appointed to serve as members of the Commissioner’s staff.

(2) The Commissioner may make arrangements for a person falling within sub-
paragraph (3) to be appointed to serve as a member of the Commissioner’s
staff.

(3) A person falls within this sub-paragraph if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c. 16);

(b) the metropolitan police force;

(c) the City of London police force;

(d) the Police Service of Northern Ireland;

(e) the Ministry of Defence Police appointed on the nomination of the
Secretary of State under section 1 of the Ministry of Defence Police Act
1987 (c. 4);

(f) the British Transport Police Force;

(g) the Civil Nuclear Constabulary;

(h) the States of Jersey Police Force;

(i) the salaried police force of the Island of Guernsey; or

(j) the Isle of Man Constabulary.

(4) A constable or other person appointed under arrangements made under sub-
paragraph (1) or (2) is to be appointed on such terms and conditions (including
as regards remuneration, allowances and expenses) as the Commissioner
determines.

(5) The Commissioner’s determination under sub-paragraph (4) may be made by
reference to provision made by regulations made under section 49 of the Police
and Fire Reform (Scotland) Act 2012.

(6) A constable or other person appointed under arrangements made under sub-
paragraph (1) or (2)—

(a) has all the powers and privileges of a constable throughout Scotland, and

(b) is subject to the direction and control of the Commissioner.
(7) The Commissioner is liable in respect of any unlawful conduct on the part of any constable or other person appointed under arrangements made under sub-paragraph (1) or (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(8) The Scottish Ministers may by order apply any provision of the Police and Fire Reform (Scotland) Act 2012 and subordinate legislation made under it (subject to such modifications as they consider appropriate) to a constable or other person so appointed.

Staff involved in investigations

7B (1) The Commissioner may designate—

(a) any member of the Commissioner’s staff appointed under paragraph 7 or 7A to take charge of any investigation on behalf of the Commissioner; and

(b) other members of the Commissioner’s staff to assist the member designated to take charge.

(2) This sub-paragraph applies to a person who is a member of the Commissioner’s staff appointed under paragraph 7 and is designated under sub-paragraph (1).

(3) A person to whom sub-paragraph (2) applies—

(a) has all the powers and privileges of a constable throughout Scotland, but

(b) is not as a result of the designation to be treated as being in police service for the purposes of—

(i) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

(ii) section 200 of the Employment Rights Act 1996.

(4) Ministers may by order apply any enactment relating to the investigation of offences by constables (subject to such modifications as they consider appropriate) in relation to investigations carried out in pursuance of paragraph (b)(i) of section 33A(1) by a member of the Commissioner’s staff designated under sub-paragraph (1).”.

(c) in paragraph 11—

(i) the existing text becomes sub-paragraph (1),

(ii) after that text insert—

“(2) Nothing in this paragraph requires or authorises the provision of any information or document relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to disclosure of the information or document).”.

“...
Animal Health and Welfare (Scotland) Act 2006 (asp 11)

23 In section 49(6) of the Animal Health and Welfare (Scotland) Act 2006 (vets, inspectors and constables), for the words “a police force” substitute “the Police Service of Scotland”.

Adult Support and Protection (Scotland) Act 2007 (asp 10)

24 (1) The Adult Support and Protection (Scotland) Act 2007 is amended as follows.

2 (2) In section 5(1) (co-operation), for paragraph (e) substitute—

“(e) the chief constable of the Police Service of Scotland.”.

25 In section 27(3) (notification to police), for the words from “police” to “situated.” substitute “Police Service of Scotland.”.

26 (4) In section 42(3) (adult protection committees), for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland.”.

Edinburgh Airport Rail Link Act 2007 (asp 16)

27 In section 38(5) of the Edinburgh Airport Rail Link Act 2007 (traffic regulation), for “Lothian and Borders Police” substitute “the Police Service of Scotland”.

Glasgow Commonwealth Games Act 2008 (asp 4)

28 (1) The Glasgow Commonwealth Games Act 2008 is amended as follows.

2 (2) In section 30(1) (compensation and recovery of losses), in paragraph (b), for “chief constable of the constable’s police force” substitute “Scottish Police Authority”.

29 In section 37(2) (transport plan), for paragraph (c) substitute—

“(c) the chief constable of the Police Service of Scotland.”.

Marine (Scotland) Act 2010 (asp 5)

30 In paragraph 12(2)(b) of schedule 2 to the Marine (Scotland) Act 2010 (disclosure of information), for “a police force in Scotland” substitute “the Police Service of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)

31 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

3 (2) In section 114 (scrutiny: duty of co-operation)—

(a) in subsection (2)—

(i) the word “and” at the end of paragraph (b) is repealed, and

(ii) after paragraph (c) insert ‘, and

(d) policing.’,

(b) in subsection (3)(a)—
(i) the word “or” at the end of sub-paragraph (ii) is repealed, and

(ii) after sub-paragraph (iii) insert—

“(iv) policing, or”,

(c) in subsection (10)—

(i) for “or health services” substitute “, health services or policing”, and

(ii) after “services”, where last occurring, insert “or, as the case may be, policing”,

(d) in subsection (11), after the definition of “local authorities” insert—

““policing” has the same meaning as in Part 1 of the Police and Fire Service Reform (Scotland) Act 2012;”.

(3) In section 115(6) (joint inspections), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.  

(4) In schedule 5 (improvement of public functions: listed bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(5) In schedule 8 (information on exercise of public functions: listed public bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(6) In schedule 19 (scrutiny functions: persons etc. subject to user focus duty), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.  

(7) In schedule 20 (scrutiny functions: persons etc. subject to duty of co-operation), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.  

Control of Dogs (Scotland) Act 2010 (asp 9)

29 In section 13 of the Control of Dogs (Scotland) Act 2010, after the entry for “local authority” insert—

““police” means the Police Service of Scotland,”.

Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)

30 In schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 (definitions of words and expressions) for the entry for “constable” insert—

““constable” and other expressions relating to the police have the meanings given by section 96 of the Police and Fire Reform (Scotland) Act 2012 (asp 00),”.”
Police and Fire Reform (Scotland) Bill
Schedule 6—Minor and consequential amendments
Part 2—Amendments relating to Part 2

Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)

31. In section 117 of the Criminal Justice and Licensing (Scotland) Act 2010 (provision of information to prosecutor: solemn cases), in subsection (4)(a), for “a police force” substitute “the Police Service of Scotland”.

5. Alcohol etc. (Scotland) Act 2010 (asp 18)

32. (1) The Alcohol etc. (Scotland) Act 2010 is amended as follows.

(2) In section 14 (licence holders: social responsibility levy)—
   (a) in subsection (3)(b), for “appropriate” substitute “the”, and
   (b) in subsection (5), for the entry for “appropriate chief constable” substitute—
   “‘chief constable’ means the chief constable of the Police Service of Scotland.”.

33. In section 61(3) of the Children’s Hearings (Scotland) Act 2011 (constable’s duty to provide information to Principal Reporter), for “section 17(1)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “section 20(1)(d) of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

20. Public Records (Scotland) Act 2011 (asp 12)

34. In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

PART 2

AMENDMENTS RELATING TO PART 2

Gas Act 1965 (c.36)

35. In section 17(5) of the Gas Act 1965 (notification of accidents)—
   (a) in paragraph (a) the words “fire and rescue authority, ” are repealed, and
   (b) after that paragraph insert—
   “(aza) for the Scottish Fire and Rescue Service if it appears to them that the Scottish Fire and Rescue Service will or may have duties to discharge, or will or may have to take precautionary or preventative action in any such event,”.
Police and Fire Reform (Scotland) Bill
Schedule 6—Minor and consequential amendments
Part 2—Amendments relating to Part 2

Transport Act 1968 (c.73)

36 In section 102(4) of the Transport Act 1968 (exemption for police and fire), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Pensions (Increase) Act 1971 (c.56)

37 In paragraph 44 of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Health and Safety at Work etc. Act 1974 (c.37)

38 In section 23(4)(b) of the Health and Safety at Work etc. Act 1974 (consultation requirements relating to notices), for “relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated” substitute “Scottish Fire and Rescue Service”.

Control of Pollution Act 1974 (c.40)

39 In section 62(2)(a) of the Control of Pollution Act 1974 (exemption from control of loudspeakers in roads), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Water (Scotland) Act 1980 (c.45)

40 (1) The Water (Scotland) Act 1980 is amended as follows.

20 (2) In section 9A(1)(a) (exemption from Scottish Water charges), for “a fire authority” substitute “the Scottish Fire and Rescue Service”.

(3) In section 19 of Schedule 4 (undertakers to fix and maintain fire hydrants), for “fire authority concerned” substitute “Scottish Fire and Rescue Service”.

(4) In section 20 of Schedule 4 (undertakers to deposit keys of hydrants), for “fire authority”, in both places where it occurs, substitute “Scottish Fire and Rescue Service”.

(5) In section 21 of Schedule 4 (cost of hydrants), for “fire authority” substitute “Scottish Fire and Rescue Service”.

(6) In section 21A of Schedule 4 (regulations on recovery of costs of hydrants), for “fire authorities” substitute “the Scottish Fire and Rescue Service”.

Zoo Licensing Act 1981 (c.37)

41 In section 3(3) of the Zoo Licensing Act 1981 (appropriate authority for purposes of representations on an application)—

(a) for paragraph (a)(ii) substitute—

“(ii) the Scottish Fire and Rescue Service, if it is not the enforcing authority”, and
(b) in paragraph (b) for “relevant authority in whose area the zoo or any part of it is, or is to be, situated” substitute “Scottish Fire and Rescue Service”.

Civic Government (Scotland) Act 1982 (c.45)

42 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

5 (2) In section 54(4)(a) (use of loudspeaker exempt from offence), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

(3) In section 89(4A) (safety of platforms etc.), in the words after paragraph (b) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

(4) In section 93 (fire precautions in common stairs etc.)—

(a) for “appropriate relevant authority”, where it occurs in each of subsections (3), (4) and (7), substitute “Scottish Fire and Rescue Service”, and

(b) in subsection (6) for “an appropriate relevant authority” substitute “the Scottish Fire and Rescue Service”.

(5) In section 98 (luminous tube signs)—

(a) in subsection (1) for “appropriate relevant authority”, where it occurs in each of paragraphs (a), (b) and (c), substitute “Scottish Fire and Rescue Service”, and

(b) in subsection (1A) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

(6) In schedule 1 (licensing - further provision as to the general system), for “appropriate relevant authority”, where it occurs in each of paragraphs 2(1)(b), 5(5)(d), 7(3)(a)(ii), 9(5)(b), 9(7)(b), 10(2)(a), 10(2A), 10(4)(b), 11(7)(d), 12(4)(b), 12(7)(b), 17(4)(c)(ii) and 17(4)(d)(ii), substitute “Scottish Fire and Rescue Service”.

(7) In schedule 2 (control of sex shops), for “appropriate relevant authority”, where it occurs in each of paragraphs 8(1)(b), 10(1)(d), 13(5)(d), 14(5)(b), 14(7), 15(2)(a), 15(2A), 15(5) and 23(4)(b)(ii), substitute “Scottish Fire and Rescue Service”.

Road Traffic Regulation Act 1984 (c.27)

43 In section 87(1)(a) of the Road Traffic Regulation Act 1984 (exemptions from speed limits), for “a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005” substitute “the Scottish Fire and Rescue Service”.

Cinemas Act 1985 (c.13)

44 (1) The Cinemas Act 1985 is amended as follows.

(2) In section 3(10) (definition for purposes of the Act), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

(3) In section 8(2) (definition for purposes of the section), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

Road Traffic Regulation Act 1984 (c.27)
In section 61(11) of the Housing (Scotland) Act 1987 (persons providing houses for purpose of occupation requirement for exercise of right to purchase), for paragraph (k) substitute:

“(k) the Scottish Fire and Rescue Service or its statutory predecessors,”.

In section 3(8)(a) of the schedule to the Strathclyde Regional Council Order Confirmation Act 1991, for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

In section 6(9) of the schedule to the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (entry to closed public roads), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Environmental Protection Agency” insert—

“The Scottish Fire and Rescue Service”.

In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities), for paragraph 13 substitute—

“13 The Scottish Fire and Rescue Service.”.

In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities)—

(a) for paragraph 9 substitute “Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service”, and

(b) after paragraph 85 insert—

“85ZA The Scottish Fire and Rescue Service.”.
52 In section 16(1) of the Local Government in Scotland Act 2003 (duty to participate in community planning), for paragraph (d) substitute—

“(d) the Scottish Fire and Rescue Service.”.

53 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

54 (1) The Fire and Rescue Services Act 2004 is amended as follows.

(2) For subsection (10) of section 34 (pensions etc.) substitute—

“(10) In this section “Scottish fire authority”—

(a) means the Scottish Fire and Rescue Service, and

(b) except in subsections (2)(e) and (h), includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00)).

(3) In subsection (6) of section 35 (definitions for purpose of information in connection with pensions etc.), after the definition of “prescribed” add—

““Scottish fire authority”—

(b) means the Scottish Fire and Rescue Service, and

(c) in subsection (5) includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00)).”.

55 In section 1(3) of the Emergency Workers (Scotland) Act 2005 (definition of capacity for the purpose of section 1(1) offence)—

(a) in paragraph (zb) for the words from “a relevant” to “authority’s functions” substitute “the Scottish Fire and Rescue Service while discharging any of the Service’s functions”, and

(b) in paragraph (b) for the words from “a relevant” to “on the authority” substitute “the Scottish Fire and Rescue Service for the purpose of carrying out any of the functions conferred on the Service”.

56 (1) The Fire (Scotland) Act 2005 is amended as follows.
(2) For the title of Part 1 of the 2005 Act and the italic cross heading immediately preceding section 1 of that Act, substitute—

“THE SCOTTISH FIRE AND RESCUE SERVICE”.

(3) In section 17 (duty to secure water supply)—

5 (a) in subsection (1)—

(i) for “A relevant authority” substitute “SFRS”, and

(ii) for “the authority’s” substitute “its”, and

(b) in subsection (2), for “the authority”, where it occurs in each of paragraphs (a), (e) and (f), substitute “SFRS”.

(4) In section 18 (use of water)—

(a) in subsection (1) for “a relevant authority” substitute “SFRS”, and

(b) in subsection (2) for “A relevant authority” substitute “SFRS”.

(5) In section 19 (agreements in relation to water supply), for “a relevant authority”, where it occurs in each of subsections (1) and (3), substitute “SFRS”.

(6) In section 20(1) (emergency supply by Scottish Water) for “a relevant authority” substitute “SFRS”.

(7) In section 21 (fire hydrants: provision etc.)—

(a) in subsection (4) for “the relevant authority in whose area the hydrant is located” substitute “SFRS”, and

(b) in subsection (6) for “a relevant authority) the relevant authority in whose area the hydrant is located” substitute “SFRS) SFRS”.

(8) In section 23(2)(b) (use of fire hydrants exempt from offences) for “a relevant authority” substitute “SFRS”.

(9) In section 24 (notice of works affecting water supply and fire hydrants)—

(a) in subsection (1)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”, and

(b) in subsection (3) for “the relevant authority in whose area the hydrant is situated” substitute “SFRS”.

(10) In section 25 (powers of authorised employees in relation to emergencies), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”, and

(b) for “the authority”, in both places where it occurs, substitute “SFRS”.

(11) In section 27 (powers of authorised employees in relation to obtaining information), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”,

(b) for “the authority” substitute “SFRS”, and

(c) for “the authority’s” substitute “SFRS’s”.
(12) In section 29 (powers of authorised employees in relation to investigating fires), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”, and

(b) for “the authority” substitute “SFRS”.

(13) In section 30 (exercise of authorised employee powers) for “a relevant authority” substitute “SFRS”.

(14) In section 39 (assaulting or impeding employees discharging certain functions)—

(a) in subsection (1)—

(i) in paragraph (a) for “a relevant authority” substitute “SFRS”, and

(ii) in paragraph (b) for “the authority” substitute “SFRS”,

(b) in subsection (2)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “that authority” substitute “SFRS”, and

(c) in subsection (3) for “a relevant authority” substitute “SFRS”.

(15) In section 40 (framework document)—

(a) in subsection (1)—

(i) in paragraph (a) for “relevant authorities” substitute “SFRS”,

(ii) in paragraph (a) for “their functions” substitute “its functions under this Act or any other enactment.”, and

(iii) in paragraph (b)(ii) for “those authorities” substitute “SFRS”,

(b) in subsection (3)—

(i) in paragraph (b) for “fire and rescue authorities” substitute “SFRS”, and

(ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and

(c) in subsection (6)—

(i) for paragraph (a) substitute—

“(a) SFRS,”, and

(ii) in paragraph (b) for “those authorities” substitute “SFRS”.

(16) In section 41 (adherence to framework document)—

(a) for subsection (1), substitute—

“(1) In carrying out its functions, SFRS must have regard to the framework document.”,

(b) in subsection (2)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “document prepared under section 40(1)” substitute “framework document”,

(c) in subsection (4), for “the authority”, in both places where it occurs, substitute “SFRS”,
(d) in subsection (5)—
   (i) in paragraph (b) for “the authority” substitute “SFRS”, and
   (ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and
(e) in subsection (6), for “the authority in respect of which it is proposed to be made” substitute “SFRS”.

(17) For the italic cross-heading immediately preceding section 45, substitute—

“CHAPTER 8C
EQUIPMENT, FACILITIES AND SERVICES”.

(18) In section 47(1) (provision of equipment etc. by Scottish Ministers) for “relevant authorities” substitute “SFRS”.

(19) In section 51 (prohibition on employment of police)—
   (a) for “A relevant authority” substitute “SFRS”, and
   (b) for “the authority” substitute “it”.

(20) In section 52 (interpretation of Part 2), in the appropriate place in alphabetical order insert the following definitions—

   “Chief Inspector” has the meaning given by section 43A(6),”,
   “Chief Officer” means the person appointed under paragraph 8 of schedule 1A,”,
   “framework document” means the document prepared under, and having effect by virtue of, section 40,”,
   “Inspector” has the meaning given by section 43A(6),”.

(21) In section 59(1) (application of power to make further provision for protection of firefighters) for “relevant authorities” substitute “SFRS”.

(22) In section 79 (interpretation of Part 3) in the definition of “relevant person” for “a relevant authority” substitute “SFRS”.

(23) In section 80 (inquiries), for “a relevant authority”, where it occurs in each of paragraphs (a) and (b)(iii), substitute “SFRS”.

(24) In section 81(2) (inquires about which Ministers may not make regulations) for “44” substitute “43B”.

(25) In section 85(1) (false alarms), for “a relevant authority” substitute “SFRS”.

(26) In section 86 (disposal of land), for “A relevant authority” substitute “SFRS”.

(27) Before section 87, insert—

“86A Interpretation

(1) In this Act, “SFRS” has the meaning given by section 1A(1).

(2) References in this Act to the area of SFRS are to be construed as references to Scotland, but taking the seaward boundary of the area to be the low water mark.”.
Gambling Act 2005 (c.19)

57 In section 157 of the Gambling Act 2005 (responsible authorities in relation to premises), for paragraph (f) substitute—

“(f) the Scottish Fire and Rescue Service.”.

Housing (Scotland) Act 2006 (asp 1)

58 In paragraph 4 of schedule 2 to the Housing (Scotland) Act 2006 (duty to consult on provision for detecting fires), for “fire and rescue authority for the area in which the house concerned is situated” substitute “Scottish Fire and Rescue Service”.

Public Services Reform (Scotland) Act 2010 (asp 8)

59 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies)—

(a) for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service”, and

(b) after the entry for “Scottish Environmental Protection Agency” insert —

“Scottish Fire and Rescue Service”.

(4) In schedule 19 (persons subject to user focus duty), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”. 

Public Records (Scotland) Act 2011 (asp 12)

60 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of the Act applies), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities (appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5))” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”. 


PART 3

AMENDMENTS RELATING TO BOTH PARTS

Pipe-lines Act 1962 (c.58)

61 In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) to the Scottish Fire and Rescue Service and the chief constable of the Police Service for Scotland,”

(b) in subsection (2)—

(i) after “by” (where it occurs in the opening words), insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(ii) after “furnish” insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(iii) in paragraph (a), for “a fire and rescue authority or police authority” substitute “the Scottish Fire and Rescue Service or the chief constable of the Police Service for Scotland”.
# Schedule 7—Repeals

## Part 1—Repeals relating to Part 1

**Schedule 7**  
*(introduced by section 123(2))*

### Repeals

#### Part 1

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<td>Enactment</td>
<td>Extent of repeal</td>
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<tr>
<td>Criminal Justice (Scotland) Act 2003 (asp 7)</td>
<td>Section 75.</td>
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<tr>
<td></td>
<td>In section 76, subsections (1) to (9).</td>
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<tr>
<td>Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)</td>
<td>In section 1, the word “relevant” at each place it occurs in subsections (3)(f)(i), (ii) and (iii), (4), (8) and (10).</td>
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<td></td>
<td>In section 2, the word “relevant” at each place it occurs in subsections (1)(a) and (2)(a).</td>
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<td></td>
<td>In section 20(3)(b), the words “whose police area includes the relevant locality and”.</td>
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<tr>
<td>Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)</td>
<td>In section 4(2), paragraphs (b), (c) and (d).</td>
</tr>
<tr>
<td>Edinburgh Tram (Line Two) Act 2006 (asp 6)</td>
<td>In section 62(5), the entry beginning “chief officer of police”.</td>
</tr>
<tr>
<td>Edinburgh Tram (Line One) Act 2006 (asp 7)</td>
<td>In section 62(5), the entry beginning “chief officer of police”.</td>
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<tr>
<td>Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)</td>
<td>Sections 1 to 32.</td>
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<td>Section 34(7).</td>
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<td>Section 41(2) to (5).</td>
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<td>Sections 42.</td>
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<td>Sections 48 to 50.</td>
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<td>In section 99, the entry for “the 1967 Act”.</td>
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<td></td>
<td>Schedules 1 to 3.</td>
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<tr>
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<td>In schedule 6, paragraphs 1, 7, 11 and 12.</td>
</tr>
<tr>
<td>Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)</td>
<td>In schedule 1, the entries for “police area”, “police authority” and “police force”.</td>
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<tr>
<td>Public Services Reform (Scotland) Act 2010 (asp 8)</td>
<td>In schedule 5, the entry for “Scottish Police Services Authority”.</td>
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<td></td>
<td>In schedule 8, the entry for “Scottish Police Services Authority”.</td>
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<tr>
<td>Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)</td>
<td>Section 31(7).</td>
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<td>Section 56.</td>
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<tr>
<td>Alcohol etc. (Scotland) Act 2010 (asp 18)</td>
<td>Section 15(3)(b)(ii).</td>
</tr>
<tr>
<td>Public Records (Scotland) Act 2011 (asp 12)</td>
<td>In the schedule, the entries for “Joint police boards”, “Police Advisory Board for Scotland” and “Scottish Police Services Authority”.</td>
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</tbody>
</table>
### Part 2

**REPEALS RELATING TO PART 2**

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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<tbody>
<tr>
<td>Gas Act 1965 (c.36)</td>
<td>In section 28(1) (interpretation of Part 2), the definition of “fire and rescue authority”.</td>
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<tr>
<td>Local Government (Scotland) Act 1973 (c.65)</td>
<td>Section 63A.</td>
</tr>
<tr>
<td>Water (Scotland) Act 1980 (c.45)</td>
<td>In section 109(1), the definition of “fire authority”.</td>
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<td>In section 1(1) of Schedule 4, the definition of “fire authority”.</td>
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<tr>
<td>Local Government, Planning and Land Act 1980 (c.65)</td>
<td>Section 2(1)(h).</td>
</tr>
<tr>
<td>Civic Government (Scotland) Act 1982 (c.45)</td>
<td>In section 8, the definition of “appropriate relevant authority”. Section 89(4A)(b) and the word “and” immediately preceding it. Section 89(4B). Section 93(9).</td>
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<tr>
<td></td>
<td>In section 98(2), the definition of “appropriate relevant authority”. In paragraph 3 of schedule 2, the definition of “appropriate relevant authority”.</td>
</tr>
<tr>
<td>Housing (Scotland) Act 1987 (c.26)</td>
<td>In section 82, the definition of “fire authority”.</td>
</tr>
<tr>
<td>Housing (Scotland) Act 1988 (c.43)</td>
<td>Section 43(3)(a)(vii) and the word “or” immediately preceding it. Section 45(4)(g).</td>
</tr>
<tr>
<td>Housing (Scotland) Act 2001 (asp 10)</td>
<td>In paragraph 2 of schedule 1, the words from “A tenancy”, where they first occur, to “such an authority”.</td>
</tr>
<tr>
<td>Local Government in Scotland Act 2003 (asp 1)</td>
<td>In section 22(9), the words “Subject to section 16(3) of the Fire (Scotland) Act (asp 5),” and paragraph (c). In section 61, paragraph (a) and, in paragraph (c), the words “a joint fire board”, in each place where they occur.</td>
</tr>
<tr>
<td>Fire (Scotland) Act 2005 (asp 5)</td>
<td>Section 1. Section 2 to 7. Section 12. Sections 33 and 34.</td>
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### Schedule 7—Repeals

#### Part 3—Repeals relating to both Parts

<table>
<thead>
<tr>
<th>Enactment</th>
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<tr>
<td></td>
<td>Section 37.</td>
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<td>Section 41(7).</td>
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<td>Sections 42 and 43.</td>
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<td>Sections 44 to 46.</td>
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<td>Sections 48 to 50.</td>
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<td>Section 61(4) and (5).</td>
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<td>Section 67(2).</td>
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<td>Section 88(4)(a).</td>
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<td></td>
<td>Schedule 1.</td>
</tr>
<tr>
<td>Housing (Scotland) Act 2006 (asp 1)</td>
<td>In section 194(1), the definition of “chief officer of the fire and rescue authority”.</td>
</tr>
</tbody>
</table>
| Public Services Reform (Scotland) Act 2010 (asp 8) | In schedule 20, the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)”.

### PART 3

**REPEALS RELATING TO BOTH PARTS**

<table>
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<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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<tr>
<td>Pipe-lines Act 1962 (c.58)</td>
<td>Section 37(4)(a).</td>
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Police and Fire Reform (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

Introduced by: Kenny MacAskill
On: 16 January 2012
Supported by: Roseanna Cunningham
Bill type: Executive Bill
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

POLICE AND FIRE REFORM (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Police and Fire Reform (Scotland) Bill introduced in the Scottish Parliament on 16 January 2012:
   - Explanatory Notes;
   - a Financial Memorandum;
   - a Scottish Government Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 8–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The purpose of the Bill is to create a single police service and a single fire and rescue service. The Bill sets out the governance arrangements and framework for the new services. In addition, it provides:
   - a modern purpose for the police service and updated oath for constables. For fire, the Scottish Government intends that a new purpose will be included in a new fire and rescue framework;
   - a statutory framework for the delivery of police and fire and rescue services and appropriate scrutiny and oversight arrangements; and
   - arrangements for the transfer of existing officers and staff to both services.

5. The Bill also places the arrangements for independent custody visiting in Scotland on a statutory footing. It ensures that independent custody visiting in Scotland complies with the Optional Protocol to the Convention against Torture.

6. To facilitate the establishment of single services the Bill abolishes the existing unitary police and fire authorities (Fife and Dumfries and Galloway) and the 6 joint police and joint fire boards which are established by amalgamation schemes made under the provisions of the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005 by bringing together a number of local authorities (who are individual police and fire authorities under the enabling legislation) to form joint boards.

7. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

8. The Bill is in 3 parts. Part 1 deals with police, and has 17 Chapters and 98 sections. Part 2 deals with fire and rescue, and has 21 sections and Part 3 deals with general provisions with 6 sections. The Bill also includes 7 Schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill.
Part 1 Police Reform

9. **Part 1** largely replaces the legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, and puts in place a new modernised framework for policing. The Bill also repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland to rename it and extend the provisions in that part to provide for more robust scrutiny of policing. Specifically, it makes provision for:

- The establishment and way of working of the Scottish Police Authority (SPA), responsible for the governance, oversight and maintenance of the Police Service, for holding the Chief Constable to account, and for providing forensic services. The Bill will also give the Scottish Ministers power to direct the SPA, but not the Chief Constable (**Chapters 1 and 3 and Schedule 1**);

- The responsibilities of the Chief Constable for the direction and control and day to day administration of the Police Service of Scotland (the Police Service), the allocation and deployment of resources received from the SPA, and ensuring adequate arrangements for the policing of each local authority area. The Bill also makes clear that the Chief Constable must account to the SPA (**Chapter 2**);

- An updated oath, a restatement and reframing of the functions and duties of constables, and provision for the terms and conditions of service of constables and police cadets, as well as that of police staff, police custody and security offices and constables from another jurisdiction on temporary service with the Police Service (**Chapter 2 and Schedule 2**). In addition, the Bill gives the Scottish Ministers power to make regulations on a range of issues concerning the governance, administration and conditions of service of constables and police cadets (**Chapter 8**);

- A statement of the policing principles to which the Scottish Ministers, SPA and the Chief Constable must have regard when setting the strategic direction for the service and commanding constables, as well as detailed arrangements for the strategic police plan and annual police plan. It obliges the SPA to involve the Chief Constable in preparing these (**Chapter 4**);

- A statutory duty on the SPA and the Chief Constable to make arrangements which secure best value for the SPA and the Police Service (**Chapter 5**);

- Reporting on and examining policing matters, including placing specific obligations on the SPA to produce an annual report. It also provides for the preparation and submission of accounts and arrangements for audit, enables the Auditor General for Scotland to initiate examinations into the delivery of best value, and places a duty on the Auditor General and Her Majesty’s Inspectors of Constabulary in Scotland (HMICS) to work together (**Chapter 6**);

- The Chief Constable to make arrangements for local policing, including establishing a new formal statutory relationship with each local authority (**Chapter 7**);

- Arrangements for police appeals tribunals in disciplinary cases where the processes of review or appeal have been exhausted (**Chapter 9 and Schedule 3**);
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- A new independent investigatory capacity outside the Police Service (the Police Investigations and Review Commissioner (PIRC)) to deal with the most serious cases and where it is in the public interest to have an independent investigation (Chapter 10);
- Inspection of the SPA and the Police Service by HMICS, which will retain its existing powers and also be able to examine the delivery of best value. It also requires the Scottish Ministers to lay HMICS inspection or inquiry reports before the Scottish Parliament (Chapter 11);
- A requirement on the SPA and the Police Service, and on the HMICS, Auditor General and PIRC to work together (Chapter 12);
- The Scottish Ministers to pay a grant directly to the Scottish Police Authority (Chapter 14). The SPA and Chief Constable will also be able to charge for goods and services provided by the SPA or police service (Chapter 13);
- A number of offences (Chapter 15);
- Independent Custody Visiting (Chapter 16); and
- The transfer of officers, staff and assets from the existing unitary authorities, joint boards and SPSA to the new service (Chapter 17 and Schedule 4).

Part 2 Fire Reform

10. Part 2 amends the Fire (Scotland) Act 2005 to establish the Scottish Fire and Rescue Service and transfers to it fire-fighting, fire safety and other functions under that Act. Specifically, it makes provision for:

- The establishment and way of working of the Scottish Fire and Rescue Service (SFRS), responsible for the delivery of fire and rescue functions, and for employing the Chief Officer, fire-fighters and other staff. The Bill will also give the Scottish Ministers power to direct SFRS. (Sections 99, inserting new Schedule 1A, and 116);
- Fire and rescue functions in the Fire (Scotland) Act 2005 and the Fire (Additional Function) Scotland Order 2005 to be the responsibility of SFRS, and for SFRS to carry out those functions (Sections 100 – 110);
- SFRS to have a specific statutory duty to make arrangements which secure best value (Section 111);
- SFRS to produce, publish and review a strategic plan (Section 112);
- SFRS to make arrangements for local fire and rescue services, including establishing a formal statutory relationship with each local authority (Section 113);
- Monitoring and scrutiny of fire and rescue matters, including placing a specific duty on SFRS to produce an annual report, to prepare and submit for audit accounts and to provide information to the Scottish Ministers. (Sections 100 (paragraph 16 of inserted schedule 1A), 114 and 115);
• Inspection of SFRS by newly established Inspectors of the Scottish Fire and Rescue Service. It also provides for reports by the Chief Inspector to SFRS, the Scottish Ministers and the Scottish Parliament (Section 117); and

• The transfer of fire-fighters and other staff and assets from the existing unitary authorities, joint boards and the Scottish Ministers to the new service (Section 118 and Schedule 5).

Part 3: General

11. Part 3 makes a number of general provisions relating to subordinate legislation, minor and consequential amendments to other legislation and commencement.

PART 1 – POLICE REFORM

CHAPTER 1 - THE SCOTTISH POLICE AUTHORITY

12. Section 1 provides for the establishment of a new corporate body, the Scottish Police Authority (SPA).

13. Schedule 1 to the Bill, which is introduced by section 1, establishes the SPA as independent from the Crown, and makes provision regarding its constitution, membership, remuneration and location. Paragraphs 2 – 6 provide that the SPA will consist of between 7 and 11 members, though that number may be varied by order made by the Scottish Ministers which would be subject to negative procedure in the Scottish Parliament. Members must be appointed by Ministers on the basis of relevant skills and expertise to govern the Police Service and hold the Chief Constable to account. All appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Scottish Ministers are to be responsible for appointing the Chair of the SPA, and members of the SPA must elect one of them to act as Deputy. These paragraphs also set out the length of term members and the chairing member can serve; that Ministers can remove members under certain circumstances; and provide a list of people disqualified from membership of the SPA.

14. Paragraphs 7 – 9 of Schedule 1 make provision for the SPA to appoint staff to assist in carrying out its functions, and to second police officers from police services across the United Kingdom to assist in carrying out its functions. They also make provision regarding the terms and conditions on which the SPA’s staff are employed. Paragraphs 10 – 13 of Schedule 1 set out rules regarding the establishment of committees and sub-committees by the SPA, its procedures, delegation of functions (although the SPA will still retain responsibility for the performance of those functions and remain able to perform them), and location of SPA and Police Service office Headquarters (which are subject to the approval of the Scottish Ministers). Part 2 of Schedule 1 makes consequential amendments flowing from the establishment of the SPA as a new Scottish public body.

15. Section 2 sets out that the SPA’s main functions are to maintain the Police Service of Scotland (the Police Service), to promote and support continuous improvement in, and hold the Chief Constable to account for, the policing of Scotland. The SPA will also have additional
functions conferred on it by this, or any other, enactment. The SPA must try to carry out these functions in a way that is proportionate, accountable and transparent and consistent with best practice.

16. On the first of these roles, **Section 3** provides that the SPA has a specific obligation to pay constables pay, allowances and expenses, in accordance with the regulations made under **section 49** of the Bill. It also gives the SPA a broad power to provide and maintain anything necessary or desirable for carrying out police functions.

17. **Section 4** allows the SPA to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The power to borrow money and to purchase land compulsorily is subject to Ministerial consent and, in relation to borrowing money, the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of cases.

18. **Section 5** places an obligation on the SPA to comply with any direction given by the Scottish Ministers. The Scottish Ministers may not give directions in relation to specific policing operations. The Ministerial direction must be published and laid before the Scottish Parliament. Ministers will also have powers to vary or revoke such directions, which must be published and laid in the same way.

**CHAPTER 2 – THE POLICE SERVICE OF SCOTLAND**

19. This Chapter makes a number of provisions relating to the Police Service of Scotland. Police officers are office holders not employees and their terms and conditions of service are set out in statute rather than being governed primarily by employment law. It is for this reason that the legislation has to set out detailed arrangements for the establishment of the Police Service and the appointment etc. of constables, and the provisions in this Chapter largely replicate those in the 1967 Act relating to the appointment of constables. Any differences in approach are set out below. **Section 6** establishes the Police Service of Scotland as a constabulary comprising a constable holding the office of Chief Constable, one or more holding the office of deputy chief constable, one or more holding the office of assistant chief constable, and constables. It makes detailed provision for the terms and conditions of members of the constabulary. It sets out the ranks a constable may hold, and makes provision for the appointment, role, functions, jurisdiction, duties, and powers of senior officers, regular constables and special constables, as well as making provision for dealing with offences committed by constables, such as failure to perform duty and failure to return equipment, and for the removal from office of senior officers in the interests of efficiency or effectiveness.

**Constable: appointment, ranks and terms of office**

20. **Section 7** requires the SPA to appoint the Chief Constable of the Police Service, one or more deputy chief constables and one or more assistant chief constables. The Chief Constable appointment is subject to approval by the Scottish Ministers. The SPA is required to consult the Chief Constable before appointing a deputy or assistant chief constable. Regular constables (i.e. any constables aside from senior officers) will be appointed by the Chief Constable (**Section 8**),
who may also appoint special constables (Section 9). Special constables are not paid, but may be entitled to allowances and other payments, which will be set out in regulations made under section 49. The main differences from the 1967 Act are that the Bill provides the flexibility to have more than one deputy chief constable and Ministerial agreement is only required before the SPA appoints the Chief Constable rather than all senior officers.

21. Section 10 provides that, in order to be appointed as a constable, an individual has to have made a declaration before a Sheriff or Justice of the Peace. Section 10(1) sets out the new wording of the declaration, which is included on the face of the legislation for the first time, having previously been included in Police Regulations. The wording of the oath can be modified by the Scottish Ministers by order, which would be subject to affirmative procedure in the Scottish Parliament.

22. Section 11 makes provision for constable ranks. It lists the ranks a constable may hold, and gives the Scottish Ministers a power to make regulations (which would be subject to affirmative resolution in the Scottish Parliament) to add or remove any rank below that of assistant chief constable, and lists the people the Scottish Ministers must consult before doing so. The order making power is a new provision intended to make it easier to add or remove ranks if either is necessary for operational efficiency. Section 11(2) provides that constables appointed to the offices of Chief Constable, deputy chief constable or assistant chief constable under section 7 hold the same rank as the office to which they have been appointed. The Chief Constable is responsible for assigning and promoting individuals to ranks below that of assistant chief constable. A constable can only be demoted if the constable consents or it is done in accordance with the regulations made under section 49. Section 12 provides that a constable holds and vacates office in accordance with those regulations, or any other enactment which makes such provision.

23. Section 13 provides the SPA with a power to pay rewards to any constable below the rank of Chief Constable who it considers has performed their functions with exceptional diligence, or in an especially meritorious manner, or to any person who it deems to have contributed substantially to Scotland’s policing. Such rewards are made on the recommendation of the Chief Constable.

24. Section 14 provides the SPA with a power to require a Chief Constable, deputy chief constable or assistant chief constable to retire in the interests of efficiency or effectiveness. Before calling for this, the SPA must: give the senior officer an explanation of its reasons and an opportunity to make representations, and consider any representations made. In the case of the Chief Constable, it must consult the Scottish Ministers. A senior officer called on to retire in this way must retire from the date set by the SPA, or an earlier date agreed between them and the SPA.

25. Section 15 makes provision for constables to be engaged in service outwith the Police Service on temporary service, with the consent of the Chief Constable. The Scottish Ministers can, by regulations, prescribe types of service as “temporary service”, and make whatever further provision they consider appropriate. Constables on temporary service continue to hold the office of constable, but are not entitled to carry out the functions, or have the powers and privileges of, a constable, except in certain circumstances. Following such a period of temporary service,
constables are entitled to return to service in the Police Service at the rank they held previously. Their time spent on temporary service is treated as time served as a constable of the Police Service for pay purposes. These are only applicable if the constable does not become eligible for a pension, allowance or gratuity by virtue of regulations made under the Police Pensions Act 1976 or section 1 of the Police (Overseas Service) Act 1945 during the period of temporary service. Constables can be promoted during their time on temporary service, in which case they would return to the Police Service at the promoted rank and are treated as having served in that rank from the time of promotion for pay purposes. Although this provision largely repeats the current arrangements for temporary service it seeks to make it easier for officers to serve outwith the Police Service.

26. **Section 16** allows officers from the rest of the UK and the Crown Dependencies to carry out temporary service as officers in the Police Service, provided they take the oath (**section 10**). Such individuals are under the direction and control of the Chief Constable, and have all the powers, privileges and functions of a constable in Scotland. This is a new provision to facilitate the inward secondment of officers from outwith Scotland for short term postings.

**Chief Constable**

27. **Section 17** makes it clear that the Chief Constable is responsible, and must account to the SPA, for the policing of Scotland. The Chief Constable has the following responsibilities:

- Direction and control of the Police Service;
- The day to day administration of the Police Service and the allocation and deployment of resources received from the SPA;
- Involvement in the preparation of the strategic police plan, annual police plans and SPA’s annual report;
- Seeking to secure continuous improvement in the policing of Scotland;
- Designation of local commanders and ensuring that adequate arrangements are in place for the policing of each local authority area; and
- To provide the SPA with information about the Police Service, policing and the state of crime.

28. When directing constables, police cadets and police staff, the Chief Constable must comply with any lawful instruction given by the appropriate prosecutor in relation to the investigation of offences, the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995, the Lord Justice General or the sheriff principal for the area concerned. He or she must also seek to ensure that Scotland’s policing is carried out with due regard to the policing principles set out at **section 32** and the recommendations made or guidance issued by the SPA on Scotland’s policing, and in accordance with the strategic police priorities, any strategic police plan approved under **section 34**, and the most recent annual police plan published under **section 35**. Any recommendations or guidance made by the SPA must not be inconsistent with the strategic police priorities, the latest approved strategic police plan, the relevant annual police plan and any guidance or instructions issued to the Chief Constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences. This section largely brings together the current responsibilities of Chief Constables, updated to
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

reflect the establishment of the Police Service and the new planning and reporting regime established in this Bill. It also makes clear that the Chief Constable is accountable to the SPA for the policing of Scotland.

29. **Section 18** provides that the Chief Constable can delegate any of his or her functions to any other constable. He or she is however still responsible for the performance of those functions and remains able to perform them. The SPA is required to designate a deputy chief constable to perform the Chief Constable’s functions if that office is vacant or if he or she is unable to perform their duties due to absence, illness or suspension. If the offices of chief constable and deputy chief constable are vacant or the holders are unable to perform their duties due to absence, illness or suspension, the SPA must designate an assistant chief constable to perform the Chief Constable’s functions. Only one deputy chief constable or assistant chief constable can be designated to take on the functions of the Chief Constable at any particular time. This provision does not affect any restriction on delegation of the Chief Constable’s functions contained in any other enactment.

**Functions of Constables**

30. **Sections 19 to 23** set out the functions, jurisdiction and duties of constables, including command and control. **Section 19** sets out that constables will have all of the functions conferred on them by this or any other enactment or by rule of law, and all the powers and privileges of a constable throughout Scotland. It also provides that senior officers and local commanders also have all of the additional functions conferred on them by this or any other enactment or by rule of law. **Section 20** sets out constables’ general duties. These are largely a restatement of the duties placed on constables under the 1967 Act, restated and reframed to better reflect the role of modern policing. When taking lawful measures to bring offenders to justice, a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

31. **Section 21** makes clear that constables are subject to the direction and control of the Chief Constable in relation to the performance of their duties, as are police staff and police cadets (who may also be dismissed by the Chief Constable). A constable must carry out lawful orders and punctually and promptly perform all of the duties which fall to him or her.

32. **Section 22** updates two offences committed by constables: absence from duty without reasonable excuse or neglect or violation of duty (this also applies to police custody and security officers). **Section 23** provides for the offence of failing to return any relevant item requested to the SPA without reasonable excuse or the SPA’s permission. An offence of failing to return any item on ceasing to be a constable, without reasonable excuse or the SPA’s permission, is also provided. **Section 23** also creates a power for a Sheriff or Justice of the Peace to grant a warrant for the search and removal of any relevant items. A relevant item is anything issued to a constable for the carrying out of the constable’s functions, e.g. police uniform. The penalty for the offences of being absent from duty and failure to return equipment is imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale. The offence of neglect or violation of duty is subject to a maximum sentence of 5 years imprisonment or to a fine or to both if tried on indictment, or on summary conviction to imprisonment for a maximum term of 12 months or to a fine at the statutory maximum or both. This offence was only subject to summary proceedings under the 1967 Act.
Liability for Unlawful Conduct

33. **Section 24** provides for liability for unlawful conduct by constables in line with the provisions currently included in the 1967 Act. This is needed because police officers are office holders, not employees, and the usual liability arrangements whereby employers are liable for unlawful acts on the part of their employees do not apply. Specifically it provides that the Chief Constable will be liable for any unlawful conduct in the carrying out of their functions by (a) a constable under his or her direction and control or (b) a member of an international joint investigation team who is not a constable or member of SPA staff or police staff. The SPA must pay any damages or expenses awarded against the Chief Constable (or the person carrying out his or her functions if the office of Chief Constable is vacant) in any proceedings under this section, any expenses incurred by the Chief Constable and any sum required in relation to the settlement of any claim against the Chief Constable which has or might have given rise to such proceedings. The SPA can, if and to the extent that it thinks fit, pay any damages or expenses awarded against a constable in relation to unlawful conduct by them, any expenses incurred by them, and any sum required in connection with the settlement of any claim which has or may have given rise to such proceedings.

Police Cadets

34. **Section 25** allows the Chief Constable to appoint police cadets to undergo training with a view to becoming constables. Such cadets are to be treated as employees of the SPA as they are not attested officers under section 10 of the Bill and do not have the powers of a constable. They are however under the direction and control of the Chief Constable and are subject to regulations made under **section 49** in relation to their terms and conditions of service in line with the provisions in the 1967 Act.

Police Staff

35. **Sections 26 and 27** of this Chapter make provision for police staff. **Section 26** provides the SPA with a power to appoint people to assist constables in carrying out police functions. The Chief Constable has power to make such appointments on behalf of the SPA. Such people can be employed by the SPA or provided to the SPA under contract with a third party. Under **section 27** police staff may be employed on terms and conditions determined by the SPA and the SPA may pay or make arrangements for contributing to and paying pensions of police staff.

Police Custody and Security Officers

36. **Sections 28-30 and Schedule 2** set out the arrangements for police custody and security officers and for their certification, and put in place penalties for any person who knowingly provides false or misleading information in relation to certification. These provisions replicate those in the 1967 Act relating to police custody and security officers.

37. Under **section 28** the Chief Constable can certify a member of police staff to be authorised as a police custody and security officer. By virtue of **section 29(1)**, the Chief Constable can only do so if he or she is satisfied that the member of police staff is a fit and proper person to perform those functions and they have received suitable training to do so. The Chief Constable can suspend or revoke a certificate if it appears to him or her that the officer is
not fit and proper, otherwise the certificate continues until the specified date. The powers and duties of police custody and security officers are as set out in Schedule 2, as introduced by section 28(3), and any other enactment or rule of law. They must be readily identifiable as such officers. Section 30 makes it an offence for anyone to provide information enabling themselves or any other individual to be certified as a police custody and security officer if they know that or are reckless as to whether the information is false or misleading. The maximum sentence for anyone guilty of such an offence is a fine not exceeding level 4 on the standard scale.

CHAPTER 3 – FORENSIC SERVICES

38. This Chapter places a duty on the SPA to provide forensic services.

CHAPTER 4 – PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

39. Chapter 4 sets out the policing principles and new arrangements for setting priorities, objectives and planning. Section 32 sets out the policing principles. The first principle, set out in section 32(a), is that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland. Section 32(b) states that the Police Service, working with others as appropriate, should seek to achieve that purpose by carrying out its functions in a way that (i) engages with, and is accessible to, local communities and (ii) promotes measures to prevent crime, harm and disorder.

40. Section 33 allows the Scottish Ministers to determine strategic priorities for the SPA in relation to Scotland’s policing or to the carrying out of the SPA’s functions. Sections 33(3) and 33(4) provide, respectively, that, before doing so, the Scottish Ministers must consult the SPA, persons whom they consider represent local authorities and any other persons they consider appropriate; and that they must have regard to the policing principles when determining strategic priorities. The Scottish Ministers are required to publish the strategic police priorities.

41. Section 34 obliges the SPA to prepare a strategic police plan setting out the main objectives for the SPA and for Scotland’s policing. That plan must be approved by the Scottish Ministers. It must: explain why each objective has been selected; describe what the SPA thinks it or the Police Service should do in order to achieve them; where reasonably practicable identify the outcomes against which they can be measured; and include any other material relating to the SPA or Police Service considered appropriate.

42. Sections 34(3) and 34(4) set out the process for consulting on the draft plan, and list those who must be consulted on it (local authorities, HMICS and any others the SPA considers likely to have an interest in the plan). The SPA must invite consultees to respond within a set period and must have regard to comments received. Once that process has been completed, the draft plan must be submitted to Ministers for approval. Once it has been approved, it must be published and laid before the Scottish Parliament. The plan must be reviewed at least once every 3 years or where there has been a significant revision to the strategic police priorities. The modified plan following that review should follow the same process of consultation, approval and publication as the original.
43. **Section 35** obliges the SPA to prepare an annual police plan. The plan is to set out the proposed arrangements for the carrying out of both the SPA’s functions and the policing of Scotland in each year and how the arrangements are expected to contribute towards the achievement of the main objectives as set out in the strategic police plan. The annual plan must be published before the start of the year to which it relates and laid before the Scottish Parliament.

44. **Section 36** requires the Chief Constable to participate in planning processes by placing an obligation on the SPA to involve the Chief Constable in preparing the strategic police plan, and each annual police plan. It also places a requirement on the Chief Constable to provide the SPA with whatever assistance it may reasonably require in that regard.

45. **Section 37** specifies that, in carrying out their respective functions in relation to the formulation and publication of the strategic police plan and each annual police plan, the SPA and Chief Constable must have regard to the policing principles; must have regard to, and ensure that the plan is consistent with, the strategic police priorities; and ensure the annual plan is consistent with the most recently approved strategic police plan.

**CHAPTER 5 - BEST VALUE**

46. **Section 38** places a statutory duty on the SPA and the Chief Constable to make arrangements which secure best value for the SPA and Police Service respectively. This replaces the current duty of best value on police authorities and joint boards under Section 1 of the Local Government in Scotland Act 2003 and places a duty on the Chief Constable for the first time. Best value is defined as meaning a continuous improvement in the performance of their respective functions. **Section 39** provides that, in carrying out their duties in regard to best value, they must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties in sections 38(1) and 38(2), including, in particular, guidance on how to make, and what is to be included in, the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult the SPA, the Chief Constable and anyone else they consider appropriate. Where there is conflict between (a) and (b), the SPA and Chief Constable should have regard only to (a).

47. In making arrangements to secure best value, the SPA and Chief Constable are required to balance the quality of carrying out their functions, the cost of doing so, and the cost to persons of any service provided by the SPA or Chief Constable on a wholly or partly chargeable basis. In maintaining that balance, they must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (as set out in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46)). Both the SPA and the Chief Constable are to discharge their duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of their functions, regard should be taken of the extent to which the outcomes of that performance have improved.
CHAPTER 6 – ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

48. This Chapter sets out new arrangements for reporting on and examining policing matters. Section 40 obliges the SPA to prepare, with the involvement of the Chief Constable, an annual report relating to the carrying out of its functions and policing as soon as practicable after the end of the reporting year. It must contain an assessment of the SPA’s and Police Service’s performance in (a) achieving the main objectives set out in the most recently approved strategic police plan, and (b) implementing the arrangements set out in the annual police plan. It may also include any other matters relating to the SPA’s functions and policing that the SPA considers appropriate. The SPA must publish the annual police report, provide a copy to Ministers and lay a copy before the Scottish Parliament.

49. The Chapter also makes provision for the preparation and submission of accounts and arrangements for audit. Section 41 obliges the SPA to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts as soon as practicable after the end of the year ending 31 March. It also obliges the Chief Constable to provide whatever assistance or information the SPA requires for these purposes. The form and content of that statement of accounts is to be set by the Scottish Ministers. The SPA must send a copy of the statement of accounts to the Scottish Ministers, who must in turn lay it before the Scottish Parliament, and under section 42 to the Auditor General for auditing.

50. Sections 43 to 44 deal with examinations by the Auditor General outwith the annual audit of the SPA’s statement of accounts. Section 43 provides that the Auditor General may, at any time, initiate an examination into the economy, efficiency, and effectiveness of the Police Service, and the arrangements made by the Chief Constable to secure best value for the Police Service (section 38(2)). It is for the Auditor General personally to initiate such an examination and to decide who is to carry it out, although he or she must take into account any proposals made by the Scottish Parliament. The examiner appointed by the Auditor General may consider the appropriateness of any criteria used to assess the use of resources available to the Police Service but cannot question the merits of the Police Service’s policy objectives. The examiner - if the Auditor General themselves is not carrying out the examination - must report to the Auditor General, who may report to the Scottish Parliament and SPA. The results can be published. Section 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 apply to any examination under this section, as they apply to examinations in relation to economy, efficiency and effectiveness generally. Section 43 makes it clear that section 23 of that Act includes, in relation to the SPA, a reference to examinations into the arrangements made by the SPA under section 38(1).

CHAPTER 7 – LOCAL POLICING

51. This Chapter sets out the arrangements for local policing, including the new relationship between the Police Service and each local authority. Under section 45 the Chief Constable is under a duty to ensure that there are adequate arrangements in place for policing within each local authority area. The Chief Constable is required to designate a constable as local commander for each local authority area, although one local commander can cover more than one local authority area.
52. **Section 46** requires local commanders to involve local authorities in setting priorities and objectives for the carrying out of police functions in the local authority area. The local commander is required to provide the local authority with any reports that it requests on the carrying out of police functions in its area; statistical information on police complaints in its area; and any other information about the policing of its area that the local authority might reasonably require. **Section 46** also enables the local authority to monitor and provide feedback, including recommendations for improvement, to the local commander on the policing of the local area. Under **section 47** the local commander is placed under a statutory duty to participate in community planning. This replaces the existing statutory duty on the Chief Constable.

53. **Section 48** of the Bill requires the local commander to submit a local police plan to the local authority for its approval. When preparing the plan, the local commander must have regard to the strategic police plan and consult others as appropriate. Once it is approved by the local authority, the local commander must publish the plan in a form and manner specified by the SPA. The local commander must review, prepare and submit for approval a replacement plan at least once every 3 years, following the same process as for the initial plan. The plan can be modified at any time if the local commander and local authority agree to do so, following the same procedure for preparation, approval and publication. The plan must set out:

- the main priorities and objectives for policing the local authority area (and, where reasonably practicable, the outcomes by reference to which achievement of the priorities and objectives can be measured);
- the reasons for selecting the priorities and objectives;
- the proposed arrangements for policing the local authority area including how those proposals will meet the stated priorities and objectives;
- how the priorities, objectives and arrangements for policing will help deliver any other relevant local outcomes identified through community planning; and
- any other information linked to policing the local area that the local commander thinks relevant.

**CHAPTER 8 – GOVERNANCE AND ADMINISTRATION OF POLICE**

54. This Chapter gives the Scottish Ministers powers to make regulations for the governance, administration and conditions of service of constables and police cadets. It then sets out in more detail the areas in which regulations can be made. These provisions are necessary as police officers are office holders and not employees. Their terms and conditions of service are therefore largely set in secondary legislation rather than through a contract of employment governed by employment law. Although cadets are not police officers they are appointed with a view to becoming officers. Their terms and conditions are therefore broadly equivalent and are provided for in a similar way (through legislation). These provisions largely replicate the regulation making powers in the 1967 Act but have been re-ordered and provide more detail than that Act does on the areas that regulations may cover.

55. **Section 49** sets out that the Scottish Ministers must make regulations covering the governance, administration and conditions of service of constables and police cadets. **Sections 50 – 54** set out in more detail what these regulations may cover. **Section 50** provides that regulations may be made for appointment and promotions, including the eligibility and
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procedure for appointment and for promotion; periods of service on probation; the efficiency and effectiveness of constables and cadets; restrictions on their private lives or business interests; and resignation and retirement. Regulations may provide for appointing senior officers (i.e. at the rank of assistant chief constable or above) for fixed terms, but cannot provide for fixed term appointment to any lower rank.

56. Section 51 provides that regulations may be made which relate to conditions of service including: pay, allowances and expenses; public holidays and leave; the supply and return of police clothing and equipment; and, the remuneration of special constables. Such regulations may make retrospective provision about pay and allowances but cannot retrospectively reduce any pay or allowance payable to or in respect of any person. Under section 52, regulations may be made in relation to officer duties, including provisions about what duties are or are not to be carried out by constables or police cadets, hours of duty and the treatment as police duty of time spent attending meetings of police representative bodies.

57. Section 53 provides that regulations must establish or provide for the establishment of procedures for handling unsatisfactory performance or behaviour. The regulations can set out standards of performance and behaviour which, if breached, might be treated as misconduct or unsatisfactory performance, as well as any other circumstances in which a constable’s behaviour or performance may be treated in this way. Regulations may permit constables to be suspended from duty pending an investigation into alleged misconduct (and when suspended a constable is not permitted to carry out any police functions). The regulations may also provide for how misconduct or unsatisfactory behaviour or performance are to be dealt with, including (but not limited to) admonition, suspension, dismissal or demotion in rank, and permit an officer to be suspended from duty whilst an allegation of misconduct is being considered. Functions may be conferred on the Police Investigations and Review Commissioner in relation to misconduct and unsatisfactory performance. Where a senior officer’s performance has been unsatisfactory or that person is found to have been engaged in misconduct, the regulations must provide that it is for the SPA to determine the sanction.

58. Section 54 provides that the regulations may also make provision for the compilation and retention of personal records about constables and police cadets and the taking of, retention, use and destruction of fingerprints and samples from such officers.

59. Under section 55, the Scottish Ministers must, before making regulations under section 49, consult, share a draft with, and consider representations from: the Police Federation for Scotland; any bodies representing senior officers; any bodies representing superintendents; the Chief Constable; the SPA: and others as they see fit. When making regulations about any matter contained in Section 61(1) of the Police Act 1996 (which deals with the areas to be considered by the Police Negotiating Board for the UK (PNB)) the draft must also be shared with the PNB.

60. Section 56 allows for regulations made under section 49 to provide for delegation of functions to the Scottish Ministers, the SPA, the Chief Constable, a local commander, the Police Investigations and Review Commissioner or any other person and to authorise or allow any persons to delegate functions.
CHAPTER 9 – POLICE APPEALS TRIBUNALS

61. This Chapter makes provision for the continuation of the Police Appeals Tribunal (the tribunal), describing its role in disciplinary cases where an officer has been dismissed or demoted in rank and the processes of review or appeal set out in regulations made using powers under Section 49 have been exhausted. This Chapter largely replicates the provisions in the 1967 Act although they have been re-ordered and updated to provide appropriate independence.

62. Section 57 gives a constable a right of appeal to a tribunal against dismissal or demotion in rank following the conclusion of misconduct or unsatisfactory behaviour or performance proceedings. Schedule 3 makes further provision about these tribunals, including that the Scottish Ministers can make rules relating to appeals. It provides that the tribunal must consist of three members (one of whom is to act as the chairing member) qualified to practice law in Scotland for 5 years and selected by the Lord President of the Court of Session. The Lord President must establish and maintain a panel of persons from whom these members will be appointed. The SPA must meet all the expenses of the appeal including the tribunal members’ remuneration, except the appellant’s expenses; however the tribunal has the power to direct the SPA to meet these costs too. The Scottish Ministers can make further rules and provision about the appeals procedure including the appeal notices, the identity of the respondent and holding private hearings.

63. Section 58 provides that a tribunal must, before considering the appeal, consider any written or oral representations made by either the person bringing the disciplinary action to bear (the respondent) or the constable who is appealing it (the appellant). Either party can require representations to be made by oral hearing, and either party can elect to be represented by another person. Section 59 provides that the tribunal can either confirm the decision being appealed or replace it with any less severe decision that could have been made by the person who made the decision against which the appeal was made. Any decision overturning the original decision has effect from the date of the original decision. A substituted decision has effect for the purposes of pensionable service as though it was made at the time of the decision against which the appeal was made. The tribunal has the option of treating the substituted decision in the same way for the purposes of pay. The tribunal can deal with any other matters that it deems appropriate to the case including any relevant periods where the constable was suspended from duty.

64. Under section 60, the chairing member of the tribunal has specific powers to require appropriate persons (including the appellant and the respondent) to provide information to aid it in its deliberations by attending and giving oral evidence at hearings or by providing relevant documents or information. It is an offence liable to a fine on summary conviction not exceeding level 2 on the standard scale to (without reasonable excuse); fail to attend hearings as required by citation; refuse or fail to answer any question at the hearing or to give the tribunal any document or information required. Knowingly or recklessly making a false statement in respect of any information required by the tribunal or deliberately altering, suppressing or destroying documents so required also constitutes an offence subject to the same maximum penalty. There is no defence of reasonable excuse in these circumstances. However, these powers do not require information to be disclosed which the person would be entitled to withhold on the grounds of confidentiality in civil proceedings in the Court of Session.
CHAPTER 10 – COMPLAINTS AND INVESTIGATIONS

65. This Chapter amends Part 1, Chapter 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act) to rename the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC) and to extend the PIRC’s remit. Section 61 places a number of requirements on the SPA and the Chief Constable in terms of dealing with relevant complaints, whose definition is the same as in 2006 Act. Those requirements are as follows:

- the SPA and Chief Constable must maintain suitable arrangements for the handling of relevant complaints, and must seek the views of others on what those arrangements should be;
- the SPA must keep itself informed about how the Chief Constable is dealing with relevant complaints in order to satisfy itself that those arrangements are suitable; and
- the Chief Constable must provide the SPA with whatever information about relevant complaints it reasonably requires, and must seek to ensure that sufficient information is kept for that purpose.

66. Section 62 renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC).

67. Section 63 inserts section 33A into the 2006 Act, setting out the general functions of the PIRC. The PIRC is required to:

- ensure that the SPA and the Chief Constable make and maintain suitable arrangements for the handling and examination of complaints about police constables and staff and the reconsideration of such complaints as set out in sections 34 to 41 of the 2006 Act (section 33A(1)(a));
- when directed by a prosecutor to do so, investigate any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence and the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (section 33A(1)(b));
- investigate and report on deaths, serious injuries or firearms incidents where constables and police staff are involved (section 33A(1)(c));
- investigate other matters relating to the Police Service or SPA that it considers are in the public interest (section 33A(1)(d)); and
- perform any functions prescribed by regulations in relation to allegations about and complaints against officers relating to their standard of behaviour or performance (section 33A(1)(e)).

68. Sections 64 to 69 insert new sections 41A to 41E into the 2006 Act which describe in more detail the PIRC’s powers, duties and functions. Section 64 inserts new section 41A of the 2006 Act which requires the Commissioner to comply with any lawful instruction given by the prosecutor in relation to investigating and reporting alleged serious criminal offences or fatal accidents involving a person serving with the police. Amendments to the Regulation of
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Investigatory Powers (Scotland) Act 2000 to provide for the investigatory powers which the PIRC will have are set out in paragraph 4 of Schedule 6.

69. **Sections 65 and 66** insert new sections 41B and 41C of the 2006 Act which explain further the definition of deaths or serious injuries, incidents involving firearms and other weapons, and other matters in the public interest which the Commissioner may investigate using powers in new sections 33A(1)(c) and (d) of the 2006 Act. Section 41B provides that the “serious incidents” that the PIRC may investigate include deaths and serious injuries when the person was detained by and had contact with the police and that contact may have caused or contributed to their death or injury, and incidents where a person serving with the police has used a firearm or other prescribed weapon. The Scottish Ministers may by regulation prescribe other circumstances which constitute a “serious incident”. Such regulations would be subject to negative parliamentary procedure. Provision is made in subsection (2) about matters which are not serious incidents. Section 41C outlines that the PIRC must investigate matters in relation to the SPA, Police Service or a person serving with the police which the PIRC believes to be in the public interest. However, the PIRC cannot use these powers to investigate cases which have been the subject of a relevant complaint or which are being or have been (or, in respect of serious incidents, are capable of being) investigated using the Commissioner’s other powers referred to in new Section 33A(1), or a matter which is being, or has been, investigated by someone else under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

70. **Section 67** inserts section 41D which gives the Scottish Ministers powers to make, by regulations, further provisions about PIRC investigations under sections 33A(1)(c) or (d) of the 2006 Act. The Scottish Ministers must consult the PIRC, the SPA, the Chief Constable and any other relevant people before making such regulations, which are subject to affirmative parliamentary procedure. The regulations may make provision about: the form, procedure, restrictions and time limits for investigations; the circumstances in which an investigation may be discontinued; requirements on the SPA and Chief Constable to refer matters to the Commissioner and to assist and co-operate with investigations; the disclosure of information; and the delegation of functions to PIRC.

71. **Section 68** inserts new section 41E of the 2006 Act which requires the Commissioner to provide a report following an investigation under paragraph (c) or (d) of new section 33A(1). That report should not enable the identity of any person other than the SPA and Police Service to be revealed unless the PIRC considers that it is necessary to do so on the grounds of public interest. The PIRC must publish the report and provide a copy of it to the person who requested the investigation, the SPA and any other person the PIRC considers appropriate.

72. **Section 69** inserts a new section 41F into the 2006 Act allowing the Court of Session to investigate whether an individual who is obstructing the PIRC in carrying out an investigation should be treated as though they are a person who has committed a contempt of court in relation to the Court of Session.

73. **Section 70** inserts a new section 42A into the 2006 Act to put in place arrangements for the handling of complaints against the PIRC and to seek the views of others as to what those arrangements should be.
CHAPTER 11 – HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

74. This Chapter describes the role, powers and functions of Her Majesty’s inspectors of constabulary in Scotland (HMICS), which will retain its existing powers and take on an additional power to examine the delivery of best value. Section 71 continues the existence of HMICS. Her Majesty can by Order in Council appoint and dismiss such number of inspectors as determined by the Scottish Ministers. The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary, and set levels of remuneration or allowances. The Scottish Ministers may appoint and set pay levels and terms and conditions for assistant inspectors under section 72. Subsection (2) provides that constables engaged on service as assistant inspectors are under the direction and control of the inspectors of constabulary. Subsection (3) provides that Scottish Ministers are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an assistant inspector of constabulary in relation to the exercise of that constable’s functions. Under section 73, inspectors can appoint staff officers to assist them, and set their terms and conditions of employment. Subsection (2) provides that a constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary. Subsection (3) provides that the inspectors are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an inspector of constabulary in relation to the exercise of the constable’s functions.

75. Section 74 provides that the Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the SPA or Police Service, as well as to carry out annual inspections - or any other intervals Ministers think fit - and report to them on the state, efficiency and effectiveness of the SPA and the Police Service, and the arrangements made by the SPA and the Chief Constable under their duty to secure best value.

76. Under section 75 the inspectors of constabulary are given general powers to do anything considered necessary or expedient in carrying out their functions, and may delegate these functions to any assistant inspector or staff officer, although they will still retain responsibility for the performance of those functions and remain able to perform them. Section 76 provides that the SPA and Chief Constable must assist and cooperate with HMICS.

77. Section 77 provides that as soon as possible after reporting to the Scottish Ministers, HMICS must give a copy of the report to the SPA and, where the report relates to the Police Service, to the Chief Constable, and publish it. The Scottish Ministers must then lay the report before the Scottish Parliament. The SPA and the Chief Constable must have regard to such reports and take such measures as they see fit in response. Under section 78, where such a report states that HMICS does not consider that the SPA or Police Service are efficient or effective, or will cease to be efficient or effective unless remedial action is taken, or that they are not achieving best value, the Scottish Ministers can direct the SPA to take remedial measures. The SPA must comply with any such direction.

78. HMICS is required under section 79 to prepare and submit an annual report to the Scottish Ministers and the SPA, to publish it and lay it before parliament.
CHAPTER 12 – CO-OPERATION, EXCHANGE OF INFORMATION, ETC

79. This Chapter describes the new arrangements for interaction and co-operation between the SPA and Police Service, and the inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner.

80. **Section 80** provides that the SPA and Chief Constable can make arrangements under which the SPA and Police Service provide assistance to each other. This includes the ability for their respective staff or constables to provide services to each other.

81. **Section 81** places a duty on the SPA to comply with any requirement made by the Scottish Ministers to provide reports, statistics or other information to them on any matter connected with the SPA, Police Service and the state of crime. The Chief Constable must do the same in relation to the Police Service for any request made by the SPA. The Chief Constable can however refer to the Scottish Ministers any such requirement made by the SPA if he or she considers that compliance would or could prejudice the carrying out of a police operation or the prosecution of offenders. If this happens, the requirement will only have effect if it is confirmed by the Scottish Ministers. The Chief Constable can also be required by the Lord Justice General or a sheriff principal (in relation to policing in the sheriff principal’s jurisdiction) to provide such reports relating to policing as may reasonably be required.

82. **Section 81(8)** places a duty on the Chief Constable to try to ensure that sufficient information about the state of crime is kept to enable compliance with any such request. **Section 81(9)** also places a duty on the clerk of any court with criminal jurisdiction to provide any information they have to the Chief Constable to enable him or her to meet that obligation.

83. **Section 82** places a duty on the inspectors of constabulary, Auditor General and Police Investigations and Review Commissioner to work together in order to improve the carrying out of their functions. In particular, arrangements must be made to ensure the effective exchange of information between them about the SPA and Police Service and to prevent any unnecessary duplication of effort. This requirement does not apply where a matter requires urgent action. In complying with this duty, the inspectors and the PIRC must comply with any direction or guidance given by the Scottish Ministers. Such directions or guidance may relate to all functions of the inspectors and the PIRC, or only to specified functions, and may be varied or revoked by the Scottish Ministers. The Auditor General and the PIRC are not prevented from disclosing information to each other in relation to the carrying out of their functions by any restriction on disclosure of information.

CHAPTER 13 – PROVISION OF GOODS AND SERVICES

84. This Chapter sets out new arrangements to allow the SPA to charge for certain services provided by the Police Service or the SPA. Under **section 83**, the SPA can authorise the Chief Constable to make arrangements, at the request of any person, to provide and charge for police services. **Subsection (9)** defines police services as services in connection with the maintenance of order or the protection of persons or property from harm which are provided on or in relation to land owned or occupied by the person who requests the services. An authorisation may be of a general or specific nature and may in particular set out a scale of charges (**subsection (2)**) and the charges may only cover the cost of providing the services (**subsection (7)**). This section also
allows the Scottish Ministers to issue a code about charging for police services that the SPA must comply with. The Police Service has to ensure all money received from charging is paid to the SPA. No charge may be made in respect of the carrying out of police functions otherwise than in accordance with an authorisation under this section, unless it is authorised by another enactment or rule of law (subsection (8)). Under subsection (7) the SPA is only allowed to charge for the cost of the service provided although subsection (3) makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service.

85. Under section 84 the SPA may provide goods and services to any other public body or office holder. It may also provide such goods and services of a type described in an order made by the Scottish Ministers to other persons described in such an order (subsection (1)). The SPA may, with the consent of the Chief Constable, make similar arrangements for the provision of goods and services by the Police Service (subsection (3)). Subsection (5) allows the SPA to charge for any goods and services it provides, or which it authorises the Chief Constable to provide, including any costs it incurs, or expects to incur, indirectly as a result of the provision of those goods and services, although these charges must only cover the cost of providing the goods and services. Subsection (7)(a) prevents the SPA from charging for forensic services it provides to the Lord Advocate and procurators fiscal. Subsection (7)(b) prevents charges from exceeding the cost of the goods or services provided although subsection (6) makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service. Goods and services may be provided by the SPA for such purposes as it considers appropriate and consistent with the proper carrying out of its functions (subsection (2)) and by the Police Service for such purposes as the SPA considers to be appropriate and consistent with the proper carrying out of police functions. The goods and services which may be provided include, but are not limited to:

- information technology systems and equipment;
- the inspection, testing and maintenance or repair of vehicles; and
- any other type of corporate support service provided by the SPA or Police Service in connection with the carrying out of SPA or police functions.

CHAPTER 14 – GRANTS

86. This Chapter provides for the payment of grants and replaces the current arrangement whereby funding of the police is shared between the Scottish Ministers and local authorities. Section 85 allows the Scottish Ministers to make grants to the SPA. Such grants may be subject to conditions. Section 86 allows grants or financial assistance to other persons for the purposes of providing services to or otherwise assisting or supporting the SPA or the Police Service in the carrying out of the SPA’s functions or police functions. A grant or financial assistance may only be given under this section where it would be necessary or expedient for promoting the efficiency or effectiveness of, or securing best value for, the SPA or the Police Service, and is subject to any conditions specified by the Scottish Ministers.

CHAPTER 15 - OFFENCES

87. This Chapter re-enacts in a modern form the specific offences in the 1967 Act in relation to impeding a member of the police from carrying out their duties. Section 87 makes it an
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offence to assault or impede a person serving with the Police Service, a member of a police force mentioned in subsection (4) who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. Section 88 provides for an offence of aiding escape from or removing a person from the custody of a constable of the Police Service, a police custody and security officer, a constable of a police force mentioned in section 87(4) who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. Both offences have penalties of imprisonment for up to twelve months and/or a fine not exceeding the statutory maximum on summary conviction, which is unchanged from the 1967 Act.

88. Section 89 makes it an offence for someone who is not a police constable to impersonate a constable with intent to deceive or to do anything calculated to suggest that they are a constable. It is also an offence to possess articles of police clothing without the permission of the SPA (subsection (2)). A person has a defence to a charge under section 89(2) if he or she can prove that the articles of clothing were obtained lawfully and were in the person’s possession for a lawful purpose. Subsection (4) makes it an offence for a person who is not a constable to wear, without the permission of the SPA, an article of police uniform which so nearly resembles that of a constable as to be calculated to deceive. The penalty on summary conviction of an offence under this section is imprisonment of up to three months or a fine not exceeding level 4 on the standard scale which is unchanged from the 1967 Act.

CHAPTER 16 – INDEPENDENT CUSTODY VISITING

89. This Chapter places the arrangements for independent custody visiting in Scotland on a statutory footing for the first time, ensuring that it is compliant with the United Nations Optional Protocol to the Convention Against Torture (OPCAT). Section 90 sets out the purpose of the provisions in Chapter 16, namely pursuance of the objective of OPCAT. Section 91 places a duty on the SPA to make arrangements to ensure that independent custody visitors can visit detainees and access information relevant to and monitor their treatment and conditions of detention. Subsection (2) provides that it must do that by providing for the appointment of independent custody visitors (ICVs), who are independent of both the SPA and Chief Constable, by authorising ICVs to do anything they require to enable them to visit detainees and monitor their treatment and conditions of detention, and by providing for the reporting of visits. Subsection (3) sets out specific action which ICVs may be authorised to take, including accessing any place of detention without notice, examining records relating to the detention of people there, meeting them and such other persons as they consider relevant to discuss the treatment and conditions of detainees, and inspecting those conditions. Access to a detainee can only be refused if an officer of inspector rank or above considers grounds for refusal of access contained in a Ministerial determination have been satisfied and any other procedural requirements set by the SPA have been met (subsection (4)). The SPA is required to keep these arrangements under review and to prepare and publish any reports required by the Scottish Ministers.

90. Ministers may issue guidance about independent custody visiting, to which the SPA, independent custody visitors and police must have regard. Before issuing such guidance, or making a determination about when access to detainees should be denied, the Scottish Ministers must consult with the SPA, the Chief Constable, ICVs or a representative body, and any others
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they consider appropriate. Such guidance or determinations must be laid before the Scottish Parliament.

91. Under section 92 the SPA must also make arrangements to allow members of the Subcommittee on the Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or punishment (SPT) established under OPCAT to visit detainees, to access information relevant to their detention and to monitor their treatment and the conditions they are held in. It also describes the arrangements that may be made (subsection (3)) and provides that access may only be refused where the Scottish Ministers have notified the SPA that there are urgent and compelling grounds of public safety, natural disaster or serious disorder that temporarily prevent the carrying out of a visit (subsection (4)). The SPA must keep the arrangements under review and it and its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits (subsections 5 and 6).

92. Section 93 sets out the definitions of the terms used in Chapter 16.

CHAPTER 17 – MISCELLANEOUS AND GENERAL

93. This Chapter makes a number of miscellaneous provisions.

94. Section 94 provides for the dissolution of the Police Advisory Board for Scotland. Section 95 introduces Schedule 4 which sets out the arrangements for the transfer of officers and staff working in the 8 police forces, SPSA and SCDEA to the new Police Service of Scotland and for the transfer of the assets and liabilities currently held by the joint boards and unitary authorities and SPSA. It also makes a number of transitional and transitory provisions to assist in the transition to the new service. Paragraph 1 defines terms used in this schedule, and paragraph 2 sets out that the appointed day is the day the new Police Service is established or such other day as Ministers may appoint. There is no parliamentary procedure attached to this.

95. Paragraphs 3 – 9 cover arrangements for the transfer of police officers. Paragraph 3 makes clear that any person who is a constable immediately before the appointed day continues to hold the office of constable after that day, is treated as though he has made the oath under section 10 of the Bill and is to be treated as though he had been appointed in accordance with the provision in the Bill as a constable of the Police Service. Officers transfer at their current rank, except where they are on temporary promotion in which case they transfer at their substantive rank although the temporary promotion remains in place. Any specific contractual terms, for example fixed term contracts, continue to have effect as if they were made by the Police Service.

96. Paragraph 4 sets out the arrangements that are to apply to senior officers who are not appointed to positions in the Police Service but who exercise their right to transfer. Paragraph 5 makes clear that any constable of a police force transfers to serve as a constable of the Police Service, and paragraph 6 covers the arrangements for constables serving in SCDEA or SPSA immediately before the appointed day. Paragraph 7 sets out the arrangements for police officers who are on temporary service outwith their force immediately before the transfer date. Where the temporary service is to another force, the office transfer to the Police Service. Where it is to another organisation the temporary service continues and the officer has a right to return to the Police Service at the end of the temporary service. Paragraph 8 makes clear that where
Paragraph 9 provides safeguards for officers who transfer to the new service. An officer must not be assigned to duties which would necessitate the officer moving home to a place outwith what was the area of the police force that has ceased to exist. Where a constable is engaged on service outwith their home force area on the date of transfer this safeguard only applies on his return to his “home” force area. The safeguard ceases to apply where the constable is or becomes a senior officer, is promoted to a higher rank or the officer consents to the lifting of the limitation.

Paragraphs 10 – 15 cover the arrangements for the transfer of staff and others. Under paragraph 10, a police employee is defined as a person employed by a joint board as a civilian, a member of staff at SPSA and an employee of a local authority who is included in a staff transfer scheme made under paragraph 11. It further applies that a police employee’s contract of employment has effect on or after the appointed day as if originally made between the employee and the SPA. It is for the SPA to determine whether the individual is to be regarded as a member of police staff under section 26 who is under the direction and control of the Chief Constable or as a member of the SPA’s staff under paragraph 7 of schedule 1. Paragraph 10 also makes a number of provisions concerning employees who are subject to a staff transfer order. Sub-paragraphs (4) and (5) establish that contract rights and obligations transfer from the former employer to the SPA on the transfer date. Sub-paragraph (6) provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. Sub-paragraph (8) provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

Paragraph 11 makes provision for a staff transfer scheme for staff employed in the unitary police authorities who are to be treated as police employees for the purposes of paragraph 10. Paragraph 12 covers staff who are appointed under a contract for services. Paragraph 13 covers police cadets and paragraph 14 makes additional provision for Police Custody and Security Officers who will have transferred to the SPA under paragraph 10. Paragraph 15 makes clear that any individuals who are an inspector of constabulary, an assistant inspector of constabulary or a staff officer to the inspector of constabulary on the date sections 71- 73 come into force remain in post.

Paragraphs 16 – 18 cover property transfers. Paragraph 16 allows Ministers to make a police property transfer scheme. This is a scheme making provision for the transfer to the SPA of property, rights, liabilities and obligations of Ministers, a local authority, a joint police board or the SPSA. Paragraph 17 allows Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a joint board. Paragraph 18 makes general provisions in relation to schemes made under paragraphs 16 and 17.

Sections 96 and 97 provide a list of definitions of terms used in the Bill. Section 98 deals with the issue of Crown application, providing in particular that the Crown may not be made criminally liable for a contravention of a provision of the Bill (but that the Court of Session may make a declarator in respect of any such unlawful act or omission) and that the power of compulsory purchase in section 4(2)(d) does not apply to Crown land.
PART 2 – FIRE REFORM

SECTION 99 – THE SCOTTISH FIRE AND RESCUE SERVICE

101. Section 99 introduces a new section 1A into the Fire (Scotland) Act 2005 (the 2005 Act) to provide for the establishment of a new statutory body corporate, the Scottish Fire and Rescue Service (SFRS) to replace the current 2 unitary authorities and 6 joint fire and rescue boards. SFRS has the functions conferred by the 2005 Act, as amended by the Bill, and additional functions conferred on it by this, or any other, enactment.

102. Section 99 also inserts Schedule 1A into the 2005 Act, which sets out the SFRS’s governance and finance arrangements, general powers and accounting requirements. Paragraph 1 provides that SFRS is established as independent from the Crown. Paragraphs 2 – 7 provide that SFRS will consist of between 7 and 11 members, although that number can be varied through secondary legislation by the Scottish Ministers which would be subject to negative procedure in the Scottish Parliament. Members of SFRS will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the fire and rescue service. The Scottish Government intends that the appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Scottish Ministers will be responsible for appointing the Chair, and members of SFRS must appoint a member to act as Deputy Chair (paragraph 5). The schedule sets out the length of term members and the Chair can serve (paragraph 4); that Ministers can remove members in certain circumstances (paragraph 6); and provides a list of people disqualified from membership of SFRS (paragraph 3).

103. Paragraphs 8 – 9 make provision for the SFRS to employ the Chief Officer, fire-fighters and other staff. The first Chief Officer is to be appointed by the Scottish Ministers with subsequent appointments made by SFRS subject to the agreement of the Scottish Ministers. Paragraphs 10 – 11 set out the rules regarding the establishment of committees and procedure of SFRS. Paragraph 12 sets out SFRS’s general powers and allows SFRS to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The power to borrow money and to purchase land compulsorily is subject to Ministerial consent, and in relation to borrowing money the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of case. Paragraph 13 makes provision for the delegation of functions to the Chief Officer and other SFRS staff and any committees established by SFRS although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them. Paragraph 14 requires the Scottish Ministers’ approval for the location of the administrative headquarters used by SFRS board members and the Chief Officer. Paragraph 15 allows the Scottish Ministers to provide grants to SFRS. Paragraph 16 makes provision for the preparation and submission of accounts and arrangements for audit. It places a duty on SFRS to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts for that year as soon as possible after the end of the year ending 31 March. The Scottish Ministers have a power to direct the form and content of that statement of accounts, as well as the accounting methods and principles to be applied. SFRS must send a copy of the statement of accounts to the
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Scottish Ministers, who must in turn lay it before the Scottish Parliament, and to the Auditor General for auditing.

SECTIONS 100-108 – FUNCTIONS

104. Sections 100 – 108 amend Chapters 2 and 3 of Part 2 of the 2005 Act and Chapter 2 of Part 3 of that Act, replacing references in that Act to “relevant authority” (unitary authority or joint fire and rescue boards) with references to the Scottish Fire and Rescue Service. Functions and responsibilities in the amended sections which were previously with joint boards and unitary authorities will now rest with SFRS. This includes the following areas: promotion of fire safety; fire safety enforcement; responding to fires, road traffic accidents and other emergencies and eventualities; provision of other services; provision of centres for education and training; and charging. In relation to the promotion of fire safety, this will enable SFRS to run national publicity campaigns, which are currently done by the Scottish Ministers. Section 101 also transfers responsibility for the enforcement of fire safety in certain Crown and other premises from the Chief Inspector of Fire and Rescue Authorities to SFRS and amends legislation so that where the enforcing authority is SFRS a matter may be referred by either party for determination of a dispute by the Chief Inspector.

SECTIONS 109-119 – FURTHER AMENDMENTS OF 2005 ACT

105. Sections 109 and 110 amend sections 35 and 36 of the 2005 Act - power to obtain assistance in carrying out functions and arrangements for carrying out functions by others - replacing references in those sections with “relevant authority” (unitary authority or joint fire and rescue board) to the Scottish Fire and Rescue Service. The sections also provide that functions can only be delegated and assistance provided in this way if the Chief Officer considers that the persons from whom assistance will be provided or to whom the functions will be delegated have the relevant knowledge, skills and experience to do so. In addition, under section 36, the function of extinguishing fires may only be delegated to fire-fighters.

106. Section 111 inserts new sections 39 A – C into the 2005 Act to place a statutory duty on SFRS to make arrangements which secure best value. This replaces the current duty of best value on fire and rescue authorities and joint boards by Section 1 of the Local Government in Scotland Act 2003. Best value is defined as meaning a continuous improvement in the performance of SFRS’s functions. In carrying out its duties in relation to best value, it must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties imposed in new section 39A, including, in particular, guidance on how to make and what is to be included in the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult SFRS and anyone else they consider appropriate. Where there is conflict between (a) and (b), SFRS must have regard only to (a).

107. In making arrangements to secure best value, SFRS is required to balance the quality of the performance of its functions, the cost of doing so, and the cost to persons of any service provided by SFRS on a wholly or partly chargeable basis. In maintaining that balance, SFRS must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (within the meaning of Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998
(c. 46)). SFRS is to discharge its duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of SFRS’s functions, regard should be taken of the extent to which the outcomes of that performance have improved. New section 39C confers a power on the Auditor General to examine the arrangements made by SFRS to secure best value.

108. **Section 112** amends the 2005 Act to insert new sections 41A, 41B and 41C which set out new arrangements for planning. **Section 112** inserts section 41A which places a duty on SFRS to prepare a strategic plan in consultation with specified persons and having regard to the fire framework (see section 40 of the 2005 Act), to which SFRS must have regard in carrying out its functions (by virtue of section 41C). That plan must be submitted to the Scottish Ministers for approval (with or without modifications). The plan must set out how SFRS proposes to carry out its functions during a 3 year planning period, set out outcomes against which performance can be measured, and include such other information as SFRS considers appropriate (including information relating to other years).

109. Section 41A sets out the process for consulting on the plan, and lists those who must be consulted on it. It also provides that SFRS must use best endeavours to secure the Scottish Ministers’ approval to the plan before the start of the planning period. The date for the start of the first planning period will be set by the Scottish Ministers by Order. Once the plan has been approved, it must be published and laid before the Scottish Parliament. Section 41B provides for review of the strategic plan and that any new plan prepared following that review must follow the same process of consultation, approval and publication as the original. SFRS may review and prepare a new strategic plan at any time, but must prepare a new plan for each new planning period (i.e. to take effect on the expiry of the previous planning period). Therefore a review will happen at least once every 3 years. Each new plan must cover a 3 year period which, for plans prepared as a result of a review part way through the previous planning period, will commence 8 weeks after the plan is submitted to the Scottish Ministers for approval, and for plans prepared in anticipation of the expiry of the previous planning period will commence the day after that period expires.

110. **Section 113** amends the 2005 Act to insert new sections 41D to 41K which set out the arrangements for local fire and rescue services, including the new relationship between the SFRS and each local authority. New section 41D sets out the role of SFRS in ensuring that adequate arrangements are in place for the provision of fire and rescue services within each local authority area and for the involvement of the local authority in determining priorities and objectives for SFRS locally.

111. New section 41E makes clear that SFRS has responsibility for the preparation of a local fire and rescue plan for each local authority area. By virtue of new section 41J, the function is to be carried out by a Local Senior Officer, designated by the Chief Officer, with delegated responsibility for the local planning functions in sections 41E to 41H. The plan must set out: the main priorities and objectives for fire and rescue services in the local authority area along with the reasons for selecting these and outcomes against which these will be measured; how it will help deliver any other relevant local outcomes identified through community planning; and, the proposed arrangements for carrying out fire and rescue functions in the local authority area including how those proposals will meet the stated objectives. The local fire and rescue plan can also include any other matters linked to fire and rescue services in the local area that the SFRS
thinks fit. When preparing the plan, SFRS must have regard to the fire framework (see section 40 of the 2005 Act) and SFRS’s strategic plan and consult others as appropriate. Once it is agreed with the local authority, SFRS must publish it.

112. New section 41G requires SFRS to review the local fire and rescue plan every 3 years, where there has been significant revision to the fire framework, and where a new strategic plan is approved. The plan must be revised if there has been no revised plan published within the past 3 years, and may be revised following any other review. Under new section 41F the local plan may also be reviewed at any time. Any review and revision of the plan must follow the same procedure for preparation, approval and publication as the initial plan. New section 41H makes clear that SFRS must provide the local authority with any information or reports reasonably requested by the local authority about the carrying out of SFRS’s functions in that local authority area.

113. New section 41J requires the Chief Officer to designate a local senior officer for each local authority area (they may cover more than one local authority area) and provides for certain statutory functions to be delegated to the local senior officer, including the production of a local fire and rescue plan, and participation in community planning under section 16 of the Local Government in Scotland Act 2003 although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them.

114. Under new section 41K a local authority can monitor SFRS’s compliance with the local fire and rescue plan for its area and delivery of local fire and rescue services in the area, and make representations or observations to SFRS and offer advice and recommendations for improvement.

115. **Section 114** amends the 2005 Act to insert new section 41L which requires SFRS to prepare and publish an annual report as soon as possible after the end of each reporting year. The report must contain an assessment of SFRS’s performance during the reporting year in acting in accordance with the fire framework and in achieving the outcomes set out in the strategic plan, and any other information SFRS considers appropriate.

116. **Section 115** amends the 2005 Act to insert new section 41M, requiring SFRS to provide to the Scottish Ministers any reports, statistics and other information they request in relation to its functions. **Subsection (2)** makes clear that the information may include, for example, statistics relating to fire deaths. The information must be provided when and how specified by the Scottish Ministers.

117. **Section 116** amends the 2005 Act to insert new section 42A to allow the Scottish Ministers to give the SFRS a general or specific direction in relation to carrying out its functions. The Scottish Ministers must publish any directions made and SFRS is required to comply with any such directions. A direction cannot be made in relation to adherence to the fire and rescue framework as the existing enforcement arrangements would apply in those circumstances.

118. **Section 117** inserts sections 43A to 43G into the 2005 Act. It describes the role, powers and functions of the Inspectors of the Scottish Fire and Rescue Service. New section 43A allows Her Majesty to appoint a Chief Inspector of the Scottish Fire and Rescue Service, and such
number of other Inspectors as determined by the Scottish Ministers. Section 43A(5) makes clear that the individual who is the Chief Inspector of Fire and Rescue Authorities on the date the provision comes into force is to be the first Chief Inspector of the SFRS. The same applies to any Inspectors or Assistant Inspectors in post on that date. It is for the Scottish Ministers to set levels of pay and the terms and conditions for such office holders. The Scottish Ministers can also appoint and set pay levels and terms and conditions for Assistant Inspectors. In addition, Ministers have a power to authorise an Inspector to carry out functions of the Chief Inspector in the event of a temporary vacancy in that office, or if the Chief Inspector is temporarily unable to carry out those functions.

119. Under new section 43B an Inspector has powers to inquire into the state and efficiency of SFRS, the manner in which SFRS is carrying out its functions and whether, in doing so, it is complying with its duty to make arrangements which secure best value. The Inspectors may independently initiate such inquiries, and must do so if so directed by the Scottish Ministers. SFRS must cooperate with the Inspectors’ inquiries and, in particular, must provide any information or documents relating to its functions that the Inspector may require, and must grant them access to SFRS premises or equipment as required. The power of entry is not available in relation to private dwellings, and Inspectors do not have the power to enter premises by force.

120. Under new sections 43C and 43D, the Chief Inspector is required to produce a report of any inquiry completed under section 43B and must in all cases give the report to SFRS. If the inquiry is under section 43B(1) the Chief Inspector must give the Scottish Ministers such information in relation to the inquiry as they may request, and, where it relates to the state and efficiency of SFRS or its compliance with its duties in relation to best value, the Chief Inspector must give the report of the inquiry to the Scottish Ministers and lay it before the Scottish Parliament. If the inquiry relates to SFRS’s carrying out of its functions, the Chief Inspector has discretion to provide a copy of the report to the Scottish Ministers. If the inquiry has been directed by the Scottish Ministers, the Chief Inspector must give them a report of the inquiry and any other information relating to the inquiry that the Scottish Ministers request. If the report relates to the state and efficiency of SFRS or its duty to make arrangements which secure best value, it must also be laid before the Scottish Parliament. New section 43E makes clear that SFRS must have regard to any reports it receives from the Chief Inspector when carrying out its functions, and must take such measures as it considers appropriate following receipt of the report, e.g. to implement any recommendations made by the Chief Inspector.

121. New section 43F puts in place a requirement for the Chief Inspector of the Scottish Fire and Rescue Service to prepare a plan setting out priority areas for Inquiry by the Inspectors and how such inquiries will be carried out. He or she is required to keep the plan under review and may revise it periodically. The Chief Inspector is required to consult on, and publish, the plan and any revised plan. New section 43G requires the Inspectors and the Auditor General to co-operate and co-ordinate activity in relation to their functions relating to SFRS.

SECTIONS 118-119 – GENERAL

122. Section 118 introduces Schedule 5, which makes provision about the transfer of staff, property, rights, liabilities and obligations to SFRS and to local authorities where appropriate. Paragraph 1 defines terms used in the Schedule, including defining the “appointed day” as the day the Scottish Ministers may appoint. There is no parliamentary procedure attached to this.
123. **Paragraphs 2-4** cover the arrangements for the transfer of staff and others. **Paragraph 2** covers the transfer of joint board staff. It provides that a joint board employee’s contract of employment has effect on or after the appointed day as if originally made between the employee and the SFRS. **Paragraph 2** also makes a number of provisions concerning employees who are subject to a staff transfer order. **Sub-paragraph (4)** provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. **Sub-paragraph (6)** provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

124. **Paragraph 3** makes provision for a staff transfer scheme for staff employed in the unitary fire and rescue authorities or who are members of staff of the Scottish Ministers. This is because only those employees who are carrying out fire and rescue functions should transfer to the SFRS. It is necessary therefore to identify those employees who are to transfer in a transfer scheme. **Paragraph 4** makes further provisions in relation to transfers under **paragraph 3**. It provides that the contract of employment for the person who is transferring has effect on or after the appointed day as if originally made between the employee and the SFRS. **Sub-paragraph (5)** provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. **Sub-paragraph (7)** provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

125. **Paragraphs 5 – 8** cover property transfers. **Paragraph 5** allows the Scottish Ministers to make an SFRS property transfer scheme. This is a scheme making provision for the transfer to the SFRS of property, rights, liabilities and obligations of Ministers, a local authority or a joint fire and rescue board. **Paragraph 6** allows the Scottish Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a joint board. **Paragraphs 7 and 8** make general provisions in relation to schemes made under **paragraphs 5** and **6**.

126. **Section 119** defines the meaning of “the 2005 Act” as the Fire (Scotland) Act 2005.

**PART 3 – GENERAL**

127. **Part 3** of the Bill makes a number of general provisions common to **Parts 1 and 2** of the Bill. **Section 120** sets out the arrangement for subordinate legislation under **Parts 1 and 2**. **Sections 121 and 122** allow Scottish Ministers to make ancillary and transitional provisions by order to give full effect to the Bill. **Section 123** inserts **schedules 6 and 7** which, taken together, make minor and consequential amendments and repeals to other legislation as a consequence of the provisions of this Act. The majority of the changes fall into the following categories:

- changing references in legislation to the current 8 police forces or Chief Constables to refer to the Police Service of Scotland and its Chief Constable;
- changing references to Police Authorities and Joint Police Boards to refer to the SPA;
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- removing references to the SPSA and SCDEA;
- changing references to fire authorities and joint fire boards to refer to the SFRS; and
- making changes to legislation relevant to public bodies, to reflect the establishment of the SFRS and the changes made to the PIRC, Inspectors of Constabulary and Inspectors of the SFRS. (The equivalent changes in respect of the SPA are made in Schedule 1.)

128. A number of more significant changes are highlighted below:

- Paragraph 1 makes a minor amendment to sections 32A and 42 of the Police (Scotland) Act 1967. These provisions, which relate to grant expenditure on national security and an offence of causing disaffection, cannot be repealed and re-enacted in this Bill as they are reserved to the UK Government;
- Paragraph 4 makes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to ensure the authorisation of intrusive surveillance works effectively in a single service and also to give the PIRC the necessary surveillance powers it requires to carry out covert investigations if required;
- Paragraph 22 makes a number of amendments to Chapter 2 of the Police Public Order and Criminal Justice (Scotland) Act 2006 to reflect the single service and the SPA. The amendments also insert provisions allowing the PIRC to appoint staff officers and to designate any member of staff to take charge of, or assist with, investigations. Two order making powers are included in the amendments: one allowing the Scottish Ministers to apply any provision of the Police and Fire Reform (Scotland) Act to PIRC staff; and the other allowing the Scottish Ministers to apply any enactment relating to investigation of offences by constables to investigations carried out by PIRC’s designated staff;
- Paragraph 30 amends the Interpretation and Legislative Reform (Scotland) Act 2010 to provide that “constable” and other expressions relating to the police in Scottish legislation have the meanings given in the Bill; and
- Paragraph 56 makes a number of minor amendments to the Fire (Scotland) Act 2005 to replace references to “a relevant authority” with the SFRS.

129. Section 124 deals with commencement of the provisions in the Bill and section 125 provides that the short title of the Act is the Police and Fire (Reform) Scotland Act 2012.
FINANCIAL MEMORANDUM

INTRODUCTION

130. Reform of the police and the fire and rescue services in Scotland is essential to keep our communities safer and stronger. The Scottish Government is determined to protect and improve local police and local fire and rescue services in the face of reductions in public finance, by streamlining and modernising services. The main policy objectives of the Police and Fire Reform (Scotland) Bill are to create a single police service and a single fire and rescue service in order to deliver the policy aims set out below:

- To protect and improve local services despite financial cuts; by stopping duplication of support services eight times over and not cutting front line services;
- To create more equal access to specialist support and national capacity – like murder investigation teams, firearms teams or flood rescue – where and when they are needed; and
- To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more locally elected members and better integrating with community planning partnerships.

131. The Bill establishes i) the Scottish Police Authority, which will oversee the Police Service of Scotland, and ii) a single Scottish Fire and Rescue Service (SFRS). It provides that the functions, staff, resources, assets and liabilities of the current police and fire and rescue services will be transferred to the new statutory Scottish Police Authority and SFRS respectively.

132. The purpose of this financial memorandum is to set out:

- the best estimates of the administrative, compliance and other costs to which the provisions of the Bill and reforms will give rise, as well as the likely savings;
- the best estimates of the timescales over which the costs and savings are expected to arise; and
- an indication of the margins of uncertainty in these estimates.

133. The financial memorandum has been developed using the best available evidence, as summarised in the police and the fire and rescue Outline Business Cases (OBCs) (described in more detail in the Methodology section below). Additional detail is provided where further relevant information has since become available. The memorandum does not provide a blueprint for how reforms should necessarily be carried out. Therefore, the precise profile of costs and savings may change as the reform and transition programmes progress.

134. Part One (I) of the memorandum sets out the best estimates of costs and savings for policing. Section I(i) outlines the cost implications that may arise directly from the provisions of the Bill. Section I(ii) provides estimates for broader costs which may arise as a consequence of the Bill and the associated process of police reform (i.e. the operational costs associated with running the new service). Section I(iii) outlines the estimated savings.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

135. Part Two (II) sets out the same information for the costs of reforming the fire and rescue services. Section II(i) outlines the cost implications that may arise directly from the provisions of the Bill. Section II(ii) provides estimates for broader costs which may arise as a consequence of the Bill and the associated process of fire and rescue service reform (i.e. the operational costs associated with running the new service). Section II(iii) outlines the estimated savings.

136. Many of the costs have been identified as falling within an initial five-year period. However, as the efficiency savings will continue to recur for some time, they have been profiled over a 15-year period.

METHODOLOGY

137. The estimated costs and savings in this financial memorandum are based on information on current levels of costs, information from relevant stakeholders, and the OBCs for police and for fire and rescue services.

The Outline Business Cases

138. The OBCs were published in September 2011 and are available at:
http://scotland.gov.uk/Publications/2011/09/15153130/0

139. The analysis set out in the police OBC was compiled with input from a range of stakeholders. A team of police officers from across the forces produced an initial assessment of the potential costs and savings from police reform in December 2010. This amounted to the most complete set of information ever produced on the costs of policing in Scotland, and was considered by Directors of Finance from the eight forces. Savings estimates were benchmarked against other public sector reform initiatives.

140. The initial assessment was refined by the team in a second phase of work, together with experts in policing functions from across the forces, into an optimal operating model for policing. External consultants were used to validate assumptions and assist in the assessment of cost, and the report was published in March 2011.

141. The results informed the subsequent development, by the Scottish Government, of the police OBC. In line with HM Treasury guidance, the OBC provided a consistent assessment of the relative costs and benefits of 3 options for reform: a single police service, a 3 force model, and 8 forces with enhanced national delivery. A draft of the OBC was circulated for comment to policing stakeholders in July 2011. The comments received informed further development of the OBC before it was published in September 2011, at the time of the announcement of plans to legislate for the creation of a single police service and a single fire and rescue service.

142. The OBC for fire and rescue services was developed: with input from a short-life external stakeholder group chaired by Steven Torrie, Her Majesty’s Chief Inspector of Fire and Rescue Authorities; from information provided by the current fire and rescue services; and from information obtained from a series of expert stakeholder workshops. Scottish Government officials visited each of the existing fire and rescue services to obtain a comprehensive picture.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

of: their partners and customers; the main outcomes and outputs across their functions; the main processes and activities that need to be undertaken to deliver outcomes; their resource levels; their command, leadership and accountability structures; the major assets used (estate, vehicles, equipment, offices); and, their key information and technology requirements. Information gathered from these visits, together with the outputs of the expert stakeholder workshops, was used to construct the current operating model. The workshops also helped define the optimum delivery models for each key function performed by the fire and rescue services. A draft of the OBC was shared with the Ministerial Advisory Group and stakeholders for comment in July 2011. The methodology and figures in the OBC were then reviewed, refined and improved as part of an iterative process, including as a result of discussions with the Chief Fire Officers Association Scotland (CFOAS).

143. As previously described, the financial memorandum summarises the best available evidence and analysis and is largely based on that used in the OBCs to support decisions on the structure of future services in September 2011. It does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets. As such, the actual costs and savings achieved may differ in detail as transition progresses, and indeed as decisions are taken by the new services. The profiling of figures (in tables 1A, 1B, 1C, 2.1, 2.2, 2.3, 3.1, 3.2 and 3.3 below) assumes that 1 April 2013 is the earliest possible date that the new services could come into being. The precise profile of figures will depend on the actual date that this occurs.

Cost and Efficiency Figures

144. The financial memorandum provides ranges for cost figures where there is a margin of uncertainty in the best estimates, in line with Standing Order rule 9.3.2.

145. The cost figures in the OBCs were adjusted for optimism bias in accordance with HM Treasury Green Book guidance. Adjusting for optimism bias is the recommended method of mitigating the risk that the costs of major projects are underestimated, particularly in the early stages of development. The likely level of optimism bias was assessed individually for each element of cost, informed by evidence of the costs of other UK public sector reforms and advice from government analysts and members of the current police forces who were part of the Sustainable Policing Project Team (which looked at the implications of reforms). The adjustments for optimism bias ranged between zero and 100%, depending on the margin of uncertainty. For most elements of cost an adjustment of 53% was adopted. The exceptions to this included police programme/project management costs (which were increased by 10%) and police information and communication technology (ICT) costs (which were increased by 100%).

146. Where appropriate, ranges have been provided for cost estimates which were not calculated as part of the OBC process. In some cases, the estimates were increased by 53% to account for optimism bias. In other instances, ranges have been based on relevant guidance documents. No adjustments were made where there was a limited margin of uncertainty and, in these cases, a single estimate is shown.

147. Efficiency estimates have been decreased by 30% to provide a range which accounts for potential margins of uncertainty.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012.

148. Best estimates of costs and efficiencies for police and fire reform are provided in tables 2.1 and 3.1 respectively. This includes the financial implications of the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings. Tables 2.2 and 3.2 provide this same information adjusted for potential optimism bias and margins of uncertainty.

149. As previously stated, tables 2.1 and 3.1 give the best estimates of the financial implications of police and fire reform. However tables 2.3 and 3.3 present an alternate way of looking at the figures, by assuming that some costs and savings may potentially have been incurred by means other than establishing single services, for example, by enhancing national delivery and increasing collaboration. It is difficult to predict exactly which costs and savings will be attributable to the single service structures and those which may have been achieved by taking other measures, particularly given that much of the current work, costs incurred and savings anticipate the establishment of a single service. Therefore, for consistency, figures in tables 2.3 and 3.3 were calculated by looking at the difference between the costs and savings estimates for an 8 service model with enhanced national delivery (police) and increased collaboration (fire and rescue) and those associated with a single service as appraised in the OBCs.

150. It should be noted that the costs and savings of reforms arise over different timeframes for the police and fire and rescue services. In the main, the total costs and savings have been assessed in both cases over a 15-year period. However, for fire and rescue service reform there are some minimal costs prior to the start of the 15-year period which have also been included. For police, year 1 is 2011-12 and the total costs and savings are calculated to 31 March 2026. For the fire and rescue services year 1 is 2013-14 and the total costs and savings (including those in year 0) are calculated to March 2028. This approach reflects, and is consistent with, the timeframes which were considered in the two OBCs.

SUMMARY OF FINANCIAL IMPLICATIONS

151. Table 1A sets out a summary of the financial implications of police reform. Table 1B sets out a summary of the financial implications from fire reform. These tables include the costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform processes, and estimated savings. All figures are at 2011-12 prices. Table 1C sets out a summary of the total cost and savings from reform, across both the police and fire and rescue services.
Table 1A: Summary of Financial Implications relating to Police Reform

<table>
<thead>
<tr>
<th>Bill Part</th>
<th>Organisational Change</th>
<th>Best Estimated Costs and Efficiency Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>[Year 1 2011-12]</td>
</tr>
<tr>
<td>1</td>
<td>The Police Service of Scotland</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>[5.27m] (21.6m)</td>
</tr>
<tr>
<td></td>
<td>Best estimated costs and (savings) arising from police reform:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set up</td>
<td>[5.61m] (15.1m)</td>
</tr>
<tr>
<td></td>
<td>Recurring</td>
<td>[9.47m] (3.23m)</td>
</tr>
<tr>
<td></td>
<td>Total (Summary of Table 2.1)</td>
<td>[16.3m] (9.11m)</td>
</tr>
<tr>
<td></td>
<td>Best estimated costs and (savings) arising from police reform after adjustment for optimism bias on costs and assuming a 30% reduction in savings:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set up</td>
<td>[517k] (355k)</td>
</tr>
<tr>
<td></td>
<td>Recurring</td>
<td>[162k] (1.31m)</td>
</tr>
<tr>
<td></td>
<td>Total (Summary of Table 2.3)</td>
<td>[689k] (1.57m)</td>
</tr>
</tbody>
</table>

* The estimated savings recur annually after year 7.
** Totals may not equate to the sum of constituent parts due to rounding.
Table 1B: Summary of Financial Implications Relating to Fire Reform

<table>
<thead>
<tr>
<th>Bill Part</th>
<th>Organisational Change</th>
<th>Best Estimated Costs and Efficiency Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>The Scottish Fire &amp; Rescue Service</td>
<td>Year 0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Best estimated costs and (savings) arising from fire reform:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set up</td>
<td>525k</td>
</tr>
<tr>
<td></td>
<td>Recurring</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>525k</td>
</tr>
<tr>
<td></td>
<td>(Summary of Table 3.1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Best estimated costs and (savings) arising from fire reform after adjustment for optimism bias on costs and assuming a 30% reduction in savings:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set up</td>
<td>790k</td>
</tr>
<tr>
<td></td>
<td>Recurring</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>790k</td>
</tr>
<tr>
<td></td>
<td>(Summary of Table 3.2)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Costs and savings potentially arising due to structure</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set up</td>
<td>525k</td>
</tr>
<tr>
<td></td>
<td>Recurring</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>525k</td>
</tr>
<tr>
<td></td>
<td>(Summary of Table 3.3)</td>
<td></td>
</tr>
</tbody>
</table>

* The estimated savings recur annually after year 6

** Totals may not equate to the sum of constituent parts due to rounding.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

Table 1C: Summary of the total cost and savings from the Bill, across both police and fire

<table>
<thead>
<tr>
<th>Organisational Change</th>
<th>Best Estimated Costs and Efficiency Savings</th>
<th>2011-12</th>
<th>2012-13</th>
<th>2013-14</th>
<th>2014-15</th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19</th>
<th>TOTAL over the 15 year periods (including initial costs for fire in year 0)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Police Service of Scotland and the Scottish Fire &amp; Rescue Service</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Best estimated costs and (savings) arising from police and fire reform:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set up</td>
<td></td>
<td>5.27m</td>
<td>19.5m</td>
<td>51.9m</td>
<td>58.3m</td>
<td>20.7m</td>
<td>(1.13m)</td>
<td>(5m)</td>
<td>0</td>
<td>150m</td>
</tr>
<tr>
<td>Recurring</td>
<td></td>
<td>(21.6m)</td>
<td>(28.1m)</td>
<td>(34.6m)</td>
<td>(96m)</td>
<td>(123m)</td>
<td>(126m)</td>
<td>(126m)</td>
<td>(126m)</td>
<td>(1,613m)</td>
</tr>
<tr>
<td>Total (Tables 1A and 1B)</td>
<td></td>
<td>(16.3m)</td>
<td>(8.6m)</td>
<td>(17.4m)</td>
<td>(37.7m)</td>
<td>(103m)</td>
<td>(127m)</td>
<td>(131m)</td>
<td>(126m)</td>
<td>(1,463m)</td>
</tr>
<tr>
<td>Best estimated costs and (savings) arising from police and fire reform, after adjustment for optimism bias on costs and assuming a 30% reduction in savings:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set up</td>
<td></td>
<td>5.61m</td>
<td>23.8m</td>
<td>65.5m</td>
<td>72.1m</td>
<td>24.9m</td>
<td>544k</td>
<td>(5m)</td>
<td>0</td>
<td>187m</td>
</tr>
<tr>
<td>Recurring</td>
<td></td>
<td>(15.1m)</td>
<td>(19.7m)</td>
<td>(15.1m)</td>
<td>(57.2m)</td>
<td>(76.3m)</td>
<td>(78.4m)</td>
<td>(78.2m)</td>
<td>(78.0m)</td>
<td>(996m)</td>
</tr>
<tr>
<td>Total (Tables 1A and 1B)</td>
<td></td>
<td>(9.47m)</td>
<td>4.02m</td>
<td>50.4m</td>
<td>15.0m</td>
<td>(51.4m)</td>
<td>(77.9m)</td>
<td>(83.2m)</td>
<td>(78.0m)</td>
<td>(808m)</td>
</tr>
<tr>
<td>Costs and savings potentially arising due to structure</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Set up</td>
<td></td>
<td>517k</td>
<td>3.08m</td>
<td>10.2m</td>
<td>24.6m</td>
<td>8.31m</td>
<td>(1.68m)</td>
<td>(5m)</td>
<td>0</td>
<td>40.0m</td>
</tr>
<tr>
<td>Recurring</td>
<td></td>
<td>(355k)</td>
<td>(1.25m)</td>
<td>4.5m</td>
<td>(23.4m)</td>
<td>(31.7m)</td>
<td>(34.2m)</td>
<td>(34m)</td>
<td>(33.8m)</td>
<td>(428m)</td>
</tr>
<tr>
<td>Total (Tables 1A and 1B)</td>
<td></td>
<td>162k</td>
<td>1.83m</td>
<td>14.7m</td>
<td>1.17m</td>
<td>(23.4m)</td>
<td>(35.9m)</td>
<td>(39.0m)</td>
<td>(33.8m)</td>
<td>(388m)</td>
</tr>
</tbody>
</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

*As already noted above in the methodology section, the costs and savings of reforms arise over different timeframes for the police and fire and rescue services. In the main, the total costs and savings have been assessed in both cases over a 15-year period. However, for fire and rescue service reform there are some minimal costs prior to the start of the 15-year period which have also been included. For police, year 1 is 2011-12 and the total costs and savings are calculated to 31 March 2026. For the fire and rescue services year 1 is 2013-14 and the total costs and savings (including those in year 0) are calculated to March 2028. This approach reflects, and is consistent with, the timeframes which were considered in the two OBCs.

** Totals may not equate to the sum of constituent parts due to rounding.

PART ONE (I): ESTABLISHING THE SCOTTISH POLICE AUTHORITY AND THE POLICE SERVICE OF SCOTLAND

Background

152. Police forces across Scotland continue to perform strongly, with recorded crime at a 35-year low, improved detection rates, and high levels of public satisfaction. In the face of significant cuts to public sector budgets, the Scottish Government wishes to protect this level of performance as far as possible. It is not possible to meet this challenge in the current structure and organisation of policing in Scotland. The decision to move to a single police service provides for long-term sustainability. It provides the best way to deliver savings - through reduced duplication, rationalised and simplified support functions and standardised business processes - while protecting front-line services to communities.

Costs and Efficiencies: Overview of Sections I(i)-I(iii)

153. This part of the financial memorandum sets out the estimated costs and savings associated with Part 1 of the Bill. Whilst the Bill provides for structural change, the existing functions of the police will continue and many of the costs associated with providing the police service will not change as a result of the Bill. However, there are areas of potential additional costs. As such, this part of the financial memorandum considers new costs which are directly associated with the provisions of the Bill, estimates the broader costs which may result as a consequence of the Bill and the associated process of police reform, and outlines the expected efficiencies.

154. Part I(i) outlines estimates of the cost implications arising from Bill provisions. These include:

- Scottish Administration Grant Support;
- Appointing the Scottish Police Authority Members, Senior Officer and Chief Constable;
- Remuneration of Scottish Police Authority Members, Senior Officer and Chief Constable;
- Establishing the Police Investigations and Review Commissioner;
- Scrutiny;
- Independent Custody Visiting;
- Police Appeals Tribunals;
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- Forensic Services;
- VAT;
- Pensions;
- Property Transfer Schemes;
- Rewards;
- Costs to Local Authorities; and
- Costs to Other Bodies, Individuals and Businesses.

155. Part I(ii) outlines the broader costs which may arise as a consequence of the Bill and the associated process of police reform. This includes:

- Shadow Leadership;
- Programme and Project Management;
- Technology Costs;
- Training;
- Relocation/Excess Travel;
- Voluntary Redundancy Payments;
- Pay Harmonisation;
- Carbon Reduction Commitment;
- Other;
- Costs to Local Authorities; and
- Costs to Other Bodies, Individuals and Businesses.

156. Part I(iii) outlines the estimated savings, under the categories of:

- Officers;
- Staff;
- Vehicles;
- Supplies and Equipment;
- Estate Management;
- Transfer of Functions and Outsourcing;
- Enforcing Existing Service Provision Arrangements;
- Road Traffic Efficiency; and
- Annual Audit.
Part I(i) Cost implications from Bill provisions: Costs to the Scottish Government

Scottish Administration Grant Support

157. Total police revenue funding in 2011-12 is £1.370m. About two thirds of this funding is provided directly by the Scottish Government. As well as providing police grant to joint boards and unitary authorities, it includes funding for police pensions, the Scottish Police Services Authority (SPSA), and the Scottish Crime and Drug Enforcement Agency (SCDEA); the Gartcosh Crime Campus; the Police Complaints Commissioner for Scotland; the Scottish Safety Camera Programme; the commitment to 1,000 additional officers; police information and communication technology (ICT); counter-terrorism; and Airwave and Police national databases.

158. The remaining third is contributed by local authorities who provide funding to the joint police boards or, in the case of unitary police authorities, direct to the police service, alongside the Scottish Government police grant.

159. Funding for police capital is currently contained as part of the General Capital Grant allocations within the local government settlement. Police boards and unitary authorities also receive loan charge support, which is provided by the Scottish Government for an agreed level of borrowing undertaken by the boards prior to 2004-05. Since 2004-05 the boards’ capital requirements have been funded by grant rather than by borrowing consents, and so the Scottish Government provides no support for borrowing undertaken by the boards after 1 April 2004.

160. Following enactment of the Bill, the police service will receive all its funding – both revenue and capital – from the Scottish Consolidated Fund through the annual Budget Bill, rather than via the local government settlement and the current separate Scottish Government funding streams. This will include the actual costs of police officer pensions (£211m in 2011-12). Funding will be paid by the Scottish Ministers direct to the Scottish Police Authority.

161. Currently, individual local authorities can provide additional funding to supplement policing activity in their area: this facility will remain.

Appointing the Scottish Police Authority Members, Senior Officer and Chief Constable

162. The Bill provides for some flexibility in the number of members of the Scottish Police Authority. It will be for the Scottish Police Authority to determine its staffing requirements. However it is likely that it will require a Senior Officer. The police service will require a Chief Constable. Filling these positions will incur recruitment costs (advertising and selection), and it is estimated that costs for the initial appointment round would amount to approximately £30k-£40k.

163. It is estimated that subsequent appointment rounds would cost approximately £10k. However, there will be savings from no longer having to appoint SPSA board members (which are approximately £10k per round). As such, the changes are expected to be cost-neutral overall in respect of subsequent appointment rounds.
Remuneration of the Scottish Police Authority, Senior Officer and Chief Constable

164. Estimates of the ongoing costs of the Scottish Police Authority members and Chair have been based on the published Public Sector Pay Policy for Senior Appointments. Assuming an 11-member board (10 members plus a Chair) annual fees are estimated to be between £168k - £316k (which includes Employers’ National Insurance Contributions (ERNIC)). The best estimate (based on the mid-point of this range) is £242k.

165. There will be an estimated annual saving of £82k on the cost of remunerating the SPSA board.

166. No decision has been made in relation to remuneration of any Senior Officer. However, based on the Public Sector Pay Policy for Senior Appointments, a reasonable estimate of employment costs, including pensions and ERNIC, would be between £114k and £164k per annum. The best estimate (based on the mid-point of this range) is £139k.

167. The costs and savings associated with the Chief Constable and other senior posts in the new service have been included in the calculations of efficiencies that were undertaken for the OBC and are outlined below.

Establishing the Police Investigations and Review Commissioner

168. Complaint review work is currently carried out by the Police Complaints Commissioner for Scotland (PCCS). The budget in 2011-12 for the PCCS was £930k.

169. The Bill confers on the PCCS additional functions to undertake investigations into the most serious complaints, allegations of misconduct or complaints about Chief Officers, and to undertake investigations into other incidents, including those involving deaths and serious injury at the hands of the police. To reflect these additional functions, the PCCS will be renamed the Police Investigations and Review Commissioner (PIRC). The PIRC will be appointed by the Scottish Ministers. Recruitment costs, based on previous experience, are estimated to be £10k. The changes are expected to be cost-neutral, as the PCCS would have incurred such costs in any case.

170. Estimates of the costs to the PIRC, for undertaking investigations, have been calculated from figures produced by the Independent Police Complaints Commission (IPCC) which operates in England and Wales. Based on IPCC average costs for the same types of investigations, these costs are estimated to range from £2m - £4m. These costs are already being incurred by the current forces and so there will be a matching efficiency saving for the new service.

171. It is expected that the PCCS will carry out necessary preparatory work to ensure that the PIRC becomes operational at the same time as the single service. The Commissioner will recruit and appoint investigations staff, including a Director of Investigations. Some of these staff will be appointed in advance of the PIRC commencing all of its functions, so that they can work along with the PCCS’s existing staff. The costs of this transitional arrangement are estimated to be about £80k. Taking into account optimism bias, the range is £80k – £122k.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

172. It is anticipated that the PIRC will be located in offices currently occupied by PCCS in Hamilton. There may be some changes needed to accommodate new staff; these are likely to cost in the region of £50k. Taking into account optimism bias, the range is £50k – £76.5k.

**Scrutiny**

173. HM Inspector of Constabulary for Scotland (HMICS) is currently responsible for inspecting the current eight Scottish police forces, and will inspect the single police service. HMICS has a budget of £1.1m in 2011-12. It is not anticipated that there will be a need for any additional budget for HMICS. Efficiencies may be achieved in respect of shared backroom functions, and possibly accommodation, with other inspectorates or public bodies - including the PIRC.

**Independent Custody Visiting**

174. The existing Independent Custody Visiting network in Scotland is administered and largely financed by the eight police boards and authorities. It is estimated that the total cost to boards and authorities in Scotland for provision of independent custody visiting is £196k per annum. In addition to this, the Scottish Government provides an annual grant for administration of independent custody visiting averaging £30k.

175. Currently some of the schemes are not fully resourced: in one police area the scheme is administered by a volunteer. The legislation is not seeking to make significant changes to the operation of the network. Although there may be some increase in costs for required improvement to service delivery, there will also be opportunities to achieve future economies of scale. Overall, it is estimated that the reforms associated with independent custody visiting will be cost-neutral.

**Police Appeals Tribunals**

176. There will be an additional cost for Police Appeals Tribunals, as the Bill imposes a requirement for there to be three independent members. It is difficult to judge how many days Police Appeals Tribunals will sit. However, based on information from previous years, it is not envisaged that the costs associated with this will be significant.

**Forensic Services**

177. Under the Bill, forensic services will be a function of the Scottish Police Authority. This arrangement is expected to be cost-neutral because these services are already provided, currently by the SPSA, and funded directly by the Scottish Ministers.

**VAT**

178. At present, the police forces are able (under section 33 of the Value Added Tax Act 1994) to recover VAT costs incurred. A move to a single service may alter this. Therefore, it has been assumed that a single service may be liable for irrecoverable VAT on all goods, estimated to be around £21.5m per annum (a recurring cost from the fourth year – there is no cost in the first two years, and in the third year it is £21.8m). However, the Scottish Government is currently liaising with HM Revenue and Customs and HM Treasury regarding whether the service could be given
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section 33 status and therefore be able to recover all VAT incurred. Other options for reducing any VAT liability will continue to be explored in the planning for the new service.

Pensions

179. On moving to a single service, police officers will remain in their existing pensions schemes (the Police Pension Scheme 1987 or the New Police Pension Scheme (Scotland) 2007). Secondary legislation will be necessary to amend pension regulations to enable this, facilitated by limited consequential amendments to primary legislation in the Bill. However, no additional pensions costs in respect of police officers will arise as a consequence of reforms.

180. Police support staff will remain in the Local Government Pension Scheme (LGPS) and will remain in the fund they are in at the time the new service comes into being. It is intended that they remain in that fund for the duration of their employment, regardless of whether they change location. There are 11 LGPS pension funds in Scotland. Police support staff are in eight of these. Police support staff appointed after the new service comes into being will join the LGPS pension fund most appropriate to the location of the new headquarters / corporate service base. No significant additional pension costs are anticipated to arise from this.

Property transfer schemes

181. The Bill enables the Scottish Ministers to make provision for payment of compensation in respect of property and rights transferred. Such payments would only be considered in exceptional circumstances and the potential cost, if any, will only be known at the time that any asset transfer scheme is made. Potential stamp duty land tax liabilities may also have to be considered if compensatory payments are made in respect of property transfers.

Rewards

182. The Bill provides the service with a power to pay such sums as it considers fit, by way of reward, to constables (other than the Chief Constable) or indeed to any other person who, in its opinion, has made a substantial contribution to the carrying out of police functions. This is not a new power and, as such, is cost-neutral.

Part I(i)b Cost implications from Bill provisions: Costs to Local Authorities

183. The Bill provides for the service to engage with local authorities and, in particular, to work with local authorities when setting priorities and objectives. Local authorities will also have a role in monitoring the exercise of functions in their areas and in providing relevant feedback. It is difficult to estimate the costs associated with this, particularly given that it is open to individual local authorities to determine the most appropriate local mechanism in each case for performing their role. The Scottish Government has been working with the Convention of Scottish Local Authorities (CoSLA) on this matter.

184. CoSLA has collected information from local authorities and provided the Scottish Government with an estimate of £3m-£4m for engaging with the new police service and the SFRS, based on costs for elected members, policy support, research and analysis and administrative support. On this basis, it is assumed that the impact of the Bill is largely cost-neutral - as efficiency savings from not having the current police and fire and rescue joint boards
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and unitary authorities are estimated to equate to this amount. However, there may be efficiencies and less expensive ways of undertaking local engagement and these will continue to be explored.

Part I(i)c Cost implications from Bill provisions: Costs to Other Bodies, Individuals and Businesses

Charging for Services

185. Police forces and the SPSA currently can, and do, charge users for various services. Examples include: charging for the policing of major events (such as T in the Park and football matches) and airports; charging for firearms licences; and, charging for the provision of collision reports to insurance companies. The SPSA also charges police forces and criminal justice partner organisations for the development and implementation of certain ICT solutions. In 2010-11 charging for services generated income in the region of £17m for the eight police forces. It is intended that the Bill will clarify the powers of the new service to charge for services. It is not anticipated that either the type of services charged for, or the level of charges, will vary significantly from current charges. Therefore, the overall impact, in terms of cost, is expected to be neutral.

Part I(ii)a Broader Costs which may arise as a consequence of the Bill and the associated process of Police Reform: Costs to the Scottish Government

186. The costs detailed in this section are those which may arise as a consequence of the Bill and the reform process taken forward in the single police service.

Shadow Leadership

187. Appointments will be made for a new Chief Constable and for other senior officers and police staff to form the new executive team for the single service. This team will be in place before the establishment of the new service, in parallel with the existing leadership of the eight police forces, SPSA and SCDEA. The estimated cost for this is based on a period of six months of additional planning and preparation, and includes estimated salaries for the new Chief Constable, senior officers and staff. This is estimated to be £1.72m. Taking into account optimism bias provides a range of £1.72m - £2.63m.

Programme and project management

188. The delivery of the programme of wider reform will require a dedicated team and an appropriate programme and project structure. One-off programme and project costs have been estimated for a four-year period. It is assumed that the project team includes police officers and police staff. The costs of procuring specialist knowledge and expertise - such as in programme and change management and financial analysis - have been estimated. Project costs also include those associated with stakeholder engagement (external and internal communication to facilitate change), the management of process improvement costs, and due diligence.

189. On this basis, total one-off programme management costs, which occur over the first 4 years, are assessed as £23m. Allowing for rounding of figures, this includes core team costs (£12m), procured expert advice and support (£2.41m), Scottish Government reform staff
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(£3.27m for both police and fire), due diligence (£400k), and force engagement resources (£4.95m). Adjusted for assessed optimism bias, this provides an estimated range of £23m – £25.3m.

Technology Costs

190. Based on advice from the police service ICT professional lead, a proportion of the initial ICT consolidation and rationalisation to support a single service can be achieved using existing infrastructure and systems.

191. Common infrastructure already exists in some areas, and the Association of Chief Police Officers in Scotland (ACPOS) Business Change Programme already considers current Scotland-wide technology-enabled business change. In addition, it is expected that the ACPOS Business Change Programme and in-force ICT projects will be re-prioritised to focus on the requirements and the business needs of a single service.

192. There is already considerable expenditure on ICT - approximately £15m a year on the ACPOS Business Change Programme and the development of shared national applications for incident management (Command and Control), HR and custody. Additional costs of £12m, spread over years 2 – 4, have been estimated for ICT costs associated with reforms. This includes a one-off capital cost of £1m, in line with expert estimates to consolidate specified current functional systems. A further provision of £11m has been added to cover acceleration of projects and parallel running as appropriate.

193. Precise additional ICT costs are difficult to estimate in advance of decisions on specific requirements. In line with Treasury Green Book guidance, an adjustment for optimism bias of 100% has been made to provide a range of estimated additional cost of £12m - £24m. However, given that there is already a significant programme of ICT convergence within the forces, in practice it is expected that much of this risk will be managed from within existing budgets.

Training

194. There is likely to be a need for training officers and staff to optimise effectiveness, particularly where there are changes to business processes and technology. It is expected that this will be delivered in part through regular refresher training that is routinely scheduled (for example, on firearms, roads policing and public order). The additional training requirement has been estimated at £16.5m (spread over years 3 and 4), which allows for an additional 2 days per annum of training for each officer (at £200 per day) and member of staff (at £100 per day). An adjustment for potential optimism bias results in an estimated cost range of £16.5m - £25.2m.

Relocation / Excess Travel

195. Depending on decisions of the new service, there may be costs associated with making relocation and excess travel payments. An estimate of £2.75m (spread over years 5 – 6) has been made for this based on the assumptions of 0.25% of employees relocating at £10k each, and 0.75% claiming excess travel compensation of £3k each per annum for 4 years from transition (based on force terms and conditions). The range of £2.75m - £4.22m is provided to reflect an adjustment for potential optimism bias.
Voluntary Redundancy Payments

196. Depending on decisions of the new service, it is likely that rationalisation will be required in support functions with resultant voluntary redundancy costs. To account for this, redundancy costs have been estimated based on the actual cost incurred through recent police and SPSA voluntary redundancy programmes. A natural attrition rate of 3% has been assumed, with redundancy required to address the remaining Full-Time Equivalent (FTE) reductions. On this basis, voluntary redundancy costs have been calculated to be in the order of £80.8m (spread over the first 5 years).

Pay Harmonisation

197. The Bill provides for officers and staff to transfer to the new service retaining their current terms and conditions. As such, it will be for the new service to decide and negotiate on any pay harmonisation and other changes to terms and conditions. A range of potential costs have been estimated to account for the fact there may be a cost associated with this. The SPSA experience indicates an increase to the staff paybill of around 1.8% in the first 2 years following implementation of restructuring, due to the uplift of some staff salaries and the short-term protection of other salary levels. It is assumed that the increase to the paybill is reduced by a small amount (0.2%) after the pay protection for those staff “above the line” ceases.

198. The estimate of £2.89m per annum (a recurring cost from year 6– there is no cost for the first 3 years, and in years 4 and 5 costs are estimated as being £3.26m) is based on the SPSA’s experience of harmonising pay and grading across the current 8 services. Given the uncertainties described above, this creates a pay harmonisation range of £0 - £2.89m. Taking a conservative approach, £2.89m has been used as the best estimate for this particular cost.

Carbon Reduction Commitment

199. The new service may participate in Phase 2 of the Carbon Reduction Commitment Energy Efficiency Scheme from 2013-14, based on likely future energy usage. Potential financial costs have not been estimated at this stage, as these cannot be identified until eligibility for, and details of, the simplified scheme are known (expected in late 2012-13); the associated allowance price has been announced by HM Treasury; and the total emissions level of the new service is known.

200. The current allowance price for the first year of Phase 1 is £12 per tonne CO₂, and it is anticipated that this will increase during later phases. Strathclyde Police are the only existing police participants within Phase 1 of the scheme. Their CO₂ level for 2010-11, as recorded in the Environment Agency’s Performance League Table, is 20,515 tonnes CO₂ equating to a cost of £246k per annum.

Other

201. The police estate is complex, and at the time of compiling the OBC there was little available audit information. Whilst the future requirement is uncertain, there is a real opportunity to optimise and rationalise existing assets. Although there are likely to be costs associated with the development of the estate (for example dilapidations, change of use, change of requirement), there are also likely to be benefits from rationalising requirements. Reforms are
likely to lead to costs as well as efficiencies and, given these factors, this has been assumed to be cost-neutral over the 15-year period.

202. Some investment will be required to achieve re-branding (for example, badging and livery). However, to most citizens the main brand is assumed to be the “police” brand. As such, it is assumed that, in the main, re-branding will be undertaken on a replacement basis and is therefore cost-neutral. Brand values, and communication of change to ensure public confidence in policing is maintained or enhanced, has been included in project management costs.

203. The transfer of, or exit from, contractual obligations is also assumed to be cost-neutral over the 15-year period.

Part I(ii)b Broader Costs which may arise as a consequence of the Bill and the associated process of Police Reform: Costs to Local Authorities

204. In some cases ICT support for police is currently provided by local authorities. The potential for centralising existing systems as a result of the move to a single service will have an impact on this provision. However, it is expected that this will be cost-neutral over the reform period as local authorities continue to utilise existing systems for their own purposes (for example, payroll and pension schemes), while reducing excess capacity and support.

Part I(ii)c Broader Costs which may arise as a consequence of the Bill and the associated process of Police Reform: Costs to Other Bodies, Individuals and Businesses

Criminal Justice Organisations

205. There are close linkages between police and partner systems, to ensure the effective management of cases throughout the criminal justice system. It is anticipated that there will be some costs associated with changes to ICT systems, resulting from the establishment of a single police service. For example, there may be consequential costs arising from changes to the policing landscape, which make existing geographic references to force areas within ICT systems redundant. Over time it is recognised that there may also be scope to achieve efficiency savings from a reduction in the number of systems currently used by police forces and greater standardisation of practices. These costs and efficiencies are currently unknown and are complex to estimate accurately. Scoping the extent of such changes will be required to provide a precise indication of costs. Indicative figures for these costs have been provided by the Crown Office and Procurator Fiscal Service (approximately £160k – £180k) and the Scottish Court Service (approximately £50k).

206. There is already significant work on police ICT convergence taking place outwith the reform process. Whilst the timescales for convergence may change due to reform, the costs are likely to have been incurred in any case. In addition, over the 15-year period, there will be benefits for criminal justice organisations from dealing with one police service (and converged ICT systems). It is recognised that there may initially be a number of set up and testing costs, and it may take time to realise the benefits from efficiencies. However, it is expected that overall, costs will be neutral over a 15-year period.
Other

207. Potential implications for Scottish businesses from the reforms have been considered as part of the Business Regulatory Impact Assessment. A number of business organisations and firms were contacted in relation to the potential impacts of police reform. No issues were identified in this respect at this time.

Part I(iii) Estimated Savings

208. Moving to a single service structure will provide for the delivery of savings, such as removing duplication and streamlining processes. This would include rationalisation, management de-layering, benefits from economies of scale, improved asset utilisation and consolidation of resources, assets, training and contracts. The figures set out below are mainly derived from analysis undertaken for the police OBC. The savings listed are long-term recurring savings and have therefore been provided on a per annum basis rather than as a total. All figures are quoted relative to costs actually incurred in 2010-11, as this represents the latest available baseline data. Over the full 15-year period under consideration in the OBCs, the savings substantially outweigh the costs identified in the sections above. On the basis of best estimates, efficiencies start outweighing costs after the fourth year.

Officers

209. Cashable savings relating to officers have been estimated to be £23.6m per annum (from the fifth year). The range, to account for margins of uncertainty, is £16.6m - £23.6m. This includes an estimate of efficiencies that arise from a reduction to the per capita costs of police officers which primarily comprise changes negotiated on terms and conditions that have already been agreed and reductions in the costs of overtime. These are savings that have been made since the 2010-11 baseline and, whilst not attributable to structure, are included so as to give a full representation of the budgets and how they will change from the baseline. Other cashable efficiencies include savings on local policing due to adoption of a standard span of control ratio and savings on senior force command and executive.

210. Non-cashable efficiencies relating to officers have been valued at £23.3m per annum. The range is estimated to be £16.3m - £23.3m. However, as the OBC assumes that officer numbers will be maintained at 17,234, this is expressed in terms of greater productivity (the opportunity to deliver more with the same resources) rather than cashable efficiency (i.e. fewer officers).

Staff

211. The potential for savings in police staff costs is estimated to be £66m per annum from the fifth year. The range, to account for margins of uncertainty, is £46.2m - £66m. The two main components are:

- those efficiencies (rationalisation, process improvement etc) that reduce the FTE requirement for police staff which may result in a cashable efficiency (fewer staff) or greater productivity (the opportunity to deliver more with the same resources); and
- those efficiencies that arise from a reduction to the per capita costs of police staff. These efficiencies relate to a reduction to required overtime and changes to
allowances and terms that have already been agreed. These are included as savings that are in the process of being made since the 2010-11 baseline and, whilst not attributable to structure, give a full representation of the budgets and how they will change from the baseline.

Vehicles

212. Savings related to vehicles are estimated to be £702k per annum from the fifth year. The range, to account for margins of uncertainty, is £491k - £702k. This relates to the potential reduction in the number and capital cost of vehicles. It does not include potential savings in fleet maintenance and management, which is captured under the Staff and Supplies and Equipment categories.

Supplies and Equipment

213. Savings from supplies and equipment (e.g. for special operations, support services, ACPOS, and the executive team) are estimated at £23.4m per annum from the fifth year. The range, to account for margins of uncertainty, is £16.4m - 23.4m. This includes reduction to specific equipment requirements through the rationalisation of functions and reduction in the cost of supplies achieved through the rationalisation of need (for example, the need for training) and procurement.

Estate Management

214. Savings relating to estate are estimated as amounting to £5.3m per annum from the fifth year. The range, to account for margins of uncertainty, is £3.71m - £5.3m. They relate only to the rationalisation of managing the estates function, and include areas such as estates management staff and outsourcing cleaning services at a lower overall cost. They do not include savings that might expect to be achieved through the rationalisation of the physical estate.

Transfer of Functions and Outsourcing

215. Savings of £7.21m per annum (from the fifth year) arise from opportunities to transfer responsibility for functions to other bodies (such as traffic wardens) or to outsource the provision of services to a third party at a reduced cost. The range, to account for margins of uncertainty, is £5.05m - £7.21m.

Enforcing Existing Service Provision Arrangements

216. Savings amounting to £250k per annum (from the third year) relate to benefits arising from ensuring existing service provision arrangements are enforced and avoiding the need for policing to provide the service, for example maximising the use of contracted transport. The range, to account for margins of uncertainty, is £175k - £250k.

Road Traffic Efficiency (termed Income Generation in the OBC)

217. Savings amounting to £1.75m (from the third year) have been estimated to arise from standardising procedures and delivering road traffic functions in a cheaper and more efficient way. A national approach means that the service can more efficiently police the movement of abnormal loads and spend less on doing this work, while economies of scale will help with better
management of vehicle recovery (i.e. reduced overheads). The range, to account for margins of uncertainty, is £1.23m – £1.75m.

**Annual Audit**

218. The creation of a single service will also deliver savings in terms of annual audit costs. The current cost for auditing the eight services and SPSA/SCDEA is £365k. It is anticipated that future costs, from the second year, will potentially be around 50% of current levels; and therefore there would be savings of around £180k per annum. The range, to account for margins of uncertainty, is £126k - £180k.

**Summary of Estimated Costs and Savings**

219. Table 2.1 sets out a summary of the financial implications of police reform (this includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings). Table 2.2 sets out the same information as table 2.1, but applies an addition to costs to take account of the potential for optimism bias and applies a potential reduction to savings of 30% to account for possible margins of uncertainty.

Table 2.1: Best-estimated costs and savings (£) from 1 April 2011 to 31 March 2026 arising from police reform. (This includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings.)

<table>
<thead>
<tr>
<th>Description</th>
<th>Year 1 2011-12</th>
<th>Year 2 2012-13</th>
<th>Year 3 2013-14</th>
<th>Year 4 2014-15</th>
<th>Year 5 2015-16</th>
<th>Year 6 2016-17</th>
<th>Year 7 2017-18</th>
<th>TOTAL by 31 March 2026</th>
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</thead>
<tbody>
<tr>
<td>Appointment of Scottish Police Authority Chair and members (Paragraph 162)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35k</td>
<td>35k</td>
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<tr>
<td>Appointment of the Scottish Police Services Authority (Paragraph 163)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td>(10k)</td>
<td>(10k)</td>
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<tr>
<td>Remuneration of the Scottish Police Authority* (Paragraph 164)</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>3.15m</td>
<td>3.15m</td>
</tr>
<tr>
<td>Remuneration of the Scottish Police Services Authority* (Paragraph 165)</td>
<td>(82k)</td>
<td>(82k)</td>
<td>(82k)</td>
<td>(82k)</td>
<td>(82k)</td>
<td>(82k)</td>
<td>(1.07m)</td>
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<tr>
<td>Remuneration of the Scottish Police Authority Senior Officer* (Paragraph 166)</td>
<td>139k</td>
<td>139k</td>
<td>139k</td>
<td>139k</td>
<td>139k</td>
<td>139k</td>
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<tr>
<td>Police Investigations and Review Commissioner investigation costs* (Paragraph 170)</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>39m</td>
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<tr>
<td>Police Complaints Commissioner for Scotland preparatory work (Paragraph 171)</td>
<td>80k</td>
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<td>80k</td>
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</tbody>
</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

<table>
<thead>
<tr>
<th>Description</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
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<th>Year 5</th>
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<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
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<tbody>
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<td>Police Investigation and Review Commissioner office costs (Paragraph 172)</td>
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<td>21.8m</td>
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<td>21.5m</td>
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<td>21.5m</td>
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<tr>
<td>VAT* (Paragraph 178)</td>
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<td>21.8m</td>
<td>21.5m</td>
<td>21.5m</td>
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<td>Shadow Leadership (Paragraph 187)</td>
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<td>1.72m</td>
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<tr>
<td>Programme and project management (Paragraph 189)</td>
<td>3.44m</td>
<td>9.34m</td>
<td>8.21m</td>
<td>2.01m</td>
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<td>ICT (Paragraph 192)</td>
<td></td>
<td>2m</td>
<td>5m</td>
<td>5m</td>
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<tr>
<td>Training (Paragraph 194)</td>
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<td>8.23m</td>
<td>8.23m</td>
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<td>Relocation/excess travel (Paragraph 195)</td>
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<td>1.14m</td>
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<td>539k</td>
<td>539k</td>
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<td>Voluntary redundancy (Paragraph 196)</td>
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<td>5.81m</td>
<td>22.5m</td>
<td>34m</td>
<td>16.6m</td>
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<tr>
<td>Pay harmonisation* (Paragraph 198)</td>
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<td></td>
<td>3.26m</td>
<td>3.26m</td>
<td>2.89m</td>
<td>2.89m</td>
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<td>Criminal Justice organisations (Paragraph 205)</td>
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<td>(66m)</td>
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<td>(250k)</td>
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<td>(22.8m)</td>
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<td>(101m)</td>
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</tr>
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</table>

* These costs/(savings) are recurring. All other costs/(savings) are one-off and result from the setting up of the Police Service of Scotland.

** Totals may not equate to the sum of constituent parts due to rounding.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

Table 2.2: Best estimated costs and savings (£) from 1 April 2011 to 31 March 2026 arising from police reform adjusted for optimism bias on costs and assuming a 30% reduction in savings. (This includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings.)

<table>
<thead>
<tr>
<th>Year 1 2011-12</th>
<th>Year 2 2012-13</th>
<th>Year 3 2013-14</th>
<th>Year 4 2014-15</th>
<th>Year 5 2015-16</th>
<th>Year 6 2016-17</th>
<th>Year 7 2017-18</th>
<th>TOTAL by 31 March 2026</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of Scottish Police Authority Chair and members (Paragraph 162)</td>
<td>35k</td>
<td>35k</td>
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<td>35k</td>
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<tr>
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<td></td>
<td></td>
<td>(10k)</td>
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<tr>
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<td>242k</td>
<td>242k</td>
<td>242k</td>
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<td>(82k)</td>
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<td>(82k)</td>
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<td>(1.07m)</td>
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<tr>
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<td>139k</td>
<td>139k</td>
<td>139k</td>
<td>139k</td>
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</tr>
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<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td></td>
<td>39m</td>
</tr>
<tr>
<td>Police Complaints Commissioner for Scotland preparatory work (Paragraph 171)</td>
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<td></td>
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<td>Training (Paragraph 194)</td>
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<td>2.89m</td>
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<td></td>
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<td></td>
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<td></td>
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53
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

<table>
<thead>
<tr>
<th>Officers* (Paragraph 209)</th>
<th>(12.1m)</th>
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<th>(13.9m)</th>
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<th>(16.6m)</th>
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<td>(491k)</td>
<td>(491k)</td>
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<td>(5.05m)</td>
<td>(60.6m)</td>
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<tr>
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<td>(175k)</td>
<td>(175k)</td>
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<td>(175k)</td>
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<td>(1.23m)</td>
<td>(1.23m)</td>
<td>(1.23m)</td>
<td>(1.23m)</td>
<td>(16m)</td>
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<td>(126k)</td>
<td>(126k)</td>
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<td>(62.3m)</td>
<td>(621m)</td>
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</tr>
</tbody>
</table>

* These costs/(savings) are recurring. All other costs/(savings) are one-off and result from the setting up of the Police Service of Scotland.

** Totals may not equate to the sum of constituent parts due to rounding.

220. Table 2.1 gives the best estimates of the financial implications of police reform. Table 2.3 presents an alternate way of looking at the figures, by assuming that some costs and savings may potentially have been incurred by means other than establishing the single service, for example by enhancing national delivery under the 8 service model. It is difficult to predict exactly which costs and savings will be attributable to the single service structure and those which may have been achieved by taking other measures, particularly given that much of the current work, costs incurred and savings anticipate the establishment of a single service. Therefore, for consistency, the figures in table 2.3 were calculated by looking at the difference between the costs and savings estimates for an 8 service model with enhanced national delivery and those associated with a single service as appraised in the OBC.

** Table 2.3: Costs and savings (£) from 1 April 2011 to 31 March 2026 potentially arising due to structure

<table>
<thead>
<tr>
<th>Year 1 2011-12</th>
<th>Year 2 2012-13</th>
<th>Year 3 2013-14</th>
<th>Year 4 2014-15</th>
<th>Year 5 2015-16</th>
<th>Year 6 2016-17</th>
<th>Year 7 2017-18</th>
<th>TOTAL by 31 March 2026</th>
</tr>
</thead>
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<tr>
<td>Appointment of Scottish Police Authority Chair and members (Paragraph 162 )</td>
<td>35k</td>
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<td></td>
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<td>35k</td>
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<td></td>
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<td>(10k)</td>
</tr>
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<td>242k</td>
<td>242k</td>
<td>242k</td>
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<td>3.15m</td>
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<td>(82k)</td>
<td>(82k)</td>
<td>(82k)</td>
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<td>(1.07m)</td>
</tr>
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</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<th>Amount 2</th>
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<th>Amount 4</th>
<th>Amount 5</th>
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</tr>
<tr>
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<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>3m</td>
<td>39m</td>
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<tr>
<td>Police Complaints Commissioner for Scotland preparatory work (Paragraph 171)</td>
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<td></td>
<td></td>
<td></td>
<td>80k</td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td>7.4m</td>
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<td>96.5m</td>
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<td></td>
<td></td>
<td></td>
<td>1.25m</td>
<td></td>
</tr>
<tr>
<td>Programme and project management (Paragraph 220)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>(80k)</td>
<td></td>
</tr>
<tr>
<td>Training (Paragraph 220)</td>
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<td>(147k)</td>
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<tr>
<td>Relocation/excess travel (Paragraph 220)</td>
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<td>(16k)</td>
<td>(16k)</td>
<td>(83k)</td>
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<td>Voluntary redundancy (Paragraph 220)</td>
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<td>4.57m</td>
<td>16.2m</td>
<td>5.02m</td>
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<td>(318k)</td>
<td>(318k)</td>
<td>(3.89m)</td>
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<td>Criminal Justice organisations (Paragraph 205)</td>
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<td>(4.34)</td>
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<td>(4.07m)</td>
<td>(52.5m)</td>
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<td></td>
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</tr>
<tr>
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<td>4.15m</td>
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<td>(15.6m)</td>
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</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

* These costs/(savings) are recurring. All other costs/(savings) are one-off and result from the setting up of the Police Service of Scotland.
** Totals might not equate to the sum of constituent parts due to rounding.

221. In relation to the best estimates, over the 15-year period assessed, the total net saving delivered from police reform is £1,135m. This figure differs from that presented in the Outline Business Case, which was £1,201m (excluding optimism bias), due to the inclusion of additional and revised costs and efficiencies based on work completed subsequent to the publication of the OBCs.

PART TWO (II): THE SCOTTISH FIRE AND RESCUE SERVICE (SFRS)

Background

222. Scotland’s fire and rescue services have performed well, helping to reduce deaths from fire by almost 50% over the last 10 years. In the face of significant cuts to public sector budgets, the Scottish Government wishes to protect this level of performance as far as possible. It is not possible to meet that challenge in the current structure and organisation of fire and rescue services in Scotland. The decision to move to a single fire and rescue service provides for long-term sustainability. It provides the best way to deliver savings - through reduced duplication, rationalised and simplified support functions and standardised business processes - while protecting front-line services to communities.

Costs and Efficiencies: Overview of Sections II(i)-II(iii)

223. This part of the financial memorandum sets out the estimated costs and savings associated with the Part 2 of the Bill. Whilst the Bill provides for structural change, the existing functions of the fire and rescue service will continue and many of the costs associated with providing the service will not change as a result of the Bill. However, there are areas of potential additional costs. As such, this part of the financial memorandum considers new costs which are directly associated with the provisions of the Bill, estimates the broader costs which may result as a consequence of the Bill and associated process of fire and rescue reform, and outlines the expected efficiencies.

224. Part II(i) outlines the cost implications arising from Bill provisions:

- Scottish Administration Grant Support;
- Appointing the SFRS Board Members and Chief Officer;
- Remuneration of the SFRS Board Members and Chief Officer;
- Changes to External Scrutiny and Complaints;
- The Inspection of Crown Premises;
- Determination of Disputes and Publicity;
- VAT;
- Pensions (additional pension costs due to transfer of staff);
- Property Transfer Schemes;
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- Costs to Local Authorities; and
- Costs to Other Bodies, Individuals and Businesses.

225. Part II(ii) outlines the broader costs which may arise as a consequence of the Bill and the associated process of fire and rescue service reform:

- Shadow Leadership;
- Programme Management, Training and Change;
- Capital Build and Refurbishment;
- ICT Costs;
- Transaction Costs;
- Voluntary Redundancy Payments;
- Pay Harmonisation;
- Carbon Reduction Commitment;
- Other;
- Costs to Local Authorities; and
- Costs to Other Bodies, Individuals and Businesses.

226. Part II(iii) outlines the estimated savings, under the categories of:

- Learning and Development;
- Corporate Services;
- Fleet and Estate;
- Prevention and Protection;
- Response; and
- Annual Audit.

Part II(i)a Cost implications from Bill provisions: Costs to the Scottish Government

Scottish Administration Grant Support

227. Currently, the fire and rescue services receive their revenue funding from their constituent local authorities (there are six joint boards and two unitary authorities), via the local government settlement. The combined revenue spend in 2011-12 is £264.4m. Funding for fire and rescue service pensions, some £60m in 2011-12, is provided directly by the Scottish Government. In addition, the Scottish Government provides direct revenue support for the Scottish Fire Services College at Gullane and for Firelink (£6.2m and £4.5m respectively in 2011-12). Services also receive loan charge support, which is provided by the Scottish Government to local authorities for an agreed level of borrowing undertaken by the boards prior to 2004-05. Since 2004-05, the boards have been funded by grant rather than by borrowing consents, and so the Scottish Government provides no support for borrowing undertaken by the boards after 1 April 2004.
228. The Fire Capital Grant currently forms part of the local government settlement as a ring-fenced capital sum and is administered by the Scottish Government. Allocations are made to each of the eight services on a formula share (all eight receiving a sum) and top slice (prioritised projects) basis. Allocations are agreed jointly between the Scottish Government and Fire Conveners, with the Scottish Ministers granting final approval. In 2011-12, the services will receive £20.2m Fire Capital Grant. A further £260k will be spent by the Scottish Government on capital investment on the Scottish Fire Services College.

229. Following enactment of the Bill, the SFRS will receive all its funding, both revenue and capital, from the Scottish Consolidated Fund through the annual Budget Bill, rather than via the local government settlement and the current Scottish Government funding streams. Funding will be paid by the Scottish Ministers directly to the SFRS.

Appointing the SFRS Board and Chief Officer

230. The Bill provides for some flexibility in the number of members of the SFRS board. The SFRS will also require a new Chief Officer. Filling these positions will incur recruitment costs (advertising and selection). It is estimated that these costs would amount to approximately £20k - £30k.

231. Based on past experience, costs associated with the re-appointment of board members are expected to be in the region of 10k.

Remuneration of the Board and Chief Officer

232. Estimates of the ongoing costs of board members and the Chair have been based on the published Public Sector Pay Policy for Senior Appointments. Assuming an 11-member board (10 members plus a Chair) annual fees are estimated to be between £168k - £316k (which includes ERNIC). The best estimate (based on the mid-point of this range) is £242k.

233. The costs and savings associated with the Chief Officer and other senior posts in the new service have been included in the calculations of efficiencies that were undertaken for the OBC and are outlined below.

Changes to External Scrutiny and Complaints

234. Under the Bill, it is proposed that the Chief Inspector of the Scottish Fire and Rescue Service and other inspectors will have external scrutiny powers in relation to the SFRS.

235. There will be costs associated with this enhanced scrutiny role, and there is a degree of uncertainty regarding the extent and frequency of the scrutiny and the amount of external assistance that may be required. Overall, however, the principle of proportionality will apply and a significant increase in costs is not anticipated. (The Chief Inspector’s unit currently has a budget allocation of £730k for 2011-12.)

236. It is intended that the Chief Inspector’s unit will co-operate with HMICS with a view to sharing support resources with associated cost savings.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

237. Self-assessment, appraisal and performance management will be a normal function of the SFRS, and co-operating and dealing with the external scrutiny body will not require additional staffing resources.

238. Currently, each of the eight services operates its own Complaints Handling Procedure, which is based on the Scottish Public Services Ombudsman guidance. There are no proposed changes to this procedure – the SFRS will have obligations to handle complaints in the same manner. As such, no additional costs are expected in this respect.

**The Inspection of Crown Premises**

239. The Crown premises fire safety enforcement role will transfer from the Chief Inspector to the SFRS. The current annual cost of this enforcement is around £130k. It is estimated that the Crown premises fire safety enforcement role cost itself could fall to approximately £25k per annum if undertaken by the SFRS. This is because the amendment would make Crown premises subject to the same enforcement regime as non-Crown premises. As such, some Crown premises which are at present subject to routine inspection would cease to be inspected because the level of risk is not high enough to justify it. The removal of some Crown premises from routine inspection is in line with Scottish Government guidance that resources should be targeted at those premises which present the greatest risk to life.1 The £105k saving from this change will be used to cover the enhanced scrutiny role (described above) of the Chief Inspector.

**Determination of Disputes and Publicity**

240. The Bill aims to make the current process for determination of fire safety disputes (under section 67 of the Fire (Scotland) Act 2005) easier to access. Depending on the referral criteria, this could lead to an increase in the number of referrals for determinations and therefore an increase in cost to the Chief Inspector and to SFRS. It is difficult to estimate what the increase (if any) would be, but the number of referrals will be controlled by the referral criteria so that additional cost will not be significant. There could be some associated savings in Scottish Government staff costs and reductions in burdens to business if this change improves enforcement practice by encouraging a more risk proportionate approach.

241. The Bill proposes that the SFRS will be responsible for undertaking publicity work to promote fire safety. The current fire and rescue services already have responsibility to undertake this work at a regional/local level. If, in the future, the SFRS also took on a national publicity role, then it could incur an additional cost. Costs of up to £330k per year have been estimated for this, based on overall costs to the Scottish Government for national publicity this year. The range, to account for optimism bias, is £330k – £505k.

**VAT**

242. At present, the services are able (under section 33 of the Value Added Tax Act 1994) to recover VAT costs incurred. A move to a single service may alter this. Therefore, it has been assumed that the SFRS may be liable for irrecoverable VAT on all goods, estimated to be around £4m per annum. However, the Scottish Government is currently liaising with HM Revenue and

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1 See Strategic guidance for Fire and Rescue Authorities/Joint Boards, issued Sept 2006.
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

Customs and HM Treasury regarding whether the SFRS could be given section 33 status and therefore be able to recover all VAT incurred. Other options for reducing any VAT liability will continue to be explored in the planning for the new service.

Pensions

243. On moving to a single service fire-fighters will remain in the Firefighter’s Pension Scheme 1992 and the New Firefighter’s Pension Scheme (Scotland) 2006 as appropriate. Secondary legislation will be necessary to amend pension regulations to enable this, facilitated by limited consequential amendments to primary legislation in the Bill. However, no additional pensions costs in respect of fire-fighters will arise as a consequence of the reforms.

244. Fire support staff will remain in the LGPS, and will remain in the fund they are in at the time the new SFRS comes into being. It is also intended that they remain in that fund for the duration of their employment regardless of whether they change location. There are 11 LGPS pension funds in Scotland. Fire support staff belong to eight of these. Support staff appointed after the SFRS comes into being will join the LGPS pension fund most appropriate to the location of the new headquarters/corporate service base. No significant additional pension costs are anticipated to arise from this.

245. A small number of Scottish Government staff, estimated to be fewer than 20, are likely to transfer to the SFRS and become employees of the new body. These staff will no longer be eligible to be in the Civil Service Pension Scheme and a bulk transfer of these staff to the LGPS will be required with the option of transferring previous service. For bulk transfers of staff out of the Civil Service pension arrangements a bulk transfer payment is paid out of the Civil Superannuation Vote arranged by Cabinet Office Civil Service Pensions as managers of the pension arrangements. This process is at no cost to Scottish Government. The additional cost included in this financial memorandum is based on the assumption that a price adjustment may occur if actuaries representing the respective interests of the Scottish Local Government Pension Fund and Scottish Government come to an agreement that additional funding is required for the bulk transfer. Precedent indicates that in some similar circumstances such costs have not arisen. The need for any price adjustment will be subject to negotiation at the time of the transfer and is subject to various factors, including the number of staff transferring and the pensions options they will exercise. On the basis of actuarial advice and an assumption that 50% of members will transfer their accrued pension benefits to the LGPS the cost has been estimated to between £0 and £100k.

Property transfer scheme

246. The Bill enables the Scottish Ministers to make provision for payment of compensation in respect of property and rights transferred. Such payments would only be considered in exceptional circumstances, and the potential cost, if any, would only be known at the time that any asset transfer scheme is made. Potential stamp duty land tax liabilities may also have to be considered if compensatory payments are made in respect of property transfers.

Part II(i)b Cost implications from Bill provisions: Costs to Local Authorities

247. The Bill provides for the SFRS to engage with local authorities and, in particular, to work with local authorities when setting priorities and objectives. Local authorities will also have a
role in monitoring the exercise of functions in their areas and providing relevant feedback. It is
difficult to estimate the costs associated with this, particularly given that it is open to individual
local authorities to determine the most appropriate local mechanism in each case for performing
their role. The Scottish Government has been working with CoSLA on this matter.

248. CoSLA has collected information from local authorities and provided the Scottish
Government with an estimate of £3m-£4m, for engaging with the new police service and the
SFRS, based on costs for elected members, policy support, research and analysis and
administrative support. On this basis, it is assumed that the impact of the Bill is largely cost-
neutral - as efficiency savings from not having the current police and fire and rescue joint boards
and unitary authorities are estimated to equate to this amount. However, there may be
efficiencies and less expensive ways of undertaking local engagement and these will continue to
be explored.

Part II(i)c Cost implications from Bill provisions: Costs on Other Bodies, Individuals and
Businesses

249. It is not expected that the Bill provisions will impose costs on other bodies, individuals
and businesses.

Part II(ii)a Broader Costs which may arise as a consequence of the Bill and the associated
process of Fire and Rescue Service Reform: Costs to the Scottish Government

250. The costs detailed in this section are those which may arise as a consequence of the Bill
and the reform process taken forward in the single fire and rescue service.

Shadow Leadership

251. Appointments will be made for a new Chief Officer, other senior officers and support
staff to form the new executive team for the single service. This team is likely to be in place
before the establishment of the new service, in parallel with the existing leadership of the current
services. The estimated cost of this is £500k, based on a period of six months of additional
planning and preparation and includes estimated salaries for the new Chief Officer, senior
officers and staff. Accounting for optimism bias, the range is £500k - £765k.

Programme Management, Training and Change

252. There will be costs associated with staff involved in managing the establishment of the
SFRS, such as programme management, training and change costs. Programme management,
training and change costs are estimated to be £3m, and are spread over years 2 – 4. This includes
£2m to manage the transition planning process and internal redeployed team, and £1m for
training and change, plus professional fees (such as legal and technical). Accounting for
optimism bias, the range is estimated to be £3m - £4.59m.

Capital build and refurbishment

253. It is not envisaged that the national headquarters will require additional accommodation,
as there will be a relatively light tier of management with the majority of resources engaged in
frontline delivery. As such, it could be attached to a current delivery unit. Furthermore, the
rationalisation of functions (such as HR, procurement and finance) will provide opportunities for discrete functions to be spread across different parts of Scotland. Specialist functions and maintenance teams may be managed as national functions, but could be deployed on a regional delivery unit basis to enable effective support and response within local areas, thereby optimising any specialist resources and assets. However, it is recognised that establishing the SFRS is likely to require some capital refurbishment of office accommodation and incur relocation costs. Training facilities and depots will be required to facilitate changes in management and delivery arrangements. These costs are estimated to be in the range of £10m, and are spread over years 1 – 4. This increases to £15.3m when accounting for optimism bias. This includes costs associated with the refit of office accommodation (approximately £5m), depot capacity (approximately £2m) and training sites (approximately £3m).

254. It has been assumed that non-operational asset sales of around £15m could be realisable given the current scale of local fire and rescue service and Scottish Government estate assets (this represents less than 5% of the estate), and that these sales would be used to offset the transition costs associated with change. As such, overall, capital build and refurbishment is estimated to be largely cost-neutral.

255. Any capital gain which may arise from the sale of assets owned by the SFRS could attract liability for corporation tax of 25%. It is difficult to estimate what this might be, given it is dependent on the assets sold and the level of any capital gain made.

**ICT Costs**

256. Technology costs are estimated to be £9m, spread over years 1 – 4. A range of £9m - £13.8m is provided to take into account optimism bias. These relate to costs associated with transition and rationalisation of ICT support (a key enabler to the reform process), the rationalisation of the control room model, and a progressive rationalisation of supporting ICT back office systems.

257. These ICT costs include:

- Costs associated with upgrading ICT infrastructure, programme management, industry liaison and additional software development to establish a single ICT platform that ensures efficiencies in communication and consistent and accessible information flows. The most significant ICT costs are mainly associated with control room consolidation. This includes ICT telephony, command and control, and project management costs associated with control rooms. These costs are estimated to amount to approximately £6.5m.

- A single suite of systems will exist at a national platform level, aligned with business strategy and need, with operational support provided at a local level. Data migration and costs associated with common HR, payroll, asset management and other common service systems are estimated to be approximately £2.5m.

**Transaction costs**

258. A number of transaction costs may also be incurred by moving to national structure. These include site disposal (approximately £300k) and contract break costs (HR and ICT –
approximately £600k). They are estimated to amount to £900k, spread over years 1 - 4. The range provided is £900k - £1.38m to take account of optimism bias.

**Voluntary Redundancy Payments**

259. Depending on decisions of the SFRS, some rationalisation may be required and result in redundancy costs. To account for this possibility, redundancy costs have been estimated to be in the order of £4m, spread over years 1 – 4, and have been calculated based on the assumptions that:

- any reduction in uniform members could be managed through staff turnover and retirements (current fire and rescue service projections suggest that 30-50% of senior managers are expected to retire over the next three years) and no redundancy costs would be incurred; and
- as determined in the efficiencies analysis, between a third and half of non-uniform headcount reductions would have some sort of voluntary redundancy package.

**Pay Harmonisation**

260. The Bill provides for staff to transfer to the new service retaining their current terms and conditions. As such, it will be for the SFRS to decide and negotiate on any harmonisation of pay and other terms and conditions. A range of potential costs has been included to account for the fact that there may be a cost associated with this.

261. In addition to one-off investment costs, there may be some recurrent costs associated with pay harmonisation. These have been estimated at around £1m per annum, based on 50% of the 1,250 non-uniformed staff requiring harmonisation by an average of 5%. On this basis, pay harmonisation has been calculated to be from £0- £1m per year from the sixth year (it is estimated at £200k in the second year, £400k in the third, £600k in the fourth and £800k in the fifth year). Taking a conservative approach, £1m per annum has been used as the best estimate for this particular cost.

**Carbon Reduction Commitment**

262. The new service may participate in Phase 2 of the Carbon Reduction Commitment Energy Efficiency Scheme from 2013-14, based on likely future energy usage. Potential financial costs have not been estimated at this stage, as these cannot be identified until: eligibility for, and details of, the simplified scheme are known (expected in late 2012-13); the associated allowance price has been announced by HM Treasury; and the total emissions level of the new service is known.

263. The current allowance price for the first year of Phase 1 is £12 per tonne CO₂, and it is anticipated that this will increase during later phases. There were no participants in Phase 1 from among the existing fire and rescue services.

**Other**

264. Some investment will be required to achieve re-branding. However, it is assumed that the main re-branding will be undertaken on a replacement basis and that will be cost-neutral.
Similarly, relocation and excess travel costs have been considered to be negligible due to the numbers affected.

**Part II(ii)b Broader Costs which may arise as a consequence of the Bill and the associated process of Fire and Rescue Service Reform: Costs to Local Authorities**

265. In some cases ICT support for fire and rescue services is currently provided by local authorities. The potential for centralising existing systems as a result of the move to a single service will have an impact on this provision. However, it is expected that this will be cost-neutral over the reform period as local authorities continue to utilise existing systems for their own purposes (for example, payroll and pension schemes), while reducing excess capacity and support.

**Part II(ii)c Broader Costs which may arise as a consequence of the Bill and the associated process of Fire and Rescue Service Reform: Costs on Other Bodies, Individuals and Businesses**

266. The Scottish Ministers do not consider that there will be any material direct cost implications for other bodies, individuals and businesses. The potential implications for Scottish businesses have been considered as part of the Business Regulatory Impact Assessment. A number of businesses were contacted in relation to the potential impacts of fire and rescue service reform, and no issues were identified in this respect at this time.

**Part II(iii) Estimated Savings**

267. Moving to a single service structure will result in efficiencies, such as removing duplication and streamlining processes.

268. The financial benefits and efficiency savings have been identified using the optimum delivery model for a single service and comparing the service changes and opportunities for delivering greater efficiency and/or lower costs with the current model. These opportunities have been collated by functional area: learning and development; response; prevention and protection; corporate services; and fleet and estates. For each opportunity, an estimate has been made of the likely scale of savings which could be delivered.

269. Most of the figures set out below are derived from the analysis undertaken for the fire and rescue service OBC. The savings listed are long-term recurring savings and have therefore been provided on a per annum basis rather than as a total. All figures are quoted relative to costs actually incurred in 2010-11, as this represents the latest available baseline data. Over the full 15-year period under consideration in the OBCs, the savings associated with reform substantially outweigh the costs identified in the section above. On the basis of best estimates, efficiencies start outweighing costs from the second year.

*Learning and Development*

270. Savings from changes to learning and development have been estimated, on the basis of data and advice from experienced fire and rescue learning and development staff, to be £3.65m per annum from the fourth year. The range, to account for margins of uncertainty, is £2.56m -
£3.65m. These savings are based on: reduction of support staff roles across the current services and the Scottish Fire Services College; saving in procurement and learning and development contracts; a reduction of manager posts; and rationalisation of physical learning and development assets to prevent the duplication of facilities, particularly those of a specialist nature.

**Corporate Services**

271. Corporate services savings have been estimated as amounting to £8.03m per annum from the third year. The range, to account for margins of uncertainty, is £5.62m - £8.03m. These include: savings from shared service arrangements; a shared transaction service for finance/shared service arrangements; a shared transaction service for Human Resources/shared service arrangements, consolidation of health and safety teams and recruitment and management delayering; reduction in management layers, helpdesk and administration for ICT Hardware, Software and Administration and reduction in over-provision of ICT and telephony resources (particularly server capacity); savings achievable by consolidating pensions administration functions; and senior management reductions.

**Fleet and Estate**

272. Savings for fleet and estate were estimated to be £2.45m per annum from the fourth year. The range, to account for margins of uncertainty, is £1.72 - £2.45m. These savings include: spend reduction from collaborative procurement facilities for management services; reduction in contract costs from collaborative procurement of specialist equipment; reducing specialist maintenance costs; reduction in non-operational estate footprint/running costs; consolidation of fleet and equipment facilities into fewer sites; and improvement in asset utilisation.

**Prevention and Protection**

273. Savings for prevention and protection have been estimated at £2.96m per annum from the second year. The range, to account for margins of uncertainty, is £2.07m - £2.96m. This includes: reductions in duplication of senior management protection roles; more targeted enforcement visits to higher risk properties; and reductions in duplication of senior management prevention roles.

**Response**

274. Savings for response are estimated to be £13.5m per annum from the third year. The range, to account for margins of uncertainty, is £9.47m - £13.5m. This includes: rationalisation of common risk analysis tools and licences; smaller expert teams carrying out consolidated risk analysis and data input; reduced need for duplication and numbers of teams covering operational guidance and procedures; reduction in duplication of research and development teams; reviewing distribution and asset requirements for national resilience equipment; risk assessing and reviewing crewing and emergency cover practices; consolidating control rooms; and revenue generation from additional charging for certain special services such as lift rescues.

**Annual Audit**

275. The creation of a single service will also deliver savings in terms of annual audit costs. The current cost for auditing the eight services is £188k. It is anticipated that future costs, from the second year, will potentially be around 50% of current levels - and therefore there will be
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

savings of around £90k per annum. The range, to account for margins of uncertainty, is £63k-£90k.

Summary of Estimated Costs and Efficiency Savings

276. Table 3.1 sets out a summary of the financial implications of fire and rescue service reform (this includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings). Table 3.2 sets out the same information as table 3.1, but applies an addition to costs to take account of the potential for optimism bias and applies a potential reduction to savings of 30% to account for possible margins of uncertainly.

Table 3.1: Best-estimated costs and efficiency savings (£) from 1 April 2012 to 31 March 2028 arising from fire and rescue service reform. (This includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Year 0 2012-13</th>
<th>Year 1 2013-14</th>
<th>Year 2 2014-15</th>
<th>Year 3 2015-16</th>
<th>Year 4 2016-17</th>
<th>Year 5 2017-18</th>
<th>Year 6 2018-19</th>
<th>TOTAL by 31 March 2028</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of Scottish Fire and Rescue Service Board and Chief Officer. (Board reappointment costs of £10k occur in 2020-21) (Paragraph 230 and 231)</td>
<td>25k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35k</td>
</tr>
<tr>
<td>Remuneration of the Board* (Paragraph 232)</td>
<td></td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
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<tr>
<td>Inspection of Crown Premises – transfer of responsibilities to SFRS* (Paragraph 239)</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>375k</td>
<td>4.95m</td>
</tr>
<tr>
<td>Publicity* (Paragraph 241)</td>
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<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>4.95m</td>
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<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
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<td></td>
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<td>50k</td>
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<td>Shadow leadership (Paragraph 251)</td>
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<td>500k</td>
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<tr>
<td>Programme management, training and change (Paragraph 252)</td>
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<td></td>
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<td>3m</td>
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<tr>
<td>Capital build and refurbishment (Paragraph 253)</td>
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<td>4.17m</td>
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<tr>
<td>Disposal of assets (Paragraph 254)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
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</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

<table>
<thead>
<tr>
<th>ICT (Paragraph 256 and 257)</th>
<th>4.0m</th>
<th>2.17m</th>
<th>2.17m</th>
<th>667k</th>
<th>9m</th>
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<td>167k</td>
<td>300k</td>
<td>900k</td>
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<td>700k</td>
<td>4m</td>
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<td>(8.03m)</td>
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<td>(950k)</td>
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<td>(2.45m)</td>
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<td>(2.96m)</td>
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<td>(13.5m)</td>
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<td>(90k)</td>
<td>(90k)</td>
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<td>(90k)</td>
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<tr>
<td>NET COST/(SAVING)</td>
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<td>8.3m</td>
<td>(9.15m)</td>
<td>(19.4m)</td>
<td>(27.2m)</td>
</tr>
</tbody>
</table>

* These costs/(savings) are recurring. All other costs/(savings) are one-off and result from the setting up of the SFRS.

** Totals may not equate to the sum of constituent parts due to rounding.

Table 3.2: Best-estimated costs and efficiency savings (£) from 1 April 2012 to 31 March 2028 arising from fire and rescue service reform, adjusted for Optimism Bias on costs, and assuming a 30% reduction in savings. (This includes costs that arise from the Bill provisions, the broader costs which may arise as a consequence of the Bill and the associated reform process, and estimated savings.)

<table>
<thead>
<tr>
<th>Year 0 2012-13</th>
<th>Year 1 2013-14</th>
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<th>Year 3 2015-16</th>
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<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>375k</td>
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### Table 3.1: Financial Implications of Fire and Rescue Reform

<table>
<thead>
<tr>
<th>Publicity* (Paragraph 241)</th>
<th>505k</th>
<th>505k</th>
<th>505k</th>
<th>505k</th>
<th>505k</th>
<th>505k</th>
<th>7.58m</th>
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<tr>
<td>VAT* (Paragraph 242)</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>60m</td>
</tr>
<tr>
<td>Pensions (Paragraph 245)</td>
<td>50k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>50k</td>
</tr>
<tr>
<td>Shadow leadership (Paragraph 251)</td>
<td>765k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>765k</td>
</tr>
<tr>
<td>Programme management, training and change (Paragraph 252)</td>
<td>1.53m</td>
<td>1.53m</td>
<td>1.53m</td>
<td></td>
<td></td>
<td></td>
<td>4.59m</td>
</tr>
<tr>
<td>Capital build and refurbishment (Paragraph 253)</td>
<td>1.53m</td>
<td>6.38m</td>
<td>6.38m</td>
<td>1.01m</td>
<td></td>
<td></td>
<td>15.3m</td>
</tr>
<tr>
<td>Disposal of assets (Paragraph 254)</td>
<td></td>
<td></td>
<td></td>
<td>(5m)</td>
<td>(5m)</td>
<td>(5m)</td>
<td>(15m)</td>
</tr>
<tr>
<td>ICT (Paragraph 256 and 257)</td>
<td>6.12m</td>
<td>3.32m</td>
<td>3.32m</td>
<td>1.02m</td>
<td></td>
<td></td>
<td>13.8m</td>
</tr>
<tr>
<td>Transaction costs (Paragraph 258)</td>
<td>409k</td>
<td>256k</td>
<td>256k</td>
<td>459k</td>
<td></td>
<td></td>
<td>1.38m</td>
</tr>
<tr>
<td>Voluntary redundancy costs (Paragraph 259)</td>
<td>1.3m</td>
<td>1m</td>
<td>1m</td>
<td>700k</td>
<td></td>
<td></td>
<td>4m</td>
</tr>
<tr>
<td>Pay harmonisation* (Paragraph 261)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>200k</td>
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<tr>
<td>Learning and development* (Paragraph 270)</td>
<td>(385k)</td>
<td>(1.02m)</td>
<td>(1.65m)</td>
<td>(2.56m)</td>
<td>(2.56m)</td>
<td>(2.56m)</td>
<td>(33.8m)</td>
</tr>
<tr>
<td>Corporate services* (Paragraph 271)</td>
<td>(700k)</td>
<td>(5.03m)</td>
<td>(5.62m)</td>
<td>(5.62m)</td>
<td>(5.62m)</td>
<td>(5.62m)</td>
<td>(78.8m)</td>
</tr>
<tr>
<td>Fleet and estate* (Paragraph 272)</td>
<td>(350k)</td>
<td>(665k)</td>
<td>(665k)</td>
<td>(1.72m)</td>
<td>(1.72m)</td>
<td>(1.72m)</td>
<td>(22.3m)</td>
</tr>
<tr>
<td>Prevention and protection* (Paragraph 273)</td>
<td>(322k)</td>
<td>(2.07m)</td>
<td>(2.07m)</td>
<td>(2.07m)</td>
<td>(2.07m)</td>
<td>(2.07m)</td>
<td>(29.3m)</td>
</tr>
<tr>
<td>Response* (Paragraph 274)</td>
<td>(280k)</td>
<td>(6.86m)</td>
<td>(9.47m)</td>
<td>(9.47m)</td>
<td>(9.47m)</td>
<td>(9.47m)</td>
<td>(130m)</td>
</tr>
<tr>
<td>Annual Audit* (Paragraph 275)</td>
<td>(63k)</td>
<td>(63k)</td>
<td>(63k)</td>
<td>(63k)</td>
<td>(63k)</td>
<td>(63k)</td>
<td>(882k)</td>
</tr>
<tr>
<td><strong>NET COST/(SAVING)</strong></td>
<td>790k</td>
<td>12.1m</td>
<td>1.75m</td>
<td>(6.88m)</td>
<td>(16.4m)</td>
<td>(20.9m)</td>
<td>(15.7m)</td>
</tr>
</tbody>
</table>

* These costs/(savings) are recurring. All other costs/(savings) are one-off and result from the setting up of the SFRS.

** Totals may not equate to the sum of constituent parts due to rounding.

277. Table 3.1 gives the best estimates of the financial implications of fire and rescue reform. Table 3.3 presents an alternate way of looking at the figures, by assuming that some costs and savings may potentially have been incurred by means other than establishing a single service, for example by increasing collaboration between the current 8 services. It is difficult to predict exactly which costs and savings will be attributable to the single service structure and those which may have been achieved by taking other measures, particularly given that much of the current work, costs incurred and savings anticipate the establishment of a single service. Therefore, for consistency, figures in table 3.3 were calculated by looking at the difference
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

between the costs and savings estimates for an 8 service model with increased collaboration and those associated with a single service as appraised in the OBC.

Table 3.3: Costs and Efficiency Savings (£) from 1 April 2012 to 31 March 2028 potentially arising due to structure

<table>
<thead>
<tr>
<th>Year 0</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>TOTAL by 31 March 2028</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appointment of Scottish Fire and Rescue Service Board and Chief Officer. (Board reappointment costs of £10k occur in 2020-21) (Paragraph 230 and 231)</td>
<td>25k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>35k</td>
</tr>
<tr>
<td>Remuneration of the Board* (Paragraph 232)</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>242k</td>
<td>3.63m</td>
<td></td>
</tr>
<tr>
<td>Inspection of Crown Premises – transfer of responsibilities to SFRS* (Paragraph 239)</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>25k</td>
<td>375k</td>
<td></td>
</tr>
<tr>
<td>Publicity* (Paragraph 241)</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>330k</td>
<td>4.95m</td>
<td></td>
</tr>
<tr>
<td>VAT* (Paragraph 242)</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>4m</td>
<td>60m</td>
<td></td>
</tr>
<tr>
<td>Pensions (Paragraph 245)</td>
<td>50k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>50k</td>
<td></td>
</tr>
<tr>
<td>Shadow leadership (Paragraph 251)</td>
<td>500k</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>500k</td>
<td></td>
</tr>
<tr>
<td>Programme management, training and change (Paragraph 252)</td>
<td></td>
<td>1m</td>
<td>1m</td>
<td>1m</td>
<td></td>
<td>3m</td>
<td></td>
</tr>
<tr>
<td>Capital build and refurbishment (Paragraph 253)</td>
<td>1m</td>
<td>4.17m</td>
<td>4.17m</td>
<td>667k</td>
<td></td>
<td>10m</td>
<td></td>
</tr>
<tr>
<td>Disposal of assets (Paragraph 254)</td>
<td></td>
<td>(5m)</td>
<td>(5m)</td>
<td>(5m)</td>
<td>(5m)</td>
<td>(15m)</td>
<td></td>
</tr>
<tr>
<td>ICT (Paragraph 256 and 277)</td>
<td>3.6m</td>
<td>2.17m</td>
<td>2.17m</td>
<td>667k</td>
<td></td>
<td>8.6m</td>
<td></td>
</tr>
<tr>
<td>Transaction costs (Paragraph 258)</td>
<td>267k</td>
<td>167k</td>
<td>167k</td>
<td>300k</td>
<td></td>
<td>900k</td>
<td></td>
</tr>
<tr>
<td>Voluntary redundancy costs (Paragraph 277)</td>
<td>700k</td>
<td>1m</td>
<td>800k</td>
<td>700k</td>
<td></td>
<td>3.2m</td>
<td></td>
</tr>
<tr>
<td>Pay harmonisation* (Paragraph 261)</td>
<td>200k</td>
<td>400k</td>
<td>600k</td>
<td>800k</td>
<td>1m</td>
<td>12m</td>
<td></td>
</tr>
<tr>
<td>Learning and development* (Paragraph 270)</td>
<td>(550k)</td>
<td>(1.45m)</td>
<td>(2.35m)</td>
<td>(3.65m)</td>
<td>(3.65m)</td>
<td>(3.65m)</td>
<td>(48.2m)</td>
</tr>
</tbody>
</table>
These documents relate to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

| Corporate services* (Paragraph 277) | (1m) | (5.63m) | (5.78m) | (5.78m) | (5.78m) | (5.78m) | (81.7m) |
| Fleet and estate* (Paragraph 277) |     |         |         |         |         |         | (18m)   |
| Prevention and protection* (Paragraph 277) | (2.5m) | (2.5m) | (2.5m) | (2.5m) | (2.5m) | (35m)   |
| Response* (Paragraph 277) | (190k) | (6.62m) | (10.3m) | (10.3m) | (10.3m) | (141m)  |
| Annual Audit* (Paragraph 275) | (90k) | (90k) | (90k) | (90k) | (90k) | (1.26m) |
| **NET COST/(SAVING)** | **525k** | **8.47m** | **(2.98m)** | **(12.7m)** | **(20.3m)** | **(23.4m)** | **(18.2m)** | **(233m)** |

* These costs/(savings) are recurring. All other costs/(savings) result from the set up of the Scottish Fire and Rescue Service.

** Totals might not equate to the sum of constituent parts due to rounding.

278. In relation to the best estimates, over the period assessed, the total net saving delivered from reform of the fire and rescue services is estimated to be £328m. This figure differs from that presented in the OBC, which was £337m (excluding optimism bias) due to the inclusion of additional and revised costs and efficiencies based on work completed subsequent to the publication of the OBCs.

SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE

279. On 16 January 2012, the Cabinet Secretary for Justice (Kenny MacAskill MSP) made the following statement:

“In my view, the provisions of the Police and Fire Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

280. On 12 January 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the Police and Fire Reform (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
POLICE AND FIRE REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Police and Fire Reform (Scotland) Bill introduced in the Scottish Parliament on 16 January 2012. It has been prepared by the Scottish Government to satisfy rule 9.3.3(c) of the Parliament’s standing orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory notes and other accompanying documents are published separately as SP Bill 8–EN.

POLICY OBJECTIVES OF THE BILL

2. Scotland has an excellent police service and fire and rescue service, with crime at a 35 year low and detection rates improving, helped by the 1,000 additional police officers the Government has put into communities, and fire deaths almost 50% lower than a decade ago. The Scottish Government is determined to protect and improve local police and local fire and rescue services in the face of reductions in public finance, by streamlining and modernising services.

3. The main policy objectives of this Bill are to create a single police service, and a single fire and rescue service, to deliver the policy aims set out below:

   - To protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services;
   - To create more equal access to specialist support and national capacity – like murder investigation teams, firearms teams or flood rescue – where and when they are needed; and,
   - To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.

4. The Bill sets out the framework for the new services and modernises the governance of the Scottish police and Scottish fire and rescue services by providing:

   - A clear, modern purpose and principles for the police service and an updated oath for constables. For fire and rescue the purpose will be included in the new Fire and Rescue Framework;
   - A clear statutory framework for national governance including clear roles and responsibilities for the Scottish Ministers, the proposed Scottish Police Authority, the Scottish Fire and Rescue Service Board, and the Chief Officers of both services;
   - Clear powers for local authorities in relation to the provision of fire and rescue services and the policing of their area;
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- Appropriate scrutiny and oversight arrangements;
- Clear funding arrangements; and
- Clear arrangements for the transfer of existing officers and staff and the appointment of new officers and staff to both services.

5. In addition the Bill places the arrangements for independent custody visiting in Scotland on a statutory footing, in line with the rest of the UK. It ensures that independent custody visiting complies with the Optional Protocol to the Convention against Torture (OPCAT).

6. The legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, is over 40 years old. This Bill largely repeals that legislation and puts in place a new modernised framework for policing. The Bill also repeals Part 1, Chapter 1 of the Police, Criminal Justice and Public Order (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland (PCCS) to provide for more robust scrutiny of policing. The statutory framework governing the fire and rescue services was modernised in the Fire (Scotland) Act 2005 and the Bill therefore amends that Act to establish a single service.

CONSULTATION

7. The Scottish Government conducted parallel formal consultations on police1 and on fire and rescue service reform2 from 10 February to 5 May 2011. The consultations presented three options for reform: a single service; a regional model of three or four services; and, retaining the existing eight service model with greater collaboration. The fire and rescue consultation made clear the Government’s preference for a single service. The police consultation recognised that significant arguments had been made in favour of a single police force, but that questions remained about accountability and centralisation of services.

8. There were 219 responses to the police consultation and 171 to the fire and rescue consultation. Responses3 were published on the Scottish Government website. Over fifty consultation events and meetings were held during the consultation period to complement the process. The majority of respondents recognised that the status quo was untenable but said that more detail was required to allow them to reach an informed decision, that reform should not endanger the provision of local services, partnership working or accountability, and that there was a need for robust arrangements for national governance including clearly defined roles that ensured separation between the Scottish Ministers and the services. There was no consensus on structure; however some stakeholders, particularly those in rural areas, expressed views in opposition to a single service.

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9. Over summer 2011, the Cabinet Secretary for Justice, the Minister for Community Safety and Legal Affairs and their officials carried out extensive discussions with stakeholders to explore these concerns and build a consensual approach to reform.

10. On 8 September 2011 the Cabinet Secretary for Justice announced details of the Government’s intention to create a single Police Service of Scotland and a single Scottish Fire and Rescue Service. In parallel, the Scottish Government published:

- A consultation\(^4\) on the legislative framework for the new services;
- Two outline business cases (OBCs)\(^5\,^6\) which provide detail on the costs and benefits of the three options for reform;
- A partial Equality Impact Assessment;\(^7\) and
- A partial Business Regulatory Impact Assessment.\(^8\)

11. In response to the views expressed in the first consultation paper, this consultation set out in detail the Scottish Government’s proposals:

- To protect and enhance local accountability and partnership working by creating new formal relationships between the services and each of Scotland’s 32 local authorities, involving many more local councillors and better integration with community planning partnerships. These proposals are outlined at para 42.
- For robust national governance with clear roles and responsibilities and a separation between the Scottish Ministers and the services. These proposals are set out at paras 72 to 94.

12. The second consultation ran from 8 September to 2 November 2011 and was issued to around 250 organisations. One hundred and forty-five responses were received in total, including 30 from individuals and 115 from groups and organisations. This included 26 local authorities, the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives (SOLACE), 6 police forces, 6 police joint boards or unitary police authorities, 4 fire and rescue services, 4 fire and rescue joint boards and unitary fire authorities, 18 police and fire specific organisations and a further 51 from NHS, voluntary sector and other stakeholders.

13. In the main, respondents to the consultation welcomed the opportunity to influence the design of the single services. There was general consensus about the main policy proposals on a modern purpose for policing, workforce arrangements for police and fire and rescue, scrutiny arrangements along with funding and finance. Views on the need to change the police oath were mixed. The main issues cited across the responses to the police and fire and rescue proposals

were the need for the retention of policing by consent and operational independence and the need for local democratic accountability and core improvements to community outcomes for the new services.

14. The most substantive comments were raised in relation to governance and accountability. There were requests for more clarity on both local and national accountability mechanisms, including local authorities’ oversight of the local policing plan, the relationship between local committees and the Scottish Police Authority and the Scottish Fire and Rescue Service Board, and the roles and responsibilities of the local commander/senior officer and their chief officers. The composition of the Scottish Police Authority and the Scottish Fire and Rescue Service Board was also raised as one of the most important factors in ensuring the long term success of the single services.

15. An independent analysis of responses has been carried out and a summary report was published along with consultation responses on 16 December^9^ and a detailed report will be published in early 2012.

BILL CONTENT AND STRUCTURE OF THIS POLICY MEMORANDUM

16. The Bill is structured in the following Parts:

Part 1 - Police Reform, puts in place new arrangements for the structure, governance and management of policing in Scotland, in particular:

- The establishment of the Scottish Police Authority responsible for the governance, oversight and administration of the Police Service of Scotland and the provision of forensic services;
- An updated oath, restating of constables’ functions and duties, and provisions for establishing their terms and conditions;
- Responsibilities of the Chief Constable for the policing of Scotland;
- A statement of policing principles to set the strategic direction for the Service and a requirement on the Scottish Police Authority to provide a strategic and annual plan;
- Statutory Best Value duties for the Scottish Police Authority and the Chief Constable;
- Statutory reporting requirements including the production of an annual report and accounts;
- New arrangements for strengthening local engagement and partnership working including the establishment of local commanders, powers for local authorities in relation to the policing of their areas, and development of local policing plans;
- New arrangements for police appeals tribunals for certain disciplinary cases;

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^9^ Keeping Scotland Safe and Strong: a Consultation on Reforming Police and Fire and Rescue Services in Scotland - Research Findings December 2011 -
http://www.scotland.gov.uk/Publications/2011/12/12130956/0
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- A new complaints process for the Police Service of Scotland, including an independent investigatory capacity for the most serious cases;
- Inspection powers for Her Majesty’s Inspectors of Constabulary in Scotland (HMICS) and a more structured relationship between HMICS and the Scottish Parliament;
- New funding arrangements with the Scottish Ministers agreeing the funding settlement for payment directly to the Scottish Police Authority along with a power for the Scottish Police Authority and Chief Constable to charge for services; and,
- Placing independent custody visiting on a statutory footing.

Part 2 - Fire and Rescue Reform, amends the Fire (Scotland) Act 2005 (the 2005 act) relating to Scottish Fire and Rescue Services, in particular:

- The establishment of the Scottish Fire and Rescue Service responsible for the governance, oversight and administration of fire and rescue services in Scotland;
- Ensuring that the functions and duties of the Scottish Fire and Rescue Service set out in the 2005 Act apply to the new single service including the promotion of fire safety;
- Restating of powers to obtain assistance in carrying out fire and rescue service functions;
- Statutory Best Value duties for the Scottish Fire and Rescue Service;
- Statutory planning and reporting requirements including providing statistics, production of a strategic plan for the approval of the Scottish Ministers, and an annual report and accounts;
- New arrangements for strengthening local engagement and partnership working including the establishment of local senior officers and development of local fire and rescue plans, along with powers for local authorities in relation to the provision of fire and rescue services in their area; and
- Abolishing the post of Chief Inspector of Fire and Rescue Authorities and replacing it with a Chief Inspector, Inspectors and Assistant Inspectors (Inspectors of the SFRS).

Part 3 – makes general and supplementary provisions.

17. This Policy Memorandum identifies the main policy issues throughout the Bill, covering police and fire and rescue services together. It starts with the measures in the Bill designed to meet the three main policy aims of reform, followed by other legislative measures required to facilitate the establishment of single services with robust national governance. It identifies where alternative policy approaches were considered and highlights some of the key issues raised in response to the second consultation paper. The Scottish Government’s approach has generally been to take the same approach for police and fire and rescue on the key issues and structuring the document in this way allows us to highlight and explain any departures from this approach.
BILL PROVISIONS TO MEET THE THREE MAIN POLICY AIMS OF REFORM

18. This part of the Policy Memorandum addresses:
   - Establishing single services; and,
   - Strengthening the connection between services and communities.

Establishing single services

19. The Scottish Government believes that the best way to address 2 of the 3 main aims of reform - to protect and improve local services and to create more equal access to specialist support and national capacity - is to create a single police service and a single fire and rescue service for Scotland.

20. The Bill therefore sets out proposals to establish a Scottish Police Authority to maintain the Police Service of Scotland. The Police Service of Scotland will comprise of police officers and police staff under the direction and control of the Chief Constable. The services currently provided by the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA) will be brought within the single service although special arrangements will apply to forensic services (see para 82 below).

21. The Bill also sets out proposals to establish a Scottish Fire and Rescue Service to provide fire and rescue services across Scotland. This will include capacity currently provided by the Scottish Government including the Scottish Fire College, the Firelink communications system and specialist capacity to respond to chemical, biological, radiological or nuclear incidents. The Bill will also consolidate the fire safety responsibilities currently divided between Scottish Government and the eight fire and rescue services into the new single service.

22. Scotland’s existing eight police forces and eight fire and rescue services, along with the joint boards and unitary authorities that maintain them will be abolished as will the SPSA and SCDEA.

23. Scottish police forces and Scottish fire and rescue services are performing well. Crime levels are at their lowest for thirty five years and detection rates are improving, helped by the 1,000 additional police officers the Government has put into communities. Fire deaths are almost fifty per cent lower than they were a decade ago. Both services are key players in the delivery of a wide ranging set of outcomes, for example working with partners to improve the life chances of children and young people, and supporting economic growth.

24. However, it will prove increasingly difficult to maintain these positive outcomes in the face of budget reductions by the UK Government. Work done by the Association of Chief Police Officers Scotland (ACPOS) under the auspices of the Scottish Policing Board\(^{10}\) indicated that planned efficiencies would not be enough to fill the funding gap for policing. Audit Scotland\(^{11}\), the Scottish Fire and Rescue Advisory Unit (SFRAU)\(^{12}\), the Health and Safety

\(^{10}\)Scottish Policing Board - Papers from Fifth Meeting - ACPOS - Update on Efficiencies

\(^{11}\)http://www.audit-scotland.gov.uk/media/article.php?id=86
Executive (HSE)\textsuperscript{13} and the Scotland Together report\textsuperscript{14} all concluded that the fire and rescue services faced considerable challenges if they were to continue to maintain their high levels of performance in the face of decreasing budgets.

25. The outline business cases published on 8 September 2011 looked at three reform options and clearly demonstrated that single services were the strongest option for both police and fire and rescue, as they would deliver the highest level of benefits and the greatest savings compared with either regional or eight service options.

26. Based on these findings, the Scottish Government believes that the establishment of single services is the best way to protect and improve local services in the face of significant reductions in public finance, by stopping duplication of support services eight times over and not cutting frontline services. It also considers that single services are the best way to create more equal access to specialist support and national capacity, where and when they are needed. For both police and fire and rescue this includes capacity to respond to adverse weather conditions or terrorist threats. In policing, specialist support includes murder investigation teams, firearms teams and tackling e-crime. For fire and rescue this includes flood rescue or specialist resources to respond to a chemical, biological, radiological or nuclear incident.

27. In addition, single services will facilitate more streamlined partnership working at a national level between police and fire and rescue with other emergency services and partners such as the Crown Office and Procurator Fiscal Service, the Scottish Prison Service and the Scottish Courts Service. Both police and fire and rescue services play a major role in the work of Strategic Coordinating Groups (SCGs) which bring together partners to plan for, and respond to emergencies, in accordance with the provisions of the Civil Contingencies Act 2004. The Scottish Government will work with the new services in order to ensure that future arrangements allow all responder organisations in SCGs to work together as effectively as possible, recognising the key role often played by the police and fire and rescue ahead of, and during emergency situations.

28. A single police service and a single fire and rescue service will facilitate flexible, responsive local delivery that is embedded within and tailored to the needs of communities, but, crucially, is also part of a Scotland-wide service not hampered by internal boundaries. This structure is enabling, but not operationally prescriptive. The operational design of the new services and deployment of resources will be the responsibility of the new services.

**Consultation**

29. Twenty-two respondents to the first police reform consultation and twenty-nine respondents to the fire and rescue consultation supported the single service option. Seventy-seven of the responses to the police consultation said they did not know, or did not select one of the three reform options. Several of these respondents noted that this was because of a lack of information on which to base their decision.


\textsuperscript{13} http://www.hse.gov.uk/services/fire/

\textsuperscript{14} http://www.strathclydefire.org/media/42937/Scotland_Together_07_09_09.pdf
30. Key stakeholders in favour of the single service option were the Association of Scottish Police Superintendents (ASPS), and the SCDEA. ASPS argued that “A single Police Service will allow us to maintain existing levels of high performance and public confidence. There will be opportunities to retain and enhance local accountability and governance. Importantly it will also increase capacity for counter terrorism and serious organised crime, whilst maintaining a focus on local, accountable community policing. The proposal to introduce a single Police Service is financially and operationally the way forward”. SCDEA argued that a single service would offer the best service compared to other options, providing greater flexibility to respond to changing needs such as international crime; consistency across Scotland; the integration of specialist functions; and improved partnership working and resource sharing.

31. The need to centralise or rationalise support functions, management, procurement and training functions was raised in fire and rescue responses that supported the single service option. Some respondents said that that a single service would provide a better, more efficient, effective and sustainable option than the alternatives. "We believe that both arrangements could deliver safe communities and fire service employment protection; provided there are clear and distinct responsibilities invested in regional structures to deliver risk based emergency cover within each regional structure to an agreed and consistent National Standard. But of the two, we consider the single structure would be easier to deliver” (Fire Brigades Union).

32. Respondents to the second consultation acknowledged that the decision to legislate for single services had been taken and in the main did not contest this but welcomed the opportunity to comment and to assist with the design of the new services. They also emphasised that there will be a need for the Scottish Government, current forces, fire and rescue services, boards and local authorities to work together to ensure successful transition to the new services.

Alternative approaches - other structural options considered

33. The outline business cases for police and fire and rescue both considered in detail a regional delivery model and also the possibility of a more collaborative approach within the current eight service model.

34. The outline business cases found that a move to a regional structure with a smaller number of boards would offer some opportunities to protect budgets, deliver better outcomes and reduce the variation in delivery approaches to some extent. However, it would deliver less efficiency than single services (around £20 million per year less for police, and £12 million per year less for fire and rescue) and would not remove unnecessary duplication or create operational consistency across Scotland. A regional structure would restrict the ability to move resources and expertise to areas of greatest need and to create and maintain effective national capability. In addition, it would not provide a direct relationship with local authorities and local communities or strengthen local accountability, but would in effect create an extra tier of governance because it would need to be accompanied by additional national and local accountability mechanisms. For these reasons, this model was rejected.

35. While an 8 service structure was considered the least challenging to deliver in transition terms, the outline business cases concluded it would present a significant risk to the delivery of a cohesive programme of change. While national police and fire and rescue functions could be
delivered through collaborative arrangements, they would have required significant effort to set up and maintain capability, as well as formal frameworks to enable effective resourcing, investment, decision making, management and deployment. Collaborative arrangements were therefore considered to be less effective, efficient, robust and sustainable than national arrangements over the longer-term. It was noted that additional national provision, such as an enhanced version of SPSA, would also be required to deliver the consolidated and rationalised back office support needed for these regional and national arrangements. With this in mind, an enhanced service structure was considered to be least likely to deliver the optimum range of efficiencies required, and to be financially sustainable in the medium term.

36. The evidence and arguments clearly point to single services in both police and fire and rescue as presenting the best option for reform. The arguments set out in the first consultations have been strengthened since by specific responses to the consultations, the independent Phase 2 Report of the Sustainable Policing Project produced by subject specialists from Scotland’s police forces, the responses to the second consultation, and the outline business cases for police and fire and rescue.

37. A single service model will drive out duplication, ensure consistency, and rationalise existing systems and structures. Efficiencies will be realised through economies of scale; expertise, capability and budgets will be pooled at a national level then targeted to meet local need; existing weaknesses in national accountability will be addressed; and local accountability will be enhanced through greater engagement at local authority level.

38. The outline business case for policing highlighted that a single service model is the strongest option for reform as it presents the:

- Least complex and most efficient option;
- Best opportunity to reinvest to improve local policing outcomes;
- Highest potential for long-term financial sustainability; and
- Best opportunity to co-ordinate change, optimise benefit and minimise risk.

39. In the case of fire and rescue, the outline business case highlighted that a single service model is the strongest option for reform as this presents the:

- Greatest potential to generate the required savings; and
- Potential to deliver the highest level of qualitative benefits, including improved outcomes, necessary to secure equitable and sustainable delivery of fire and rescue services to communities across Scotland.

40. The Financial Memorandum provides further detail on the cost and savings implications of the Bill and reform.

**Strengthening the connection between services and communities**

41. The third aim of reform is to strengthen the connection between services and communities. The Scottish Ministers intend to achieve this in the Bill by establishing a new
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formal statutory relationship between the police and fire and rescue services and each of Scotland’s 32 local authorities which will involve many more elected members and better integrate police and fire and rescue services with Community Planning Partnerships.

42. Section 45 and Section 113 of the Bill provide for a local commander (police) and a local senior officer (fire and rescue) to be designated for each local authority area. He or she will be the first point of senior contact for the local authority and other partners locally and the lead officer for the services in community planning. Local authorities will have a new formal role in shaping services delivered in their area and in scrutinising and monitoring delivery and performance. This will replace their current role as a police authority and as a fire and rescue authority.

43. This new relationship will be built around the joint development of a local plan setting out the shared priorities and outcomes to which police and fire and rescue services are to be directed. The local commander or senior officer will have a duty to involve the local authority in setting priorities and objectives and to provide information and reports to the local authority, to enable it to effectively scrutinise and monitor performance and local service delivery. Each local authority will have powers to agree the local police and fire and rescue plan; to scrutinise and monitor performance; to seek reports and information from the local commander and local senior officer; and to provide advice and recommendations on local policing and fire and rescue services.

44. The Bill does not set out how this relationship should operate locally. It will be for the local authorities to determine the most appropriate local mechanism for exercising their role outlined in the Bill, and formalising their relationship with the local commander and local senior officer and other partners to help shape and deliver local outcomes. Responses to the second consultation were supportive of the proposals for local policing and local fire and rescue services to be based around local commanders or senior officers as this approach already exists informally in many areas across Scotland.

45. This new role for local authorities will support the Government’s aim of seeing many more councillors playing a direct and formal role in police and fire and rescue services in their area so that they can better shape local priorities in order to meet local needs and challenges and scrutinise service delivery and performance in achieving local outcomes. At present only around 1 in 8 (146 out of 1,222) local councillors are involved in police committees, or regional joint police boards. Similar numbers are involved in fire and rescue committees or regional joint fire boards. This compares with over 500 local councillors involved in education services through local education committees or similar mechanisms. Furthermore, at present, many local authorities have only a few members on a regional joint board. For example, Argyll and Bute council has 2 members on Strathclyde Police Authority which has 34 members from 12 local authorities. The Bill enables each local authority to establish local arrangements, including as few or as many councillors as they see fit to work with the local commander and senior officer.

46. The new arrangements will also facilitate better integration with Community Planning Partnerships and other partnerships. Most partnerships which involve police and fire and rescue services are based around local authority areas, including Community Safety Partnerships, Alcohol and Drug Partnerships and Adult Protection Committees. Currently, police and fire and
rescue structures do not always align with these boundaries, making local partnership less straightforward. There is a significant opportunity to better align police and fire and rescue structures with other community planning partners through reform, and to strengthen local scrutiny and engagement in community planning.

47. The Scottish Police Authority, the Chief Constable and the Scottish Fire and Rescue Service will be required to ensure effective local delivery of services. The local commander and the local senior officer will be required to participate in community planning.

Consultation

48. Responses to the consultation paper highlighted the importance of safeguarding local engagement and accountability in national services and the need to ensure that police and fire and rescue services remain able to deliver outcomes for local communities. The Scottish Government recognises that most policing and fire and rescue services are delivered locally and considers that the provisions in the Bill provide the necessary checks and balances to maintain and improve local services and to ensure effective local engagement within a national framework.

49. In their responses to the second consultation, the key concern of COSLA and SOLACE was maintaining meaningful local government interest in the new structure and the protection of multi-agency working. Many of the responses from local authorities, police and fire and rescue joint boards and unitary authorities also supported this position. The Association of Chief Police Officers in Scotland (ACPOS) supported many of the main policy proposals in principle, particularly the intention to strengthen and embed local policing in local communities, but raised a number of concerns regarding local accountability and the need for further clarity on proposed national and local governance structures. Similarly, the Chief Fire Officers Association (Scotland) (CFOA(S)) was supportive of the main policy proposals in principle but raised some concerns about how the relationship between the new Board and local authorities would operate.

Alternative approaches – local service delivery responsibilities

50. The provisions in the Bill ensure that local service delivery responsibilities for policing and fire and rescue services are set within a statutory framework that provides a new distinct leadership role at a local level, placing duties on the local commander and local senior officer. Within existing local structures, senior officers in some areas already perform similar functions without discrete statutory responsibilities, and this could continue within single services if the Bill were to remain silent on such functions. However, by placing local delivery and engagement responsibilities in legislation, the intention is to ensure that local service delivery remains among the foremost priorities of the Police Service of Scotland and the Scottish Fire and Rescue Service and embeds best practice in local service delivery across Scotland. The responsibilities placed on the local commander and local senior officer are complemented by a broader duty on the Chief Constable and on the Scottish Fire and Rescue Service to ensure adequate local service provision. By holding the Chief Constable and the Scottish Fire and Rescue Service ultimately responsible for the delivery of local services, the Bill requires the services to balance national and local priorities.
51. The Scottish Government considered the alternative of placing all statutory duties for local policing on the local commanders, and local fire and rescue services on local senior officers, but this might have raised concerns about the potential for conflict within the service between local and national policing and fire and rescue and created less flexibility for the deployment of resources across areas when required. By placing statutory responsibilities for local services on the Chief Constable and Scottish Fire and Rescue Service as well as the local commander or senior officer, the policy intention is that the leader of the service will be ultimately responsible for ensuring a balance between local and national performance. In the case of police, the Bill ensures that all constables, including local commanders, remain under the direction and control of the Chief Constable in the discharge of their functions. Local senior officers, as employees of the Scottish Fire and Rescue Services are under the direction and control of that service.

Alternative approaches – community resilience hubs

52. The Scottish Government considered the option of legislating to establish community resilience hubs; where fire stations are grouped together, working with local communities beyond the traditional community fire safety role of the fire and rescue services and supporting community safety across a wider range of emergencies.

53. A number of fire and rescue services already provide community resilience functions; these vary from area to area across Scotland, depending upon local circumstance and need. As such, the Scottish Government does not propose to introduce a legislative requirement, as this could potentially restrict positive activity or create duplication of effort. As with other functions, it is expected that integrated risk management planning will be used to identify priorities for community work and to identify need in the future. This would support flexible use of resources and align services with local community planning to promote local service integration and partnership working.

OTHER KEY PROVISIONS IN THE BILL

54. The Bill includes a number of other provisions designed to support the main policy aims of reform. The next section of this Policy Memorandum describes the policy in these areas:

- Clear, modern purpose and principles for each service;
- Robust statutory framework for national governance;
- Appropriate scrutiny arrangements;
- Streamlined arrangements for funding;
- Arrangements for appointing officers and staff and for transferring officers and staff from the current services to the new services; and
- Placing Independent Custody Visiting on a statutory footing.

A CLEAR MODERN PURPOSE AND PRINCIPLES FOR EACH SERVICE

55. The Bill sets out and modernises the functions of a police officer and for the first time provides statutory principles including a core purpose to inform the strategic plans and priorities
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for policing in Scotland. For the Scottish Fire and Rescue Service this will be set out in a new Fire and Rescue Framework under the Fire (Scotland) Act 2005.

Purpose and principles

56. As outlined above, the Scottish Government intends to set a clear modern purpose and principles for both the Police Service of Scotland and Scottish Fire and Rescue Service. This will reflect the reality of their broad roles and the excellent work the services now carry out supporting and promoting community safety and well-being; through, for example, community safety initiatives and collaboration with health, education, and local authorities focused on prevention and early intervention in order to improve outcomes.

57. Section 32 of the Bill sets out the policing principles which provide that the main purpose of policing is to improve safety and well-being in Scotland by working in collaboration with others in ways which are accessible to and engaged with communities, promoting measures to prevent crime, harm and disorder. The Scottish Ministers and the Scottish Police Authority will be required to have regard to the policing principles when developing the strategic priorities and plans for the service, as will the Chief Constable when directing constables. In this way the policing principles will underpin the core of the work of the new police service.

58. For fire and rescue, the Fire (Scotland) 2005 Act already allows priorities and objectives to be set through the Fire and Rescue Framework. A new Fire and Rescue Framework will be produced which will set out a modern purpose for the Scottish Fire and Rescue Service and underpin delivery of its functions; for example by an outcomes based approach and through the promotion of community engagement.

Functions

59. The Bill does not make any fundamental changes to the statutory duties of a police constable or the functions of the fire and rescue services.

Police functions

60. The statutory duties of a police constable, as set out in the 1967 Act, capture the broad range of policing activities directed toward improved safety and well-being and the Scottish Government proposes to preserve these in an updated form. These duties are set out in section 20 of the Bill and relate to crime prevention and detection, the maintenance of order, the protection of life and property, as well as duties relating to the apprehension of offenders, the execution of warrants and attendance at court. Constables remain subject to a range of other functions (powers and duties) under legislation and common law.

61. Section 10 of the Bill places the police oath in primary legislation for the first time and updates the wording of the oath. This oath has remained unchanged since 1892. The current wording has served its purpose well:

“I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable”.

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62. The Bill sets out a new form of words for the oath:

“I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, according to law”.

63. This is intended to recognise the changing role of the police service and to emphasise the nature of the role and the relationship between the police and all individuals in society.

Fire and rescue functions

64. Sections 99 – 108 of the Bill provide for the functions of the Fire and Rescue Authorities/ Joint Boards set out in the Fire (Scotland) Act 2005 (the 2005 Act) to be transferred to the new Scottish Fire and Rescue Service. The Bill therefore proposes no changes to the functions set out below:

- Promoting fire safety;
- Fire fighting;
- Responding to road traffic accidents;
- Enforcing fire safety legislation in relevant premises; and
- Responding to any other eventualities likely to cause death, injury or illness, or harm to the environment (including buildings).

65. Some fire and rescue functions are in the Fire (Additional Function) Scotland Order 2005, made under section 11 of the 2005 Act. The Scottish Government intends to amend the Order by secondary legislation, so that these functions are transferred to the new Scottish Fire and Rescue Service. The functions are:

- Responding to chemical, biological, radiological or nuclear incidents;
- Providing urban search and rescue capability;
- Responding to serious flooding; and
- Responding to serious transport incidents.

66. A new Fire and Rescue Framework will be prepared and brought into effect through secondary legislation, to reflect these existing statutory functions, and give them a renewed focus by placing them within a context of promoting community engagement, prevention and partnership working to improve outcomes. Sections 100 and 101 of the Bill will also consolidate the fire safety responsibilities currently divided between the Scottish Government and the eight fire and rescue services into the new single service. Currently fire and rescue services provide advice, information, publicity and encouragement to prevent fires and death or injury from fires and to reduce losses. The Scottish Government works with fire and rescue services to promote fire safety including running regular national Fire Safety Campaigns. The Bill enables responsibility for promoting fire safety to be placed on the new service at local and national level.
Consultation responses

67. A number of responses to the second consultation broadly supported the proposed purpose for both policing and fire and rescue services, recognising the value of making clear the role of both services working in partnership with other services. A number of police and local authority respondents called for the purpose to include explicit references to core policing and partnership activity and to be supported by national guidance and, for police, assurances that the unique nature of the Office of the Constable is retained. The ACPOS response noted that the purpose in the Police (Scotland) Act 1967 based on “guard, patrol and watch” no longer fully reflects modern policing.

68. For fire and rescue a number of responses supported the use of the Fire and Rescue Framework to further define the purpose of the Scottish Fire and Rescue Service and there was support for including Fire Safety within the remit of the new service.

69. Responses to the second consultation had mixed views on the need to change the oath. The Scottish Government acknowledges respondents’ views that the oath has remained unchanged since 1892 and has served its purpose well, but other respondents highlighted that the police oath should be modernised to better reflect policing in the 21st century.

Police and fire and rescue functions, purpose and principles - alternative approaches

70. The Scottish Government considered setting out in statute a number of new, detailed functions for the police in recognition of the broad scope of activity in which the police are currently engaged. However the Scottish Government concluded that adapting the existing broad functions, particularly to emphasise prevention, would capture these wider activities, without the need for discrete statutory duties.

71. No alternative approaches were considered for fire and rescue.

ROBUST STATUTORY FRAMEWORK FOR NATIONAL GOVERNANCE

72. The Bill sets out a clear legislative framework to ensure effective national governance for policing and fire and rescue services across Scotland. It makes clear statutory provision for the:

- Role of the Scottish Police Authority and the Scottish Fire and Rescue Service Board;
- Composition of the Scottish Police Authority and Scottish Fire and Rescue Service Board;
- Role of the Chief Constable and Chief Officer;
- Role of the Scottish Ministers; and
- Role of the Scottish Parliament.
The new governance arrangements respond to the weaknesses in police governance and accountability highlighted by the HMICS discussion paper of June 2011.\textsuperscript{15} In particular, HMICS was critical of the inconsistent way in which national policing functions are exercised - a mix of lead Force, collaborative agreements, SCDEA, and other less formal arrangements - and that decisions made by ACPOS which affect local, regional and national policing do not fall within the standard public sector governance arrangements.

The Role of the Scottish Police Authority and the Scottish Fire and Rescue Service Board

Section 1 of the Bill establishes a new statutory body, the Scottish Police Authority, to maintain the Police Service of Scotland and hold the Chief Constable to account.

Section 99 of the Bill establishes a new statutory body, the Scottish Fire and Rescue Service. It will provide fire and rescue services throughout Scotland and be governed by a Board. The Chief Officer, as an employee of the Scottish Fire and Rescue Service will be held to account by the Scottish Fire and Rescue Service Board.

The establishment of the Scottish Police Authority and the Scottish Fire and Rescue Service provides a clear separation between the Scottish Ministers and the services. In particular, it ensures that the Chief Constable is free from undue political influence in making decisions about the investigation of crime.

The Scottish Police Authority and the Scottish Fire and Rescue Service Board are intended to provide strong governance arrangements and clear accountability for both services and, in the case of police, to respond to the weaknesses in governance and accountability highlighted by HMICS.

The Scottish Police Authority and the Scottish Fire and Rescue Service will be required to undertake strategic planning and reporting and to consult stakeholders on the use of this new power. The Scottish Police Authority, the Chief Constable and the Scottish Fire and Rescue Service will also be subject to a statutory duty of Best Value and subject to examination and inspection by the Auditor General, HMICS and the Inspectors of the Scottish Fire and Rescue Service (the Inspectors of SFRS). This is essentially a continuation of the existing duty of Best Value on local authorities and joint boards, although the Bill has extended the duty to include the Chief Constable.

In the case of police, the provisions maintain the existing office of the Chief Constable, distinct from the Scottish Police Authority. The Bill further provides that all constables in the Police Service of Scotland (who are also office holders) are under the direction and control of the Chief Constable.

Consultation

80. The Scottish Government recognises the concerns raised in the first consultation about ensuring appropriate separation between the Scottish Ministers and services, the need for clear roles and responsibilities and for the national boards to be given robust powers to hold the chief officers to account. In particular, there was concern to ensure that the Chief Constable is free from undue political influence in making decisions about the investigation of crime. The Scottish Government considers that the proposals in the Bill address those concerns.

Alternative approaches – national governance

81. The Scottish Government considered whether both services should be established as agencies under the direct control of the Scottish Ministers. It examined a range of governance structures for both fire and rescue and policing in other countries and hosted an international summit on policing to explore this further in August 2011. It considered structures, common in countries such as Finland and Denmark, which would place the services more directly under the control of the Scottish Ministers. However, the Scottish Government was keen to establish a more transparent, arms length relationship with the Scottish Ministers which, especially in the case of policing, ensured a clear separation.

Independence of the forensic service from the Chief Constable

82. In order to maintain public confidence in the criminal justice system, the new structure will reflect the need to maintain a “sterile corridor” between police investigations and forensic investigations. In Scotland there is currently a ‘crime scene to court’ forensic service which has, since 2007, been part of the SPSA and independent from police forces. In order to maintain this arrangement, section 31 of the Bill requires the Scottish Police Authority to make arrangements for the provision of a forensic service which is accountable directly to the Scottish Police Authority: not to the Chief Constable.

Forensic service – consultation and alternative approach

83. The Scottish Government consulted with stakeholders on the approach to forensic services. This included ACPOS, the SPSA (which currently provides the forensic service), the Crown Office and Procurator Fiscal Service, the Information Commissioner’s office and academics with expertise in forensic science and ethics. Alternative approaches suggested were to house the forensic service within the Police Service of Scotland, reporting to the Chief Constable, or to establish a stand alone body to deliver forensic services. In order to maintain public confidence in the criminal justice system and forensic evidence presented in court, it is important that the process for gathering and analysing forensic evidence is visibly independent from the police investigation. On this basis, the option of placing forensic services under the control of the Chief Constable was discounted. The option of establishing a stand alone forensic service as an NDPB was also discounted on the basis that this would not have been in line with the Scottish Government’s aim of simplifying the public bodies landscape; and that the required degree of separation between the police and the forensic investigation could be achieved by establishing the forensic service within the Scottish Police Authority. This option is also more cost-effective and enables the forensic service to secure corporate services, such as Information
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Technology and Human Resources, from the Police Service of Scotland rather than having its own corporate services or buying them in from another body.

Composition of the Scottish Police Authority and the Scottish Fire and Rescue Service Board

84. The Bill provides that members of the Scottish Police Authority and Scottish Fire and Rescue Service Board will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the services and hold the Chief Constable and Chief Officer to account. The Scottish Government recognises that local councillors, especially those with experience of police and fire and rescue services, will have much to offer the governance of the new services, and the appointments process will allow the Scottish Ministers to appoint a number of members to both on the basis of skills and expertise relating to local government. All appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Bill will provide for the Scottish Police Authority and Scottish Fire and Rescue Service Board to have between 7 and 11 members although the Scottish Ministers will have a power to alter that number.

Alternative approaches - membership of the Scottish Police Authority and Scottish Fire and Rescue Service Board

85. The consultation paper invited views on the proposition that the Scottish Ministers should appoint a number of serving councillors, nominated by COSLA, in order to represent the collective voice of local government on the Scottish Police Authority and Scottish Fire and Rescue Service Board. The role of the Scottish Police Authority and Scottish Fire and Rescue Service Board is to ensure the effective delivery of policing and fire and rescue services across Scotland. As such, members are not attending meetings as representatives but to act in the best interests of the Scottish Police Authority and the Scottish Fire and Rescue Service. There is, therefore a potential conflict that arises from representative membership and the Scottish Government has concluded the Bill should not include any statutory requirement for representative members. Board members will be sought with a range of skills and expertise, including current or recent expertise of local government.

Consultation

86. The composition of the Scottish Police Authority and Scottish Fire and Rescue Service Board was seen as a critical issue by respondents to the second consultation. There was wide acceptance that members of the national boards should have a range of skills including knowledge of the public sector, business, ethical or human rights issues, audit and finance plus specific skills in policing, local government and justice. There were diverse views on the number of national board members required for the depth and breadth of roles needed or to represent the diversity and regional spread of communities. Local authorities and police and fire and rescue joint boards were of the view that all or at least the majority should be elected members and police forces, fire and rescue services and other organisations were of the view that it should be balanced.
Role of the Scottish Ministers

87. The Scottish Ministers will continue to be accountable to the Scottish Parliament for policing and fire and rescue services. However, the provisions in the Bill provide a clear separation between the Scottish Ministers and the services by ensuring their role is primarily a strategic one focussed on the appointment of members of the Scottish Police Authority and Scottish Fire and Rescue Service Board; approving the appointment of the Chief Constable and the Chief Officer; and setting national budgets and strategic priorities.

88. The Bill provides the Scottish Ministers with a power of direction in relation to the Scottish Police Authority and the Scottish Fire and Rescue Service. This power is a normal feature of public bodies created by the Scottish Ministers and is used very rarely. The power to direct the Scottish Fire and Rescue Service will encompass the Scottish Ministers’ existing powers to direct fire and rescue services for public safety purposes, in relation to use of equipment and services, and to issue emergency directions. The new power of direction will not impact on the Scottish Ministers’ existing power of direction where there is a failure to act in accordance with the fire and rescue framework; this is retained as a distinct mechanism for enforcing adherence to the framework.

89. The Scottish Ministers will have no power of direction in relation to the Chief Constable or Chief Officer.

Consultation

90. A number of responses to the second consultation sought more information on the circumstances in which the power of direction might be used and sought safeguards on the face of the legislation to ensure the power could not be misused.

Alternative approaches – role of the Scottish Ministers

91. The Scottish Government considered whether a Ministerial power of direction was necessary. It concluded that such a power, which is a feature of virtually every significant public body, was a necessary link in the chain of accountability to the Scottish Parliament. It is required to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary. Like all such powers, it would be used sparingly if at all. The Scottish Government also considered specifying the circumstances in which the power might be used but concluded that this was undesirable.

Role of the Lord Advocate and Procurators Fiscal

92. The Bill proposes no changes to the powers and responsibilities of the Lord Advocate and Procurators Fiscal. The Lord Advocate and Procurators Fiscal will continue to have responsibility for the direction of criminal investigations, including criminal allegations against police officers. The Chief Constable will continue to be under the direction of the Procurators Fiscal and be accountable to the Lord Advocate in these matters.
Alternative approaches

93. No alternative approach was considered for the role of the Lord Advocate in relation to the Police Service.

Role of the Scottish Parliament

94. The Bill provides the Scottish Parliament, for the first time, the opportunity to have a formal role in scrutinising the police and fire and rescue services. The current structural framework for policing in Scotland pre-dates the establishment of the Scottish Parliament and, with the exception of the SPSA and the SCDEA, the Scottish Parliament currently has a limited role in the scrutiny of policing. The Scottish Parliament passed new legislation for fire and rescue in 2005 and has a role in approving the strategic priorities set by the Scottish Ministers in the Fire and Rescue Framework. This will be augmented in the Bill. The Scottish Parliament will approve the budget for the Scottish Police Authority and Scottish Fire and Rescue Service through the budget process. The Bill requires the key strategic and planning documents as well as the annual report and accounts for each service to be laid before the Scottish Parliament. The Bill also requires the Police Investigations and Review Commissioner, HMICS and the Inspectors of SFRS (which replaces CIFRA as described below) to publish their reports and to lay them before the Scottish Parliament.

SCRUTINY ARRANGEMENTS

95. The Scottish Police Authority and the Scottish Fire and Rescue Service Board will play a critical role in scrutinising the services and holding the Chief Constable and Chief Officer to account. Effective external scrutiny will also be an important part of the accountability framework for the new services. Scrutiny mechanisms are proposed for both police and fire and rescue which will provide professional and independent inspection.

Police audit and inspection

96. Part 1, Chapter 11 of the Bill provides that the Scottish Police Authority and the Police Service of Scotland will be inspected by HMICS, which will retain its existing powers and take on an additional power to examine the delivery of Best Value. The Bill puts the relationship between HMICS and the Scottish Parliament on a more structured footing than at present by requiring HMICS to publish its reports and make them available to the Scottish Parliament. HMICS is also required to present its reports to the Scottish Police Authority. This will be done simultaneously, in line with the recommendations of Professor Crerar’s review of external scrutiny\(^{16}\) in 2007. Section 42 of the Bill gives responsibility for audit of the Scottish Police Authority to the Auditor General who will also have powers under Section 43 of the Bill to examine the delivery of Best Value and the economy, efficiency and effectiveness of the service.

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\(^{16}\) Crerar Review -
http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/latest-news/TheCrerarReview
Fire and rescue: audit and inspection

97. At present the Chief Inspector of Fire and Rescue Authorities (CIFRA), who is appointed by virtue of section 43 of the Fire (Scotland) Act 2005, may undertake inquiries into the services when directed to do so by the Scottish Ministers.

98. The Bill abolishes CIFRA and replaces it with a Chief Inspector, Inspectors and Assistant Inspectors (Inspectors of the SFRS). The Scottish Government intends that, as with CIFRA, these post holders should be non-Ministerial office holders within the Scottish Administration. Existing inspectors will be retained.

99. The Chief Inspector and Inspectors are to be appointed by Her Majesty by Order in Council (the present incumbent also carries a Royal Warrant), while Assistant Inspectors are appointed by the Scottish Ministers. The Inspectors of the SFRS will take over and strengthen the inspection role carried out by CIFRA.

100. Section 117 of the Bill provides that the Scottish Fire and Rescue Service will be inspected by the Inspectors of the SFRS who may independently initiate inquiries as well as inspecting on direction by the Scottish Ministers. The Bill puts the relationship between the Inspectors of the SFRS and the Scottish Parliament on a clear footing by requiring the Inspectors of the SFRS to publish its reports and make reports relating to the state and efficiency of the Scottish Fire and Rescue Service available to the Scottish Parliament. The Inspectors of the SFRS are also required to present its reports to the Scottish Fire and Rescue Service. This will be done simultaneously, in line with the recommendations of Professor Crerar’s review of external scrutiny in 2007. Section 99 of the Bill inserts new Schedule 1A into the 2005 Act which requires the Scottish Fire And Rescue Service to send statements of accounts to the Auditor General for audit. The Auditor General will also have powers under Section 111 of the Bill to examine the delivery of Best Value in addition to his powers to examine the economy, efficiency and effectiveness of the service under Section 23 of the Public Finance and Accountability (Scotland) Act 2000.

Consultation responses

101. The proposals for the retention of independent audit and inspection arrangements for police and fire and rescue were supported across the majority of respondents to the second consultation. The Auditor General and HMICS’ response to the second consultation welcomed the arrangements for audit and inspection and indicated they would continue to develop their working relationship via Audit Scotland to ensure inspection and audit remained risk based, proportionate and complementary.

Alternative approaches

102. The Scottish Government considered adding to the existing functions of HMICS so that they also had responsibility for reviewing non criminal complaints and carrying out investigations into the more serious complaints. However the consultation responses suggested a preference for retaining a separation between the inspection and complaints reviewing and investigation functions.
103. Retaining the status quo for fire inspection was considered and rejected on the basis that a more robust arrangement was required.

104. The Scottish Government considered not placing the new services under a statutory duty of Best Value which applies to local authorities but to follow the more usual precedent for nationally funded bodies, by relying on the provisions of the Scottish Public Finance Manual to secure Best Value. However, given the current statutory duty placed on the current joint boards and unitary police and fire and rescue authorities in relation to Best Value, the Scottish Government has concluded that the Best Value duty should be continued in the new arrangements.

**Police and fire and rescue complaints**

105. The policy intention is to ensure robust and transparent procedures for handling complaints made in relation to the new services.

**Fire and rescue complaints**

106. For fire and rescue the intention is to follow the approach of other public bodies by making the Scottish Fire and Rescue Service a listed authority for the purposes of the Scottish Public Services Ombudsman Act 2002.

**Police complaints and serious cases and incidents**

107. In the case of police, there is a need to provide public reassurance by ensuring that the most serious criminal allegations against police officers are investigated independently where appropriate.

108. Currently, complaints against the police and police staff range from complaints about quality of service to complaints about their conduct, behaviour and actions. The vast majority of complaints are currently handled through the complaints handling and line management functions within each force, with oversight from the relevant police authority or joint board. The police authority or joint board also has a direct responsibility for dealing with complaints about senior officers.

109. The Bill creates an independent investigatory capacity outside the Police Service of Scotland to investigate the most serious cases, including complaints and allegations of misconduct about senior officers and other incidents, particularly those involving death or serious injury, where it is in the public interest to have an independent investigation. In the current structure such cases are referred to another force.

110. The Bill provisions mean that the new Scottish Police Authority will have an important role in holding the Police Service to account. This includes monitoring and scrutinising complaints, dealing with complaints or allegations of misconduct about constables and ensuring that the service learns from, and acts on them, to improve performance and maintain public confidence.
111. There are a range of incidents, such as deaths in custody, serious and fatal road accidents involving police vehicles and serious crimes where the police may be at fault, where it is useful and necessary for the actions of the police to be reviewed or investigated independently. This also applies where there is significant doubt about the robustness or conduct of an investigation and it is deemed to be in the public interest to review an investigation. At present, this is normally carried out by a different force at the request of the force concerned.

112. The Bill gives additional powers to the Police Complaints Commissioner Scotland (PCCS), which will be renamed the Police Investigations and Review Commissioner (PIRC). PIRC will undertake the investigation and review of the range of complaints and incidents described above. As at present, less serious criminal allegations will continue to be handled within the Police Service of Scotland under the independent direction and control of Crown Office and Procurator Fiscal Service (COPFS). Non-criminal complaints will be handled within the service as happens at present and complainants will be able to seek a review of their complaint by the PIRC.

113. In addition the PIRC will retain all the existing functions of the PCCS. COPFS will continue to control and direct all investigations into criminal allegations against officers and police staff and will also retain the power to instigate a criminal investigation without prior referral from the police.

Alternative approaches and consultation – police complaints and serious incidents

114. The second consultation set out a number of options for how complaints and scrutiny could be handled in relation to the new independent investigatory capacity required in a single police service. Other options considered included transferring the complaints review handling functions to the Scottish Public Service Ombudsman (SPSO) which would have brought police complaints review into line with other public sector complaints.

115. In addition the Scottish Government considered bringing together the investigatory capacity and complaints handling reviews with the inspectorate functions of HMICS.

116. Responses to the second consultation provided a range of different views on these issues and in particular whether complaints against the police could be adequately handled by the SPSO and whether a single body, incorporating HMICS, should undertake all these functions. Responses were in the main supportive of the option of creating an independent body whose functions would include PCCS with additional investigative functions. Responses were supportive of the need for HMICS to retain its separation and independence from other bodies and that it should be separate from the investigation of serious incidents and criminal allegations in order to maintain public trust and confidence.

117. The Scottish Government concluded that there was merit in retaining the distinct role of HMICS and that both complaints and criminal allegations, serious incidents and reviews of investigations should be handled by a single independent Commissioner – the Police Investigations and Review Commissioner.
118. No alternatives were considered for complaints handling reviews for Scottish Fire and Rescue Service.

ARRANGEMENTS FOR FUNDING

119. The Bill establishes a new simplified funding model under which the Scottish Ministers will agree a funding settlement which will be paid directly to the Scottish Police Authority and Scottish Fire and Rescue Service following the Parliamentary budget process. This means that the services will be subject to a single system of financial control the same as that which applies to other public services established and funded by central government.

Police funding

120. Total police revenue funding in 2011-12 is £1,370m. About two thirds of this funding is provided directly by the Scottish Government. As well as police grant to joint boards and unitary authorities, this includes funding for police pensions and for the SPSA and the SCDEA; the Scottish Crime Campus at Gartcosh, the PCCS; the Scottish Safety Camera Programme; the 1,000 additional officers; police information and communication technology (ICT); counter-terrorism; the police radio system (Airwave) and police national databases.

121. The remaining third is contributed by local authorities, who provide funding to their joint police boards and unitary authorities alongside the Scottish Government police grant.

122. The Bill will put in place simplified arrangements for funding the police service with 100% funding provided to the Scottish Police Authority by the Scottish Government. The Scottish Police Authority will hold the Chief Constable to account for the bulk of the expenditure but will be able to retain a proportion of the money to fund its own governance functions and the forensic service. The Scottish Police Authority will be responsible for preparing accounts to be audited by the Auditor General and for those accounts to be placed before the Scottish Parliament.

Fire and rescue funding

123. Expenditure on the fire and rescue service amounted to £372 million in 2010-11. This comprised £273 million in local government expenditure, and £39 million in central government support, including for the Firelink communications system, national learning and development and fire capital grant. A further £60 million supports the firefighter and new firefighter pension scheme costs.

124. The Bill will put in place simplified arrangements for funding the Scottish Fire and Rescue Service with 100% funding provided to the Scottish Fire and Rescue Service by the Scottish Government. The Scottish Fire and Rescue Service Board will hold the Chief Officer to account through the internal delegation of responsibilities for expenditure on fire and rescue services, and will be responsible for preparing accounts to be audited by the Auditor General and for those accounts to be placed before the Scottish Parliament.
Charging for services

125. The Bill gives the Scottish Police Authority and the Chief Constable powers to charge for providing police services in certain circumstances. This power is primarily intended to permit the continuation of charging for the policing of major sporting events and music festivals. The Bill also gives the Scottish Police Authority powers to provide other goods and services, including forensic services, ICT and training to other public bodies, as well as in specified circumstances to private organisations and individuals, and to charge for the provision of those goods and services in order to recover its costs. These are not new powers but instead update and clarify the powers currently contained in the 1967 Act, the 2006 Act and the Local Authorities (Goods and Services) Act 1970 as amended by the Local Government in Scotland Act 2003. Other more specific charging powers such as the power to charge for firearms licences are being continued through consequential amendments. The Scottish Ministers will expect the Scottish Police Authority to develop, publish and then regularly update guidance on charging for services, including a scale of charges, in consultation with relevant stakeholders, in order to ensure consistency in this area.

126. The Scottish Fire and Rescue Service will retain powers conferred on fire and rescue services by the 2005 Act to charge for various activities, which appear to be working effectively.

Consultation

127. There was general support for the proposal in the second consultation paper to simplify the funding arrangements for police and fire and rescue. Concerns were, however, expressed about the need for a transparent model for allocation of resources to local areas that took account of local demand factors and to prevent the transfer of resources to the central belt.

128. The need to ensure a fair transfer of assets and liabilities was highlighted.

129. There were mixed views on the delegation of budgets. ACPOS did not support fully delegated budgets to local commanders. Other responses range from calls for a limited budget to allow local commanders to contribute to local partnerships, to support for the COSLA view that control by local authorities of local budgets to deliver the local policing plan was necessary for effective local accountability.

Police funding – alternative approaches

130. The Scottish Government considered whether local authorities should retain some control over funding for the new service. This would mean funding for the new national service being assembled from 33 different sources. It would not best support the new national service which is designed to provide more efficient and equitable access to resources and capability across Scotland, based on need and linked to local and national outcomes. Neither would leaving funding decisions at a local level provide the best way of removing inefficiencies and providing clarity or consistency at a national and a local level.

131. Funding for national initiatives, priorities and organisations (SPSA and SCDEA) currently provided by the Scottish Government through Police Central Government funding will
also be consolidated and provided to the new Scottish Police Authority. The Scottish Government considered that retaining these funding streams at Government level, while transferring responsibility for providing the capabilities to the new service, would make for unnecessarily complex arrangements and would not provide a clear and transparent link between provision and financial accountability.

132. Overall, the Scottish Government considers that allocation of funding should be based on consistent assessment of national and community risk, and that this is best achieved by consolidating funding streams and aligning them with the new national governance and delivery structures.

Fire and rescue funding – alternative approaches

133. Local authorities currently provide revenue funding for the eight fire and rescue services. They have considerable discretion over these amounts, and there are differences in the levels of funding provided by the joint boards and the unitary authorities. The Scottish Government considered whether local authorities should retain some, or all, control over funding for the new service. However this would not best support the new national service which is designed to provide more efficient and equitable access to resources and capability across Scotland, based on need and integrated risk management planning and linked to local and national outcomes. Neither did the Scottish Government believe that leaving funding decisions at a local level would provide the best way of removing inefficiencies and providing clarity and consistency at a national and a local level.

134. The option of leaving the fire capital grant within local government, without the board structure, would not enable it to be allocated in a consistent way or make use of integrated risk management planning. The Scottish Government considers that the new Scottish Fire and Rescue Service is best placed to identify local and national need and allocate resources accordingly, with the Scottish Ministers retaining the power to make grant conditions.

135. Funding for national capability currently provided by the Scottish Government will also be consolidated and granted to the new Scottish Fire and Rescue Service, specifically for the National Fire College at Gullane and for Firelink, the national communications system. The Scottish Government considers that retaining these funding streams at Government level, while transferring responsibility for providing the capabilities to the new service would make for unnecessarily complex arrangements and would not provide a clear and transparent link between provision and financial accountability.

136. Overall, the Scottish Government considers that allocation of funding should be based on consistent assessment of national and community risk, and that this is best achieved by consolidating funding streams and aligning them with the new national governance and delivery structure.

Borrowing – police and fire and rescue – alternative approaches

137. No other alternative approaches to borrowing were considered. The Scottish Government expects the new bodies to be able to deliver their objectives within their allocated budgets and
concluded that, like other government funded services, they should not routinely require to resort to borrowing. However in order to provide an element of flexibility for the future the Scottish Government has included a provision to borrow with Ministerial consent.

**Assets – police and fire and rescue**

138. Schedules 4 and 5 of the Bill make provision for the transfer of the assets and liabilities currently owned by police and fire and rescue boards and unitary authorities and used for police and fire and rescue purposes when the functions transfer, by means of a transfer scheme.

139. The Bill also allows for assets currently owned by the Scottish Government used for police and fire and rescue purposes to transfer to the new Scottish Police Authority and Scottish Fire and Rescue Service.

**Alternative approaches – assets**

140. No alternatives were considered for the transfer of assets.

**WORKFORCE**

141. The Bill sets out arrangements for the appointment of police officers, firefighters and other staff to the new services. The Scottish Government’s policy is that staff transferring within the public sector should do so as far as possible without any detriment to the individual in accordance with the Cabinet Office’s Statement of Practice on Staff Transfers in the Public Sector. The Bill sets out arrangements for the transfer of police officers, firefighters and all other staff in post on the day the services are established to the new services retaining their terms and conditions on that date. Joint board staff will transfer by virtue of the Bill provisions; other staff will transfer by transfer schemes.

142. Under current arrangements, the Chief Constable or Chief Officer can require an officer to serve anywhere within the police or fire and rescue service area or, if agreed locally, a specific part of that area. In a single service model, the equivalent of the area would be the entire country. The creation of a single police and a single fire and rescue service creates more professional and career opportunities for officers and staff in both services to serve in a variety of roles across Scotland. One of the advantages of the single service is the greater flexibility that it will provide to deploy officers and assets wherever they are needed. However, the Scottish Government does not intend that reform should bring hardship to individual officers or staff at the time the new Police Service, Scottish Police Authority and Scottish Fire and Rescue Service are established. Any existing mobility arrangements will transfer with them to the new service restricted to their current force area. It will be for the leadership of the new service to negotiate any changes should it consider them necessary.

**Police workforce**

143. Police officers are office holders, not employees. This means their terms and conditions of service are primarily governed by legislation not employment law. Chapter 2 and Chapter 8 of the Bill set out the arrangements for the appointment of officers and for the making of
regulations in relation to their detailed terms and conditions of service. Chapter 9 sets out arrangements for the continuation of the Police Appeal Tribunal to hear appeals where an officer has been dismissed or demoted in rank following disciplinary proceedings.

144. The Bill provides that responsibility for appointing the Chief Constable will be for the Scottish Police Authority, subject to the agreement of the Scottish Ministers. The Scottish Government considers that this provides the right degree of separation between this key appointment and the Scottish Ministers.

145. Appointments to the offices of Deputy Chief Constable (DCC) and Assistant Chief Constable (ACC) will be made by the Scottish Police Authority following consultation with the Chief Constable. The Scottish Ministers anticipate that all appointments should be made following a fair and open competition. Appointments and promotions below the rank of Assistant Chief Constable will be for the new Chief Constable to determine in line with the regulations.

146. The Bill allows the Scottish Police Authority to employ staff who are under the direction and control of the Chief Constable to act in support of constables. These staff are to be known as police staff. It also allows the Scottish Police Authority to appoint staff to support it in its scrutiny role and to make arrangements for the provision of forensic services.

147. Section 95 and Schedule 4 of the Bill make arrangements for the transfer of police officers and staff to the new service. The following will apply:

- Police officers working in the eight police forces and SCDEA will transfer to the new Police Service of Scotland on the date the new service is established, to be under the direction and control of the Chief Constable, continuing to be governed by police regulations;
- Officers on secondment to SPSA will also transfer to the new service but any officer who is deployed to work on forensic services will be on secondment to the Scottish Police Authority;
- Officers on temporary service will remain on secondment and will have a right to return to the new service at the end of that temporary service;
- Any officer on secondment to any of the existing forces or SCDEA from a non-Scottish police force will remain on secondment but that secondment will be transferred to the new service; and
- Police staff in forces and SPSA will transfer to the Scottish Police Authority. The majority of these staff will be police staff transferred to work under the direction and control of the Chief Constable. Staff who work in forensic services or on the Scottish Police Authority’s scrutiny role will be Authority staff under the direction of the Scottish Police Authority.

148. Officers transferring to the new service will continue to be governed by police regulations and the Bill provides safeguards relating to mobility beyond current force areas. Any changes to police officer terms and conditions will continue to be subject to UK wide negotiation, provided by the Police Negotiating Board (PNB) at present.
149. It will be for the leadership of the new service to decide their approach for pay and the terms and conditions of service for new and existing police and Scottish Police Authority staff following negotiations through the trade unions; including whether to harmonise terms and conditions for staff previously employed by each of the eight existing authorities and joint boards and SPSA.

150. The Scottish Government will ensure that reform does not result in any detriment for members in respect of their pension scheme entitlements and will ensure police officers remain eligible for the Police Pension Scheme and police staff remain eligible to be members of the Local Government Pension Scheme (Scotland). There may be other changes as a result of wider public sector pension reform, but negotiations on this will be separate from the reform of the services.

Offences

151. The Bill re-enacts from the 1967 Act three offences committed by constables: absence from duty without reasonable excuse; neglect or violation of duty; and failure to return equipment. The first and last of these will carry the same penalties as in the 1967 Act. The specific offence of neglect or violation of duty will be subject to an increased maximum sentence of 5 years imprisonment, or to a fine, or both, if tried on indictment. This offence was only subject to summary proceedings under the 1967 Act, and any proceedings have therefore usually been taken on common law grounds to allow for a higher sentence. The policy intention is therefore to make prosecutions in relation to this offence easier by having a clear statutory offence with an appropriate penalty.

Consultation

152. Respondents to the second consultation including key stakeholders such as the Scottish Police Federation and the Association of Scottish Police Superintendents supported proposals on the retention of police officer and staff terms and condition and that officers and staff will retain their right to remain within their existing force area. The HMICS response notes that the proposals can be seen as recognising the concerns of existing staff and officers. There were however consistent calls across many responses on the need to harmonise police staff terms and conditions. This will be a matter for the Scottish Police Authority to determine in consultation with the trade unions.

Alternative approaches – police senior appointments

153. A number of respondents highlighted the need to make an early appointment of the first Chief Constable to allow him/her to play an active part in the transition to the new service. The Scottish Government considered whether the Scottish Ministers should make the first Chief Constable appointment to provide more planning time, but concluded that this would not provide the right degree of separation between the Scottish Ministers and the leader of the new service. The Scottish Government also considered that the relationship between the Chief and the Chair of the Scottish Police Authority would be crucial to the successful governance of the new service and that this would be assisted by the Chair leading the recruitment process.
Alternative approaches – Police Negotiating Board

154. The Scottish Government considered putting in place separate police negotiating arrangements for Scotland to replace the current UK wide arrangements in the Police Negotiating Board, but recognising that the current consensus within Scottish policing is that Scotland should remain within the UK wide negotiating structure, the Scottish Government is not proposing any changes to existing arrangements. The Scottish Government will however want to work with the Independent Chair of the PNB to ensure it continues to operate effectively in Scotland and meets the needs of Scottish policing. The Scottish Government will also need to take account of the implications for Scotland of any recommendations arising from Part 2 of the Winsor Review into the future of PNB.

Fire and rescue workforce

155. The Bill allows the Scottish Fire and Rescue Service to appoint staff to ensure that it remains sufficiently resourced and able to carry out its duties. The Scottish Fire and Rescue Service will, after negotiation with the trade unions, establish the terms and conditions which will apply for new officers and staff. The Scottish Ministers will be responsible for appointment of the first Chief Officer of the new service. Subsequent Chief Officers will be appointed by the Scottish Fire and Rescue Service Board, subject to the approval of the Scottish Ministers. The Scottish Ministers anticipate that all appointments should be made following a fair and open competition.

156. Reform will not change the status, or terms and conditions of service, of existing firefighters or support staff. The Bill sets out that all firefighters, officers, control room and support staff (including those on secondment to other bodies) employed by the Joint Boards, relevant staff employed by unitary authorities and the Scottish Government who are in post immediately before the new body is established should transfer to the new body on the day of establishment and should retain their terms and conditions of service on transfer. Once the new fire and rescue service is operational, any changes to terms and conditions, including harmonising the terms and conditions of service for support staff previously employed by each of the eight existing Fire and Rescue Authorities and Joint Boards, will be an issue to be negotiated between the Scottish Fire and Rescue Service and the trade unions.

157. National pay and conditions for firefighters and support staff up to area manager level are set by the National Joint Council (NJC) Scheme of Conditions of Service. The 11 roles covered range from firefighter to area manager (and their control room equivalents). Additional elements of pay and allowances rest with the employer and are determined locally. Similar arrangements are in place for brigade managers (“Principal Officers”). There are no plans to change these negotiation arrangements during transition to a single service. Any changes to existing pay scales, for example to align with existing public sector pay frameworks, will require discussions between the new body and the trade unions.

158. The Scottish Government will ensure that fire and rescue reform does not result in any detriment for members in respect of their pension scheme entitlements and that firefighters retain their right to be members of the New Firefighters Pension Scheme and control room staff and support staff remain eligible to continue to be in the Local Government Pension Scheme (Scotland). There may, of course, be other changes as a result of wider public sector pension
reform but negotiations on this will be separate from discussions around the reform of the fire and rescue services. Any Scottish Government staff who transfer to Scottish Fire and Rescue Service will no longer be eligible for membership of the Civil Service pension scheme. Arrangements will be put in place for a bulk transfer of these staff to the Local Government pension scheme.

Consultation

159. Respondents to the second consultation included key stakeholders such as the Fire Brigades Union and Unison. They supported proposals for the transfer of officers and staff to the new service although Unison expressed concerns in relation to workforce planning for control room staff and sought clarification around pensions and terms and conditions for support staff. There were however consistent calls across many responses on the need to harmonise staff terms and conditions. This will be a matter for the Scottish Fire and Rescue Service to determine in consultation with the trade unions.

Alternative approaches – fire and rescue workforce - National Joint Council (NJC)

160. The Fire (Scotland) Act 2005 gives the Scottish Ministers the power to set up Scottish arrangements for negotiating pay and conditions. The Scottish Government considered using these powers to set up separate arrangements to replace the existing UK wide arrangements in the National Joint Council (NJC). However the Scottish Government considers that decisions on how best to review future arrangements are best made by the Scottish Fire and Rescue Service Board in due course. The Bill is repealing these powers (section 49 and 50 of 2005 Act).

PLACING INDEPENDENT CUSTODY VISITING ON A STATUTORY FOOTING

161. Independent custody visiting was introduced into Scotland in 1999. Under this scheme volunteers attend police stations to check on the treatment of people held in custody and the conditions in which they are held. Currently police authorities and joint boards have responsibility for organising and overseeing the delivery of independent custody visiting, in consultation with Chief Constables. The Bill places the arrangements for independent custody visiting on a statutory footing, as is currently the case in the rest of the UK.

162. The UK ratified OPCAT\(^\text{17}\) in March 2009. It is an international human rights treaty which sets out the measures which should be in place to monitor the treatment of and conditions of detainees. It created a Sub-Committee for the Prevention of Torture (SPT) which has issued guidance on implementation of OPCAT. While OPCAT does not dictate the structure of provision, the SPT has set out key criteria that should be met, most importantly that the scheme should be independent and impartial, with its mandate and powers set out in statute. Independent custody visiting schemes are statutory in England & Wales and Northern Ireland.

163. The Bill places the arrangements for independent custody visiting in Scotland on a statutory footing, in line with the rest of the UK. It ensures that independent custody visiting in Scotland is OPCAT compliant, building as much as possible on the existing skills and expertise

\(^\text{17}\) OPCAT: http://www2.ohchr.org/english/law/cat-one.htm
across the custody visiting network. Duties which will be placed on the new Scottish Police Authority include:

- Ensuring that independent custody visiting schemes are in place and comply with Scottish Government guidance;
- Arranging publication of statistics and findings from custody visiting schemes; and
- Reviewing the arrangements for independent custody visiting as and when necessary and acting to address any issues.

Consultation

164. Proposals to put independent custody visiting on a statutory footing were broadly supported across all the respondents to the police reform proposals with wide acceptance that this will ensure this important service will continue to be delivered across Scotland.

Alternative approaches - independent custody visiting

165. No alternatives were considered as a statutory scheme of this nature is required to implement the Scottish Ministers’ obligations under OPCAT.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

166. The provisions reforming the Police Service of Scotland and the Scottish Fire and Rescue Service are not discriminatory on the basis of gender, race, age, disability, sexual orientation, transgender status, marital status or religion. An Equality Impact Assessment (EQIA) has been developed to better understand the issues that affect people in these groups, and any effects that the reforms may have. As part of this process, the first formal consultation sought views on potential impacts on equality. Officials also met with equality stakeholders, and equality and diversity leads and staff associations in the police and fire and rescue services, to obtain their insights and input into developing the EQIA.

167. Initial findings included the fact that both services’ workforces are predominantly male, with most female, disabled and ethnic minority staff being employed in support staff roles. As such, decisions affecting staff need to consider any impacts on these groups of people and implications on the diversity of the workforce. There are also a number of equality issues affecting communities, however reform will aim to help provide greater consistency in service delivery for equality groups throughout Scotland, and bring benefits in terms of economies of scale, best practice, shared budgets and resources. Key findings in relation to this include the need to retain and enhance the knowledge, relationships and current good work which has been taking place to address these issues; and to ensure that equality issues affecting communities are addressed going forward. Building relationships and effective local engagement, to understand the specific needs of individual communities, and the local impact of decisions affecting service delivery will be important going forward.
EQIA - Consultation

168. A draft of the EQIA was also included in the second consultation. Respondents welcomed the intention to allow those police and fire and rescue services which currently display good practice in service response and workforce issues across all the equality strands to lead the way in setting the equality agenda across the services. Responses will feed into further development of the EQIA and the findings will be considered as part of the transition process and operational delivery of the new services.

Human rights - police

169. The Scottish Government is committed to creating a modern, inclusive Scotland which respects, protects and realises human rights. The police have obligations across all their duties and powers under the Human Rights Act 1998. This will be continued under the new Police Service.

170. The police have a pivotal role in ensuring that people’s human rights are not infringed by others. They uphold the laws that, for example, protect people’s right to life (Article 2 ECHR), the right to respect for private and family life (Article 8), the prohibition of discrimination (Article 14) and the protection of property (Article 1 of Protocol 1). However, in performing this role the police are sometimes required to use force and/or to limit the right to liberty and security of individuals. Article 5 of the ECHR sets out the circumstances in which this can take place.

171. Given the above, the Scottish Government has carefully considered the effect of the Bill on human rights and considers that its provisions are compatible with the European Convention on Human Rights (ECHR).

172. The Bill makes no changes to the existing legal powers of the police to use force or to arrest or detain individuals and, in that respect, has no human rights implications. Nonetheless, provisions on the governance and accountability of policing; on independent complaints and investigations; on the provision of forensic services; and on Independent Custody Visiting will serve to enhance and protect human rights.

173. In terms of governance and accountability, the Scottish Police Authority will hold the Chief Constable to account for the performance and actions of the Police Service of Scotland, across the full range of policing. The Bill also provides more routine opportunities for the Scottish Parliament to consider and scrutinise policing by, for example, ensuring that the Scottish Policing Plan and Annual Reports of the Authority, HMICS and PIRC are laid before the Scottish Parliament. In its response to the second consultation, Amnesty International welcomed this.

174. The provisions of the Bill ensure that individuals continue to have recourse to an independent body, the PIRC, if they are not satisfied with the police’s handling of a complaint. This is consistent with the public’s right to an effective remedy as required under Article 13.
175. Articles 2 and 3 of ECHR protect the right to life and prohibit inhuman or degrading treatment. Taken together these Articles place a positive requirement on the state to investigate effectively incidents such as death or mistreatment where there is police involvement and to ensure both hierarchical and institutional independence in such investigations. The provisions of the Bill achieve this by establishing PIRC and giving it powers to investigate such incidents. It also supports Articles 2 and 3 by placing the arrangements for independent custody visiting, whereby volunteers attend police stations to check on the treatment of people held in custody and the conditions in which they are held, on a statutory footing.

176. The Bill establishes a forensic service which will be directly accountable to the Scottish Police Authority, rather than the Chief Constable, for its operation and performance. This provides an important separation between forensic and police investigations and in doing so, supports an individual’s right to a fair trial under Article 6.

**Human rights - fire and rescue**

177. There are no human rights issues raised through the Bill for fire and rescue services.

**Human rights – consultation**

178. In response to the consultation, organisations such as Amnesty International, the Scottish Human Rights Commission and the Human Rights Consortium Scotland, focused on the human rights implications of the proposals for a single Police Service of Scotland. They emphasised that reform provides an opportunity to embed human rights standards into the structure, policy and practice of policing in Scotland through, for example, explicit reference to human rights in the police purpose and oath. They also indicated that reform could enhance transparency and accountability; that there were useful lessons from the establishment of the Police Service for Northern Ireland; and that it was important that existing good practice on human rights was not lost in the process of reorganisation. Other responses highlighted the need for the composition of the Authority to include individuals who have the skills, experience and expertise to constructively challenge the Chief Constable (or agreed delegated chief officer) over the exercise of his or her powers across all types of policing.

179. Consultation responses showed wide support for the establishment of the Police Investigations and Review Commissioner (PIRC).

**Rural and island communities**

180. The Bill will have a positive impact on island communities, strengthening the connection between services and local communities by creating a formal relationship between each service and the 32 local authorities. The new roles of local commander and local senior officer will afford the three island local authorities a much greater role in the shaping of service priorities and delivery of local outcomes than would have been the case with joint boards on the mainland. The Bill will also ensure more equal access to specialist support and national capacity where it is needed.
181. The objective of police and fire and rescue reform is to protect and improve local services. Under new services, the majority of policing and fire and rescue services will continue to be delivered locally. The Bill provisions on local plans will help to ensure that the design and delivery of local services are tailored to the areas they serve, reflecting the particular needs of rural communities where appropriate and directed towards the distinct priorities of those areas.

Local government

182. As outlined, the Bill will create a new formal relationship between the services and local authorities, involving many more local councillors and better integrating with community planning partnerships.

183. Local government currently has a range of statutory functions including duties to:

- Appoint senior officers and set the terms of such appointments;
- Oversee the work of the Chief Constable / Officer and hold them to account;
- Control the budget for the force / service and provide the Chief Constable / Officer with necessary resources;
- Make arrangements to secure best value and report publicly on performance, in accordance with statutory guidance;
- Be informed of policing / fire and rescue provision in their area and call for reports from the Chief Constable / Officer in relation to particular policies; and
- Keep themselves informed of the manner in which the Chief Constable / Officer deals with complaints made by a member of the public.

184. Police and fire and rescue authorities also carry out a number of administrative functions, in particular handling finances, procurement and contractual issues (and in some cases clerking joint boards) but the discharge of these functions may be delegated to officials or to the Chief Constable and Chief Officer who may in turn arrange for the discharge of such functions by their staff.

185. For 30 of the 32 local authorities, these statutory functions are currently exercised by 6 regional joint boards, which cover between 3 and 12 local authority areas and are made up of representatives from those constituent areas. With the repeal of the Police (Scotland) Act 1967 and the creation of the Scottish Police Authority, local authorities will cease to be police authorities, whilst changes to the Fire (Scotland) Act 2005 mean that local authorities will cease to be fire and rescue authorities. In their place, the Bill creates a new, direct and formal relationship between the national services and each of Scotland’s 32 local authorities, involving many more local councillors in monitoring and challenging the services locally and better integrating service provision with community planning partnerships.

186. Responsibility for appointing senior officers, estates, assets and staff of joint boards and unitary police and fire and rescue authorities will transfer to the Scottish Police Authority and Scottish Fire and Rescue Service respectively. As covered in paragraph 119, funding for both services will no longer fall to local government. Although the management of these assets and
resources will transfer, the role of local authorities in working with the services to shape service
design and delivery will be strengthened. The provisions will bring engagement and influence
closer to communities than is the case for those 30 local authority areas currently covered by
regional joint boards. This shift from regional to local engagement and monitoring will better
align with arrangements for community planning and the development of Single Outcome
Agreements. The benefits of co-terminous boundaries enjoyed by the two unitary police and fire
and rescue authorities - Fife and Dumfries and Galloway - in helping facilitate effective and
efficient partnership working will be adopted across Scotland.

Sustainable development

187. As with other public bodies in Scotland the new services will be subject to the
requirements of the Climate Change (Scotland) Act 2009 and as such will be required to
contribute to and report on the achievement of ambitious carbon reduction targets to reduce
Scotland’s emissions of greenhouse gases by 80 per cent by 2050, with an interim target for 2020
of at least 42 per cent reductions in emissions.

188. The creation of single services will provide the opportunity to take a strategic approach to
reducing energy-use, minimising waste and reducing transport.

Conclusion – fit with the wider public sector

189. The Scottish Government established the Commission on the Future Delivery of Public
Services, led by Dr Campbell Christie, in November 2010. The Commission was asked to
undertake a strategic review of public service delivery in Scotland and to provide a road-map to
guide the future reform of public services. The Commission was tasked specifically to make
recommendations that would improve the quality of public services in Scotland and ensure the
lasting financial sustainability of public service provision given the significant challenges ahead.

190. In June 2011, the Commission published its conclusions stating that the four key
objectives of a reform programme must be to ensure that:

- Public services are built around people and communities, their needs, aspirations,
capacities and skills, and work to build up their autonomy and resilience;
- Public service organisations work together effectively to achieve outcomes;
- Public service organisations prioritise prevention, reducing inequalities and
promoting equality; and,
- All public services constantly seek to improve performance and reduce costs, and are
open, transparent and accountable.

191. The Scottish Government’s response to the Christie Commission report was published on
21 September 201118. The Scottish Government committed itself to a public service reform
programme which, over the term of this five-year Parliament, will intensify the focus on
improving service outcomes for the people of Scotland. It will be built on four pillars:

18 Scottish Government’s response to the Christie Commission report –
http://www.scotland.gov.uk/Publications/2011/09/21104740/0
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

- A decisive shift towards prevention;
- Greater integration of public services at a local level, driven by better partnership, collaboration and effective local delivery;
- Greater investment in the people who deliver services through enhanced workforce development and effective leadership; and
- A sharp focus on improving performance, through greater transparency, innovation and use of digital technology.

192. Police and fire and rescue reform is one important element of that public sector reform programme, which is being developed following the principles of all four pillars of public sector reform.

193. There is a clear case for structural reform of police and fire and rescue. The performance of our vital frontline services depends on it, as there is strong evidence that creation of a single police and a single fire and rescue service is the best way to safeguard the vital frontline services communities depend on. The planned reforms will improve performance by retaining local services for local communities while giving all parts of Scotland access to national expertise and assets whenever and wherever they are needed. The new services will enhance partnership working at a local level by establishing strong, formal relationships between each service and each of Scotland’s 32 local authorities. Local officers will be designated for each local authority area to work with them, and other partners, to meet local priorities. In this new arrangement more local councillors will have a say in shaping services in their area. At a national level too, the Scottish Parliament will have more opportunities to scrutinise the performance of services and hold them to account.

194. The Scottish Government’s response to the Christie Commission also stressed the importance of public money being spent wisely to achieve better outcomes and improve value for money. In police and fire and rescue reform, estimated savings of £130 million per year can be achieved by making sure money is spent on the frontline and not on unnecessary duplication across eight services. Single services for Scotland are the best way to protect communities from cuts by freeing up resources for frontline policing and fire and rescue services.
POLICE AND FIRE REFORM (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Scottish Parliament’s Standing Orders, in relation to the Police and Fire Reform (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

BACKGROUND

3. The purpose of the Bill is to create a single police service and a single fire and rescue service. The Bill sets out the governance arrangements and framework for the new services. In addition, it provides:

   - a modern purpose for the police service and updated oath for constables;
   - a statutory framework for the delivery of police and fire and rescue services and appropriate scrutiny and oversight arrangements; and
   - arrangements for the transfer of existing officers and staff to both services.

4. To facilitate the establishment of single services the Bill abolishes the existing unitary police and fire authorities (Fife and Dumfries and Galloway) and the 6 joint police and joint fire boards which are established by amalgamation schemes made under the provisions of the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005 by bringing together a number of local authorities (who are individual police and fire authorities under the enabling legislation) to form joint boards.

5. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum.

Outline of Bill provisions

6. The Bill is in 3 Parts. Part 1 deals with police, Part 2 deals with fire and rescue and Part 3 deals with general provisions. The Bill also includes 7 schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill.

This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012
Part 1 Police Reform

7. **Part 1** largely replaces the legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, and puts in place a new modernised framework for policing. The Bill also repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland to rename it and extend the provisions in that Part to provide for more robust scrutiny of policing.

8. Police officers are office holders, not employees. This means their terms and conditions of service are set out in statute rather than being governed primarily by employment law. It is for this reason that the bill sets out detailed arrangements for the establishment of the Police Service and the appointment etc. of constables, including, in section 49, the power for the Scottish Ministers to make regulations governing the appointment and terms and conditions of service of police officers. The Scottish Government anticipates that the regulations made under this section will largely replicate those currently in force under the 1967 Act.

Part 2 – Fire Reform

9. **Part 2** amends the Fire (Scotland) Act 2005 to establish the Scottish Fire and Rescue Service and transfers to it fire-fighting, fire safety and other functions under that Act.

Part 3 – General

10. **Part 3** makes a number of general provisions relating to subordinate legislation, minor and consequential amendments to other legislation and commencement.

APPROACH TO USE OF DELEGATED POWERS

11. The Bill contains a number of delegated powers provisions which are explained in more detail below. In deciding whether these provisions should be specified on the face of the Bill or be included in subordinate legislation, the Scottish Government has carefully considered the importance of each matter against the need to:

- Ensure sufficient flexibility to respond to changing circumstances and to make changes quickly in the light of experience without the need for primary legislation; and

- Allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation.

General subordinate legislation provision

12. Section 120 contains general provisions about subordinate legislation. It provides for different provision to be made for different purposes and permits the powers to be used to make supplementary, incidental, consequential, transitional, transitory or saving provisions as the Scottish Ministers consider appropriate. Subordinate legislation made under the provisions relating to the Police Investigations and Review Commissioner will be subject to the procedures
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

set out in section 103 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by paragraph 22(11) of schedule 6 to this Bill. Subordinate legislation made under the provisions introduced by Part 2 of the Bill will be subject to the procedures set out in section 88 of the Fire (Scotland) Act 2005.

13. An order made under section 10(2), an order made under section 11(5), an order made under section 41D(1) of the 2006 Act (to be inserted by section 67 of the Bill), orders made under paragraphs 7A(8) or 7B(4) of schedule 4 to the 2006 Act (to be inserted by paragraph 22(13)(b) of schedule 6 to the Bill) and an order made under section 121 containing provisions which add to, replace or omit the text of an Act are subject to the affirmative procedure. No procedure is specified for commencement orders, orders to appoint days for staff and constables to transfer to the new services, staff, constables and property transfer orders and schemes. All other powers are subject to the negative resolution procedure.

DELEGATED POWERS

14. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

PART 1 – POLICE REFORM

Section 5(1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers
Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: no procedure

Provision

15. Section 5(1) requires the Scottish Police Authority (the Authority) to comply with any direction given by the Scottish Ministers.

16. The power cannot be used for directions in relation to a specific operation being or to be carried out by the Police Service, or the way in which the Police Service is carrying out (or is to carry out) a specific operation.

Reason for taking power

17. This power enables the Scottish Ministers to direct the Authority to undertake particular actions which are in the wider public interest or to address significant concerns about the operation of its functions or the policing of Scotland.

18. The Authority will be responsible for a significant proportion of the Scottish Budget and an important area of public policy. It is therefore appropriate, as is common in wider Scottish Government public bodies policy, for the Scottish Ministers to have a power to direct the Authority which will be exercised only under exceptional circumstances. The Scottish Ministers have no power of direction over the Chief Constable.
Choice of procedure

19. No Parliamentary procedure applies, however the directions are required to be published and laid before the Scottish Parliament.

Section 10(2) – Power to modify the declaration for appointment of an individual as a constable

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure

Provision

20. Section 10 provides for an individual to be appointed to the office of constable only where the individual has made a declaration before a sheriff or justice of the peace. Sub-section (2) enables the Scottish Ministers to modify that declaration by order.

Reason for taking power

21. This power is considered necessary and appropriate to enable the Scottish Ministers to modify the declaration if required for whatever reason. Under the 1967 Act the declaration is included in secondary legislation. As part of the framework for a new single service the Scottish Government considered that the declaration should be modernised and placed on the face of the Bill. The order making power provides the flexibility to further amend the declaration in future without the need for primary legislation.

Choice of procedure

22. An order made under this provision will be subject to affirmative procedure. This is appropriate as any change to the declaration would be an amendment to the primary legislation.

Section 11(5) – Power to add and remove ranks

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure

Provision

23. Section 11(1) provides the ranks which a constable may hold in the Police Service of Scotland. Subsection (5) enables the Scottish Ministers to add or remove ranks, but only where that rank is below that of assistant chief constable.

Reason for taking power

24. This power is considered necessary and appropriate to ensure that the Scottish Ministers can facilitate organisational change within the Police Service of Scotland, either by adding or deleting ranks to respond to changing operational requirements.
Choice of procedure

25. Regulations made under this provision will be subject to affirmative procedure. This procedure is appropriate given the list of ranks appears on the face of the legislation. Furthermore, the regulations will also be subject to statutory consultation to ensure the views of those directly affected by the regulations are considered by the Scottish Ministers.

Section 15(2) – Power to prescribe types of service as being “temporary service” and to make further provisions as necessary.

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary Procedure: negative procedure

Provision

26. Section 15 makes provision for constables to be engaged in service outwith the Police Service on temporary service (or secondment), with the consent of the Chief Constable. Under section 15(2)(a) the Scottish Ministers can, by regulations, prescribe types of service as “temporary service”, and under section 15(2)(a) make whatever further provision they consider appropriate. A constable on temporary service is to continue to hold the office of constable, but does not have the powers and privileges of a constable unless they remain under the direction and control of the Chief Constable or the nature of the temporary service means it remains appropriate for them to retain their police powers. At the end of the temporary service, a constable is entitled to revert to the Police Service in the rank in which they were serving immediately before the period began and to be treated as if the constable had continued to serve in the Police Service for the purposes of the constable’s rate of pay. Subsection (2)(b) enables the Scottish Ministers to make further provision in this respect as they consider appropriate.

Reason for taking power

27. As police officers are office holders and their terms and conditions of service are set by statute it is necessary to make statutory provision to enable those officers to work outwith the Police Service whilst they remain police officers. Over time the types of temporary service are likely to change and there needs to be flexibility to make any changes without the need for primary legislation. This power enables the Scottish Ministers to ensure that a police officer is able to undertake temporary service with a wide range of other employers or services and for that range of services to change over time to take account of newly established bodies or to facilitate new types of joint working. It is preferable to have the capacity to do this without the need to await a suitable vehicle in primary legislation and providing for this in secondary legislation means that it will be possible to make arrangements for temporary service as best serves the Service, without the need for primary legislation.

Choice of procedure

28. Regulations made under these provisions will be subject to negative procedure. In essence the effect of the order is to define the types of service which are to be considered as temporary service and to make clear the conditions that attach to that service. This procedure is appropriate given the administrative nature and detail of these regulations and the probability of the power being used regularly as a result of the negotiation of terms and conditions.
Section 49 – Power to make regulations as to the governance, administration and conditions of service of constables and police cadets

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure

Provision

29. Section 49 gives the Scottish Ministers powers to make regulations for the governance, administration and conditions of service of constables (including special constables) and police cadets. Sections 50 to 54 set out in more detail the areas in which regulations can be made. These cover appointments; promotions; probation; efficiency and effectiveness; restrictions on private life or business interests; resignation; retirement; conditions of service; duties; disciplinary procedures; and personal records. Section 55 requires the Scottish Ministers to consult and share a draft of the regulations with the Chief Constable, the Authority, the staff associations and where appropriate the Police Negotiating Board for the United Kingdom and section 56 allows regulations to make provision for the delegation of functions.

Reason for taking power

30. These provisions are necessary as police officers are office holders and not employees. Their terms and conditions of service are therefore largely set in secondary legislation rather than through a contract of employment governed by employment law. Although cadets are not police officers they are appointed with a view to becoming officers and their terms and conditions are therefore broadly equivalent and are provided for through regulations. The Scottish Government anticipates that the first set of regulations made under section 49 of this Bill will be largely the same as those currently in operation under the 1967 Act, updated to take account of the establishment of a single police service. Regulations will be amended from time to time following appropriate statutory consultation and formal negotiation with the Chief Constable, the Authority and the staff associations. That, and the detailed technical and administrative nature of the material that will be included in these regulations and the need to have flexibility to amend at regular intervals, means that it is not thought appropriate to incorporate these matters in the Bill.

Choice of procedure

31. Regulations made under these provisions will be subject to negative procedure. This procedure is appropriate given the administrative nature and detail of these regulations and the probability of the power being used regularly as a result of the negotiation of terms and conditions.
Section 63, new section 33A:- Power to prescribe what is a “serious criminal offence” for the purposes of investigation by the PIRC

Power Conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure

Provision

32. Section 63 inserts section 33A into the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act). Section 33A provides for the general functions of the Police Investigations and Review Commissioner. Section 33A(2)(b) gives the Scottish Ministers power to prescribe offences as being a serious criminal offence for the purposes of section 33A(1)(b)(i).

Reason for taking power

33. The Commissioner will investigate any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence. This will be done under the direction of the appropriate prosecutor, and will include offences resulting in death or serious injury, or other offences prescribed by regulations.

34. This power could be used to expand the types of offences that the Commissioner may investigate under the direction of the appropriate prosecutor without the need for amending primary legislation.

Choice of procedure

35. Regulations made under this provision will be subject to negative procedure. The power only categorises an offence as a serious criminal offence which the appropriate prosecutor may then direct to the PIRC to investigate; the appropriate prosecutor is not obliged to order an investigation, nor would the outcome of the investigation be influenced as a result. Negative procedure therefore provides the appropriate degree of scrutiny.

Section 65 – Power to specify other circumstances as being serious incidents involving the police

Power Conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative procedure

Provision

36. Section 65 inserts section 41B into the 2006 Act. Section 41B(1)(b)(ii) and 41B(1)(c) provide respectively the Scottish Ministers with power to specify additional types of weapon which may have been used, and other circumstances which constitute a serious incident involving the police, for the purposes of investigation by the Commissioner.
Reason for taking power

37. The Commissioner will investigate serious incidents involving the police including incidents where firearms or other weapons are used by the police, where direct or indirect contact with the police may have contributed to death or serious injury, or any other circumstances as specified in regulations.

38. This power could be used to expand the types of incidents involving the police which would be considered serious and may be investigated by the Commissioner without the need for amending primary legislation.

Choice of procedure

39. Regulations made under this provision will be subject to negative procedure. The power categorises a matter as being a serious incident involving the police which the Commissioner may then investigate; the outcome of the investigation would in no way be influenced as a result. Negative procedure therefore provides the appropriate degree of scrutiny.

Section 67 – Power to make provision about investigations by the Commissioner

Power Conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative procedure

Provision

40. Section 67 inserts section 41D into the 2006 Act. Section 41D(1) gives the Scottish Ministers power to make provision about investigations by the Commissioner in relation to serious incidents involving the police and the investigations undertaken by the Commissioner in the public interest. The provision sets out what the regulations may cover in particular. This order is made under section 103 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by paragraph 22(11) of schedule 6 to this Bill.

Reason for taking power

41. This power will allow the Scottish Ministers to prescribe in the regulations such matters as: a requirement on the Chief Constable and the Authority to refer matters to the Commissioner; the circumstances in which the Commissioner must, may or need not carry out investigations; time limits for investigations; and the delegation of functions to the Commissioner.

Choice of procedure

42. Regulations made under this provision will be subject to affirmative procedure. This procedure is appropriate to allow the Scottish Parliament the opportunity to consider the detail of the form and procedures of investigations, the circumstances under which the Commissioner will carry out investigations and other matters relating to investigations by the Commissioner.
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

Section 71(2) – Power to appoint inspectors of constabulary

Power conferred on: Her Majesty the Queen
Power exercisable by: Order in Council
Parliamentary procedure: no procedure

Provision

43. Section 71(2) gives Her Majesty power to appoint such numbers of inspectors of constabulary in Scotland by Order in Council as the Scottish Ministers may determine.

Reason for taking power

44. The appointment by Order in Council provides for the appointment of an individual to be made without the need for new legislation whenever a new inspector is to be appointed.

Choice of procedure

45. The power will be subject to no procedure. This is suitable for administrative matters such as this and is consistent with the equivalent provision in the Police (Scotland) Act 1967. The Order in Council would be required to be laid before the Scottish Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Section 84(1)(b) – Power to specify the type of goods and services the SPA may provide

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

46. Section 84 makes provision for the Authority to provide goods and services to any other public body or office-holder. Subsection (1)(b) provides the Scottish Ministers with power to specify the type of goods and services that may be provided to persons other than public bodies or office holders, and the persons to which they may be provided.

Reason for taking power

47. This power provides flexibility around the type of goods and services that can be provided and the persons or bodies which are to receive them. Over time this list is likely to change and there needs to be flexibility to do this without the need for primary legislation.

Choice of procedure

48. An order made under this provision will be subject to negative procedure. This procedure is appropriate given the administrative nature of the provision and the likelihood of the power being used regularly.
Section 84(3)(b) – Power to specify the type of goods and services the Police Service may provide

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

49. Section 84 makes provision for the Authority, with the consent of the Chief Constable, to make arrangements for the Police Service to provide goods and services (other than police services) to any other public body or office-holder. Subsection (3)(b) provides the Scottish Ministers with power to specify the type of goods and services that may be provided to persons other than public bodies or office holders, and the persons to which they may be provided.

Reason for taking power

50. This power provides flexibility around the type of goods and services that can be provided and the persons or bodies which are to receive them. Over time this list is likely to change and there needs to be flexibility to do this without the need for primary legislation.

Choice of procedure

51. An order made under this provision will be subject to negative procedure. This procedure is appropriate given the administrative nature of this provision and the probability of the power being used regularly.

Section 97(1) paragraph (e) of definition of “international joint investigation team” – Power to specify an international agreement to which the United Kingdom is a party and in accordance with which an investigation team is formed

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

52. The definition of “international joint investigation team” lists 4 international agreements under which joint international agreements may be formed. Paragraph (e) of the definition gives the Scottish Ministers power to specify other international agreements to which the UK is a party for the purposes of section 24, 87, 88 or 93.

Reason for taking power

53. This power allows the Scottish Ministers to keep the definition of a joint investigation team in line with any changing international agreements, without the need for primary legislation.
Choice of procedure

54. An order made under this provision will be subject to negative procedure. It is expected that the necessary scrutiny, including any changes to devolved legislation, will already have been applied before the UK becomes a party to applicable international agreements and therefore the same level of scrutiny will not be appropriate here. Negative procedure therefore provides the appropriate level of scrutiny.

PART 2 – FIRE REFORM

Section 99, new schedule 1A, paragraph 2(4) – Power to modify minimum and maximum number of members of SFRS

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

55. Section 99 inserts Schedule 1A into the Fire (Scotland) Act 2005. Paragraph 2 provides for the Scottish Ministers to appoint members of SFRS. Subsection (4) provides that SFRS is to consist of no fewer than seven nor more than eleven members, including a chairing member. Sub-paragraph (4) provides power for the Scottish Ministers to amend by order the minimum and maximum number of board members.

Reason for taking power

56. These arrangements reflect current best practice on optimum board size and have flexibility built into them. It is considered appropriate that there should be power to amend the minimum and maximum number of board members if this proves necessary in the light of experience without requiring further primary legislation. Sub-paragraph (4) provides power for the Scottish Ministers to amend by order the minimum and maximum number of board members.

Choice of procedure

57. An order made under this provision will be subject to negative procedure. The power allows for altering the number of SFRS members without changing the structure or functions of SFRS, as agreed by the Scottish Parliament, in any way.

Section 99, new schedule 1A paragraph 3(d) – Power to specify persons of such other descriptions who may be disqualified from membership of the SFRS Board

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure
Provision

58. Paragraph 3 of new Schedule 1A of the 2005 Act describes persons who are disqualified from appointment and from holding office, as a member of SFRS. Sub-paragraph (d) of paragraph 3 gives the Scottish Ministers power to prescribe other descriptions of persons who should be disqualified from appointment.

Reason for taking power

59. This power is considered appropriate to ensure no conflict arises between the role of board members and any other role they may hold. It also allows the necessary ability to respond to new and emerging circumstance and legislation.

Choice of procedure

60. An order made under this provision will be subject to negative procedure, given its administrative nature.

Section 112, new section 41A(6) – Power to set the start date of the 3 year period to which the first strategic plan relates

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

61. Section 112 requires SFRS to prepare a strategic plan setting out how it proposes to carry out its functions during a period of 3 years. The plan sets out outcomes by reference to which the carrying out of its functions may be measured and any such other material relating to its functions or to any period as SFRS thinks fit.

Reason for taking power

62. Section 112 inserts section 41A into the 2005 Act. Sub section (6) of section 41A gives the Scottish Ministers power to appoint a day before which SFRS must endeavour to secure the approval of the Scottish Ministers to the strategic plan. The 3 year period to which the strategic plan relates is then defined as the 3 years starting on that day, as provided in subsection (2)(a) of section 41A.

63. The 3 year planning period will need to be set in accordance with when SFRS is established and the timing of any new or amended fire and rescue framework. It will also be necessary to take into account prevailing circumstances when SFRS is established and to allow SFRS sufficient time to prepare, consult on and submit a plan for approval. Given these variables, it is appropriate for the date to be set by the Scottish Ministers by order at a later date, in discussion with SFRS.
Choice of procedure

64. An order made under this provision will be subject to negative procedure. The start of the 3 year period is of an administrative nature and therefore affirmative procedure is unnecessary.

Section 116, new section 42A – Power to give SFRS general or specific directions
Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: no procedure

Provision

65. Section 116 inserts section 42A into the Fire (Scotland) Act 2005. The provision enables the Scottish Ministers to give SFRS general or specific directions.

Reason for taking power

66. This power enables the Scottish Ministers to direct SFRS to undertake particular actions which are in the wider public interest to address significant concerns about the operation of its functions.

67. SFRS will be responsible for delivering a core public service, and with it will have responsibility for a significant proportion of the Scottish Budget and an important area of public policy. It is therefore appropriate, as is common in wider Scottish Government public bodies policy, for the Scottish Ministers to have a power to direct SFRS which will be exercised only under exceptional circumstances.

Choice of procedure

68. No Parliamentary procedure applies, however the directions are required to be published and then laid before the Scottish Parliament.

Section 117, new section 43A – Power to appoint by Order in Council Inspectors of SFRS
Power conferred on: Her Majesty the Queen
Power exercisable by: Order in Council
Parliamentary procedure: no procedure

Provision

69. Section 117 gives Her Majesty power to appoint by Order in the Council a Chief Inspector of SFRS and such number of Inspectors as the Scottish Ministers may determine.
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

**Reason for taking power**

70. The appointment by Order in Council provides for the appointment of an individual to be made without the need for new legislation whenever a new Chief Inspector or Inspector is to be appointed.

**Choice of procedure**

71. The power will be subject to no procedure. This is considered to be an appropriate level of scrutiny for administrative matters such as this and is consistent with the equivalent provision in the Fire (Scotland) Act 2005. The Order in Council would be required to be laid before the Scottish Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

**PART 3 - GENERAL**

**Section 121 - Ancillary Provision**

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative / affirmative procedure

**Provision**

72. Section 121(1) enables the Scottish Ministers to make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in consequence of or for giving full effect to, any provision made by or under this Bill.

**Reason for taking power**

73. To enable the Scottish Ministers to adequately give effect to the provisions in this Bill.

**Choice of procedure**

74. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure. These procedures are typical for ancillary powers.

**Section 122 – Transitional Provision**

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

**Provision**

75. Section 122(1) enables the Scottish Ministers to make transitional, transitory and savings provisions in connection with the coming into force of any provision of this Act.
Reason for taking power

76. This order is necessary to allow for flexibility as provisions within the Bill are brought into force. Without the power, it may be necessary to return to the Scottish Parliament, through subsequent primary legislation, to deal with a matter which could be dealt with through this power. That would not be an effective use of resources by the Scottish Parliament or the Scottish Government. The power, whilst potentially wide, is limited to the extent that it can only be used if the Scottish Ministers consider it necessary or expedient in connection with the coming into force of any provision of the Bill.

Choice of procedure

77. This is a residual power that is included to ensure that any unforeseen obstacle to the transition to the Scottish Police Authority or to SFRS can be addressed. There are precedents for this kind of power, which is restricted by the fact that only transitional and transitory provision can be made. Bearing in mind the limited scope of the power, in terms of the subject matter and nature of the provision that can be made, it is felt that the negative procedure will provide sufficient Parliamentary scrutiny.

Section 124 – Commencement

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<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
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<tr>
<td>Power exercisable by:</td>
<td>order made by statutory instrument</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>no procedure</td>
</tr>
</tbody>
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Provision

78. Section 124(2) enables the Scottish Ministers to appoint days on which the provisions in the Bill come into force (other than sections 120, 121, 122 and 125 which come into force on the day after Royal Assent).

Reason for taking power

79. To enable the Scottish Ministers to appropriately commence the provisions in the Bill.

Choice of procedure

80. The power will be subject to no procedure which is standard for commencement powers.

SCHEDULES

Schedule 1 paragraph 2(4) - Power to modify the minimum or maximum number of members of the Scottish Police Authority

<table>
<thead>
<tr>
<th>Power conferred on:</th>
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<td>Power exercisable by:</td>
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<td>negative procedure</td>
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</tbody>
</table>
Provision

81. Schedule 1 paragraph 2 enables the Scottish Ministers to appoint members of the Scottish Police Authority. Sub-paragraph (1) provides that the Authority is to consist of no fewer than seven nor more than eleven members, including a chairing member. Sub-paragraph (4) gives the Scottish Ministers the power to change the minimum or maximum number of members.

Reason for taking power

82. These arrangements reflect current best practice on optimum board size and have flexibility built into them. It is considered appropriate that there should be power to amend the minimum and maximum number of Authority members if this proves necessary in the light of experience without requiring further primary legislation.

Choice of procedure

83. An order made under this provision will be subject to negative procedure. The power allows for altering the number of Authority members without changing the structure or functions of the Authority, as agreed by the Scottish Parliament, in any way.

Schedule 1 paragraph 3(h) - Power to specify persons of such other descriptions who may be disqualified from membership of the Scottish Police Authority

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative procedure

Provision

84. Paragraph 3 of schedule 5 describes persons who are disqualified from appointment or from holding office as a member of the Authority. Sub-paragraph (h) gives the Scottish Ministers power to prescribe other descriptions of persons who should be disqualified from appointment.

Reason for taking power

85. This power is considered appropriate to enable the Scottish Ministers to ensure that no conflict arises between the role of Authority members and any other role they may hold. It also allows the necessary ability to respond to new and emerging circumstances and legislation.

Choice of procedure

86. An order made under this provision will be subject to negative procedure, given its administrative nature.
This document relates to the Police and Fire Reform (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 16 January 2012

**Power exercisable by:** rules made by statutory instrument  
**Parliamentary procedure:** negative procedure

### Provision

87. Paragraph 4 of schedule 3 provides the Scottish Ministers with power to make rules pertaining to the police appeals tribunal procedure.

### Reason for taking power

88. The rules will set out in detail what are largely administrative provisions. It is not considered appropriate to include such detailed provisions in primary legislation.

### Choice of procedure

89. Rules made under this provision will be subject to negative procedure. This procedure is appropriate for detailed technical matters and is consistent with other types of court or tribunal rules.

Schedule 4 paragraph 2(1) – Power to appoint a day (or days) for the transfer of constables, staff, property, etc.

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** order made by statutory instrument  
**Parliamentary procedure:** no procedure

### Provision

90. Schedule 4 provides for the transfer of constables, staff and property etc. Paragraph 2(1) of schedule 4 gives the Scottish Ministers power to specify the date on which police constables and staff will transfer to the Police Service of Scotland or Scottish Police Authority.

### Reason for taking power

91. In preparation for the establishment of the service, it will be necessary to ensure that constables and staff transfer at the appropriate time. It may be necessary for different staff to transfer on different dates or for all staff to transfer on a particular date to support the smooth and effective transition to the new service. The date or dates cannot at this stage be specified as it will depend on work undertaken with and by the existing services and the result of timescales for transition. It is therefore appropriate for the date or dates to be set by order in due course.

### Choice of procedure

92. An order made under this provision will be subject to no parliamentary procedure as it is simply determining the date on which constables and staff will transfer in accordance with the provisions set out in the Bill and is therefore analogous with a commencement order.
Schedule 4 paragraph 11(1) – Power to make a staff transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Provision

93. Paragraph 3 and paragraph 10 of schedule 4 provide for the transfer of constables, joint board staff and employees of a local authority who are to be treated as police employees to the Police Service of Scotland or Scottish Police Authority on a day the Scottish Ministers may by order appoint.

94. Paragraph 11 of schedule 4 makes provision for the transfer to the Police Service of Scotland or the Authority of persons who are employed by a local authority and whose employment relates to the carrying out of functions conferred on the police service. The Scottish Ministers may make a staff transfer scheme which makes provisions for the transfer of such persons.

95. Sub-paragraph (3) of paragraph 11 provides that before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liability and obligations are to be transferred.

Reason for taking power and choice of procedure

96. The scheme will need to make detailed provision in order to capture all appropriate staff and ensure that they are dealt with in an effective and principled fashion. Individual local authorities will be best placed to set the arrangements for their own areas, subject to the approval of the Scottish Ministers. Bearing in mind the level of detail involved, and from the perspective of maintaining confidentiality, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Schedule 4 paragraph 16(1) – Power to make a police property transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Provision

97. To ensure a seamless transition to the Police Service of Scotland, the intention is that property belonging to the Scottish Ministers, local authorities, joint police boards or the SPSA can be transferred to the Authority or a local authority on such date as the Scottish Ministers specify.

Reason for taking power and choice of procedure

98. Paragraph 16 of schedule 4 provides a power for the Scottish Ministers to make a police property transfer scheme which makes provision for or in connection with the transfer to the Authority of property, rights, liabilities and obligations currently belonging to the Scottish
Ministers, local authorities, joint police boards or the SPSA, and which relate to the Authority’s functions or police functions.

99. The scheme will need to make detailed provision in order to capture all property, rights, liabilities and obligations and ensure that they are dealt with in an effective and principled fashion. Local authorities, joint police boards and the SPSA will be best placed to set the arrangements for their own areas, subject to the approval of the Scottish Ministers. Bearing in mind the level of detail involved, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

**Schedule 4 paragraph 17 – Power to make a local authority property transfer scheme**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* scheme  
*Parliamentary procedure:* no procedure

**Provision**

100. Paragraph 17 of schedule 4 provides a power for the Scottish Ministers to make a local authority property transfer scheme, which makes provision for or in connection with the transfer to a specified local authority, rather than the Authority, of property, rights, liabilities and obligations currently belonging to a specified joint board.

**Reason for taking power and choice of procedure**

101. As for police property schemes, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

**Schedule 5 paragraph 1 – Power to appoint a day (or days) for the transfer of staff, property, etc.**

*Power conferred on:* the Scottish Ministers  
*Power exercisable by:* order made by statutory instrument  
*Parliamentary procedure:* no procedure

**Provision**

102. Schedule 5 provides for the transfer of staff, property etc. Paragraph 1 of schedule 5 gives the Scottish Ministers power to specify the day or dates on which SFRS staff will transfer to the Scottish Fire and Rescue Service.

**Reason for taking power**

103. In preparation for the establishment of the service it will be necessary to ensure that SFRS staff transfer at the appropriate time. It may be necessary for different staff to transfer on different dates or for all staff to transfer on a particular date to support the smooth and effective transition to the new service. The date or dates cannot at this stage be specified as it will depend on work undertaken with and by the existing services and the result of timescales for transition. It is therefore appropriate for the date or dates to be set by order in due course.
Choice of procedure.

104. An order made under this provision will be subject to no parliamentary procedure as it is simply determining the date on which SFRS staff will transfer in accordance with the provisions set out in the Bill and is therefore analogous with a commencement order.

Schedule 5 paragraph 3 – Power to make a staff transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Provision

105. Paragraph 2 of schedule 5 provides for the transfer of all joint board staff to SFRS on a day the Scottish Ministers may by order appoint.

106. Paragraph 3 makes provision for the transfer to SFRS of persons who are employed by a local authority or are members of the staff of the Scottish Ministers and whose employment relates to the carrying out of functions conferred on SFRS. The Scottish Ministers may make a staff transfer scheme which makes provisions for the transfer of such persons.

107. Paragraph 4 sets out the effect on a contract of employment of a staff transfer scheme. Sub-paragraph (9) provides that, before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liability and obligations are to be transferred.

Reason for taking power and choice of procedure

108. The scheme will need to make detailed provision in order to capture all appropriate staff and ensure that they are dealt with in an effective and principled fashion. Individual local authorities and staff of the Scottish Ministers will be best placed to set the arrangements for their own areas, subject to the approval of the Scottish Ministers. Bearing in mind the level of detail involved, and from the perspective of maintaining confidentiality, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Schedule 5 paragraph 5 – Power to make an SFRS property transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Provision

109. To ensure a seamless transition to SFRS, the intention is that property belonging to the Scottish Ministers, local authorities and joint fire and rescue boards can be transferred to SFRS on such date as the Scottish Ministers specify.
110. Paragraph 5 of schedule 5 provides a power for the Scottish Ministers to make an SFRS property transfer scheme which makes provision for or in connection with the transfer to SFRS of property, rights, liabilities and obligations currently belonging to the Scottish Ministers, local authorities and joint fire and rescue boards, and which relate to SFRS functions.

Reason for taking power and choice of procedure

111. The scheme will need to make detailed provision in order to capture all property, rights, liabilities and obligations and ensure that they are dealt with in an effective and principled fashion. Local authorities and joint fire and rescue boards will be best placed to set the arrangements for their own areas, subject to the approval of the Scottish Ministers. Bearing in mind the level of detail involved, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Schedule 5 paragraph 6 – Power to make a local authority property transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Provision

112. Paragraph 6 of schedule 5 provides a power for the Scottish Ministers to make a local authority property transfer scheme, which makes provision for or in connection with the transfer to a specified local authority, rather than SFRS, of property, rights, liabilities and obligations currently belonging to a specified joint board.

Reason for taking power and choice of procedure

113. As for SFRS property schemes, it is not thought that these matters could practicably be dealt with on the face of the Bill, or that they require the scrutiny of the Scottish Parliament.

Schedule 6, paragraph 22(13)(b) - Power to apply provisions of the Bill etc to staff of the Police and Investigations Review Commissioner
Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: affirmative procedure

Provision

114. Paragraph 22(13)(b) of Schedule 6 provides for the Scottish Ministers to apply any provisions of the 2012 Act to the constables or other persons appointed by the Commissioner as members of staff under paragraph 7A of schedule 4 to the 2006 Act. This order is made under section 103 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by paragraph 22(11) of schedule 6 to this Bill.
Reason for taking power

115. The Commissioner’s staff may be seconded from police services in the UK or elsewhere or recruited directly. In order to carry out investigations staff members will have all the powers and privileges of a police constable.

116. This power may be used by the Scottish Ministers to apply provisions within the Act to the Commissioner’s staff such as those in relation to the functions of constables set out in section 20 of the Bill. For example, the duty to attend court to give evidence, or the duty to make such reports to the appropriate prosecutor as may be needed. Other provisions, such as section 22 which relates to failure to perform duty and section 23, failure to return equipment, may also need to be applied.

Choice of procedure

117. The order will be subject to affirmative procedure. This provides the appropriate level of Parliamentary scrutiny because the power would involve the application with modifications of primary legislation.

Schedule 6, paragraph 22(13)(b) - Power to apply enactments relating to investigation of offences to PIRC investigations

- Power conferred on: the Scottish Ministers
- Power exercisable by: order made by statutory instrument
- Parliamentary procedure: affirmative procedure

Provision

118. Paragraph 22(13)(b) of schedule 6 inserts section 7B into the 2006 Act and provides power to apply any enactment relating to investigations by constables to investigations by the Commissioner’s staff. This order is made under section 103 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by paragraph 22(11) of schedule 6 to this Bill.

Reason for taking power

119. The Commissioner’s staff will carry out investigations into a range of incidents involving persons serving with the police. Some will be under the direction of an appropriate prosecutor, others at the request of the Chief Constable or the Authority.

120. This power is in relation to investigations under the direction of an appropriate prosecutor into circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence including circumstances in which death or serious injury has resulted. Other types of serious criminal offences that the Commissioner may investigate will be defined in regulations (as set out in paragraphs above).

121. The Commissioner may designate a member of his staff to take charge of any investigation and other staff members to assist the member designated to take charge. As set out above in paragraph 39 these staff members will have the powers and privileges of a constable throughout Scotland. Investigations may include gathering evidence, questioning witnesses,
surveillance, and obtaining prints and samples. Part II of the Criminal Procedure (Scotland) Act 1995 sets out police functions in relation to, for example, questioning potential witnesses and obtaining samples.

122. The Scottish Ministers may use the power in 22(13)(b) to apply provisions such as those set out in the Criminal Procedure (Scotland) Act 1995 to investigations carried out by the Commissioner’s staff.

Choice of procedure

123. The order will be subject to affirmative procedure. This provides the appropriate level of Parliamentary scrutiny because the power would involve the application with modifications of primary legislation.
Justice Committee

4th Report, 2012 (Session 4)

Stage 1 Report on the Police and Fire Reform (Scotland) Bill

Published by the Scottish Parliament on 2 May 2012
# Justice Committee

4th Report, 2012 (Session 4)

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Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Roderick Campbell
John Finnie
Christine Grahame (Convener)
Colin Keir
Jenny Marra (Deputy Convener)
Alison McInnes
David McLetchie
Graeme Pearson
Humza Yousaf

Committee Clerking Team:

Peter McGrath
Joanne Clinton
Andrew Proudfoot
Christine Lambourne
The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

General

1. The majority of the Committee supports the general principles of the Police and Fire Reform (Scotland) Bill1.

Scottish Police Authority and Scottish Fire and Rescue Service Board

Role, size and composition

2. We are of the strong view that the primary function of the SPA and of the SFRS Board is to govern the new services and to hold the chief constable and chief fire officer to account.

3. We are not convinced that the Bill should specify a set number of either lay or local authority members to sit on the boards, as we believe that flexibility is required to ensure the most suitable individuals are appointed.

4. The Committee is reluctant to stipulate the size of the SPA and SFRS Board, as we believe that the quality and experience of their members are far more important than numbers. However, we lean towards the view that a board of fewer than 11 members would not provide the breadth of knowledge and experience required to demonstrate effective governance, nor would it allow for the vacancies and absences that will inevitably arise.

5. The Committee recommends that part of the Boards’ initial work should include suitable training for all members to ensure they are equipped to contribute effectively to the work of the boards.

6. The Committee agrees with witnesses that the SPA must be transparent in delivery of its functions, including holding its meetings in public and publishing its papers, to demonstrate accountability and gain trust, particularly with the public.

1 Alison McInnes MSP did not support the general principles of the Bill.
7. We believe that the same principles of transparency should apply to the SFRS Board.

Relationship between the SPA and SFRS Board and local government

8. We are not convinced that there is a need for a formal mechanism to be included on the face of the Bill to help resolve disputes between the national police or fire and rescue boards and local authorities.

9. The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms.

Power to specify the type of goods and services the SPA may provide

10. The Committee notes the Subordinate Legislation Committee’s concerns that the power to specify the type of goods and services the SPA may provide appears to be “very general”. On balance, however, we accept the Scottish Government’s reassurances that the power will only be exercised in certain circumstances and that the Scottish Parliament will have an opportunity to examine the related subordinate legislation.

Reserves

11. The Committee is unclear as to why the Bill does not give the SPA and SFRS the ability to accrue reserves. We therefore ask the Scottish Government to provide an explanation as to why this power, which was available to the police and fire and rescue authorities and joint boards, is being removed.

Role of the Scottish Ministers

12. The Committee believes there must be a balance between operational independence and democratic accountability of the police and therefore accepts the Scottish Government’s position that use of the power of direction may be necessary in very limited circumstances and in relation to non-operational matters only. Furthermore, we are not convinced that including a definition of operational independence on the face of the Bill would be helpful.

13. We do however acknowledge the genuine concerns of witnesses on this matter and would urge the Scottish Government to work with stakeholders to try to allay these fears, perhaps by developing guidance or a protocol and making use of suggested definitions of operational independence, such as that provided by the Scottish Police Federation, as a starting point.

Role of the Scottish Parliament

14. The Committee accepts that the move to national services and the abolition of local government authorities and boards places an onus on the Scottish Parliament to enhance and formalise its scrutiny of the police and fire and rescue services. Accordingly, we welcome provisions in the Bill requiring strategies and plans to be laid before the Parliament.

15. The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police.
16. The Committee agrees with the Finance Committee that effective post-legislative scrutiny of the move to single services will be crucial and would welcome a commitment by the Scottish Government to provide sufficient information to assist this process.

Priorities, strategic and local plans, and annual reports, including local scrutiny

17. The Committee notes that the chief constable is to be involved in preparation of the strategic and annual plans, but we are unclear as to exactly what “involve” means in practice. We therefore seek clarification on this and on why there is no similar requirement to involve the chief constable in the preparation of the strategic police priorities.

Local accountability and scrutiny

Local budgets

18. The Committee believes that, in the interests of transparency and accountability, a “snapshot” of resource allocation within local authority areas as of 1 April 2013 should be given to local authorities so that they can measure any future changes, such as the transfer of funds, assets, and human resources.

19. The Committee would welcome clarification as to whether, in practice, local authorities will have a degree of influence over local police resources.

20. The Committee notes that funding for additional police officers is currently provided by local authorities. The Scottish Government has indicated that there appears to be no reason why this cannot continue under the Bill. The Committee seeks clarification on how this would work in practice.

Rank of local commander and local senior officer

21. The Committee agrees with the Local Government and Regeneration Committee that the rank of local commander and local senior officer is not significant, and endorses the view that the knowledge and relationships that they build will be a more significant factor in negotiations on resources.

Local scrutiny

22. The Committee does not believe that the manner in which local authorities are to scrutinise the local plans should be included on the face of the Bill, as we believe this would be too prescriptive and would not allow any flexibility for local authorities to develop scrutiny mechanisms best suited to their own local areas.

23. However, the Committee agrees that guidance for local authorities on this matter would be helpful and therefore supports the Scottish Government’s plan to develop such guidance, informed by the outcomes of the pathfinder projects, which are currently underway. We urge the Scottish Government to ensure that this guidance is available for local authorities in time for them to put in place any scrutiny mechanisms before the single services become operational.
Community planning
24. The Committee is not convinced by the argument put forward by some witnesses that the statutory duty to participate in local community planning should be extended to the chief constable and chief fire officer and is satisfied that this is a role more suited to local commanders and local senior officers.

25. The Local Government and Regeneration Committee considered in more detail witnesses’ views on how the new services could engage with the public and recommended that local commanders and local fire officers should develop strategies for engaging with the public on policing and fire services. The Committee seeks the views of the Scottish Government on this matter.

Assets and liabilities
26. The Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint boards will be redistributed.

Implementation

Appointment of the chief constable and chief fire officer
27. The Committee agrees with the overwhelming evidence that the chief constable and chief fire officer should be appointed as early as possible, and certainly before the proposed date of December 2012.

28. We note that the first chief fire officer may be appointed by the Scottish Ministers and would urge that this is undertaken as soon as possible.

29. The Committee urges the Scottish Government to consider the options suggested by witnesses and others, with a view to a chief constable being in place at the earliest opportunity, while ensuring that the independence and robustness of the process is not undermined.

Outline business cases
30. The Committee seeks clarification from the Scottish Government as to (a) when the full business cases for the police and fire and rescue services will be completed, and (b) whether, in principle, the annual budgets for the services will be adjusted on the basis of the full business cases.

31. The Committee notes witnesses’ concerns regarding the ability to achieve the projected savings contained in the outline business cases within the expected timescales. Therefore, we seek clarification as to the impact of the projected redundancies of civilian posts on the front line.

Value Added Tax
32. Regardless of whether the cost of VAT is to be met by the police and fire and rescue services or whether alternative arrangements are in place, the Committee is concerned at the possibility of a significant annual recurrent loss from the Scottish budget. The Committee urges the Scottish Government to pursue with HM Treasury all possibilities to resolve this issue, for example, (a) by treating the Police Service of Scotland in a similar way to the Police Service of Northern Ireland, and/or (b) by giving local authorities the capacity to contribute to police
and fire budgets, so as to help clarify that the new bodies can “draw upon local
taxation”.

Cross-border arrangements
33. The Committee asks the Scottish Government to provide an update on the
outcome of discussions with the UK Government regarding negotiations on cross-
border arrangements.

Policing

Failure to perform duty
34. The Committee seeks clarification as to why the Scottish Government feels
that it is necessary for the offence of neglect or violation of duty on the part of a
constable to be prosecuted under solemn procedure, when witnesses have argued
that this matter can be adequately dealt with under common law.

Police appeals tribunal
35. On balance we are persuaded by the argument that police appeals tribunal
should have membership composing solicitors and advocates, in the interests of
ensuring that proceedings are impartial and determined by an appropriately
qualified body.

Retirement of senior officers
36. The Committee notes the concerns of witnesses on the provision in the Bill to
require a chief constable, a deputy chief constable or an assistant chief constable
to retire in the “interests of efficiency or effectiveness”, and asks the Scottish
Government to consider and respond to these concerns.

Forensic services
37. The Committee accepts the Scottish Government’s rationale behind giving
the Scottish Police Authority the responsibility to provide forensic services so as to
create a “sterile corridor” between police investigations and forensic investigations.

38. We do, however, seek clarity on how this will work in practice, and in
particular whether forensic services will still be required to attend a crime scene
where requested to do so by the police service.

39. The Committee recommends that the Bill should include a provision
specifying that forensic services should be supplied to the Police Investigations
and Review Commissioner at no cost.

Complaints and investigations
40. The Committee seeks clarity on how the relationship between the Lord
Advocate and the Police Investigations and Review Commissioner would work
regarding criminal investigations, and in particular as to the role of the PIRC in
relation to serious incidents involving the police. We further seek the Scottish
Government’s views on comments by some witnesses that the power of the PIRC
in relation to public interest investigations is too wide.

41. As with the chief constable and chief fire officer, we consider that the PIRC
should be appointed as early as possible to enable their investigating team to be in
place before 1 April 2013, but that the appointments process must be both independent and perceived to be independent.

42. The Committee also seeks clarification as to whether the Scottish Government intends the PIRC to be a self-contained body or whether its staff will be seconded from the police.

43. The Committee agrees that the PIRC should have qualified privilege to protect him or her from defamation proceedings, as suggested by the Police Complaints Commissioner for Scotland.

44. The Committee invites the Scottish Government to clarify whether it considers there to be sufficient independent oversight of the PIRC’s complaints handling procedures.

Independent custody visiting
45. The Committee is broadly content with provisions on independent custody visiting. However, we note some witnesses’ concerns about the potential for access to be denied and invite the Scottish Government to clarify whether it is satisfied that this is consistent with international obligations.

Human Rights
46. The Committee notes the good practice from Northern Ireland in relation to embedding human rights within all aspects of policing and recommends that the Scottish Government gives consideration to the Bill being more explicit on human rights.

Fire and rescue

Fire and rescue functions
47. The Committee accepts that it would be helpful for the rescue aspect of the fire and rescue service’s functions to be clarified to a greater degree, but does not believe that this should necessarily be included in the Bill. We therefore ask the Scottish Government to discuss with fire bodies where best to clarify or codify their rescue functions, such as in the Fire and Rescue Framework or the next Fire (Additional Function) (Scotland) Order.

Fire officer and staff issues
48. The Committee notes the comments of the Fire Brigades Union and the Chief Fire Officers Association Scotland regarding the provision in the Bill which removes section 49 (on negotiation arrangements in relation to conditions of service) from the Fire (Scotland) Act 2005. We therefore invite the Scottish Government to explain the rationale for removing this provision.
INTRODUCTION

Parliamentary scrutiny

49. The Police and Fire Reform (Scotland) Bill\(^2\) was introduced in the Scottish Parliament on 16 January 2012. The Parliament designated the Justice Committee as lead committee to report on the general principles of the Bill at Stage 1, and the Local Government and Regeneration (LGR) Committee as secondary committee.

50. The Justice Committee issued a call for written evidence on the Bill, to which it received 43 written submissions and seven supplementary responses. The Committee took evidence on the Bill at five meetings between 28 February and 27 March, hearing from a range of police and fire bodies, unions, inspections, complaints and finance organisations, and police and fire authorities and joint boards, as well as the Cabinet Secretary for Justice.

51. The LGR Committee agreed to focus its scrutiny on those parts of the Bill relating to the arrangements for local authorities and implementation of local policing and fire service arrangements.\(^3\) It took evidence on 21 February and reported on 19 March.

52. The Finance Committee reported on the Financial Memorandum on the Bill on 20 March\(^4\), while the Subordinate Legislation Committee published its report on the Delegated Powers Memorandum on 22 March\(^5\).

Background to the Bill

The Police in Scotland

53. The earliest form of policing in Scotland was the duty of watch and ward, carried out by burgesses in burghs from at least the 12\(^{th}\) century. Scotland’s first constables were appointed in 1617, and in 1800 Glasgow was the first burgh in the UK to establish a police force along modern lines. The Burgh Police (Scotland) Act 1833 gave powers to Scottish burghs to create police forces, if they had not already done so; this meant that an individual act of parliament to form a specific police force was no longer required.\(^6\) Throughout the 19\(^{th}\) and into the 20\(^{th}\) centuries, the police service was largely seen as a responsibility of local government.

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\(^2\) Police and Fire Reform (Scotland) Bill, as introduced (SP Bill 8, Session 4 (2012)). Available at: [http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Bill_as_introduced.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Bill_as_introduced.pdf).


\(^6\) Police Information Centre. Website. Available at: [http://www.police-information.co.uk/policeinscotland.html](http://www.police-information.co.uk/policeinscotland.html) [Accessed 27 April 2012].
54. In 1960, a Royal Commission was appointed to review the constitutional position of the police throughout Great Britain. Its terms of reference were to consider and make recommendations on: (a) the constitution and functions of local police authorities; (b) the status and accountability of police forces, including chief officers; (c) the relationship of the police with the public and dealing with public complaints, and (d) remuneration of constables. The Commission reported in 1962 and recommended securing a more effective system of control and accountability over the police, by moving towards a more centralised model. It had two main concerns with the existing arrangements: (a) the problem of controlling chief constables, and (b) the lack of technical competence and an inadequate system of inspection within police authorities.

55. The Police (Scotland) Act 1967 (the 1967 Act) was informed by the work of the Royal Commission and remains to this day the legislation underpinning policing in Scotland. The 1967 Act created the ‘tripartite’ sharing of responsibility for policing in Scotland between the Secretary for State, police authorities or joint police boards, and the chief constables of each of the forces. It has been argued that the main mechanism for obtaining ‘policing by consent’, the principle by which police forces operate with the support and co-operation of the public, has been through the tripartite system.

56. The police authorities or joint police boards, which are made up of local councillors, have responsibility for the following:

- setting the budget for their force;
- appointing senior police officers (with the agreement of the Scottish Ministers);
- determining the numbers of police officers and civilian support staff for their area;
- appointing civilian support staff; and
- playing a role in securing Best Value and continuous improvement within their force.

57. While the 1967 Act does not refer to the term ‘operational independence of chief constables’, this concept has become “common currency amongst those

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9 A joint police board supervises a police force covering several local authority areas. A police authority covers only one local authority area. Both joint police boards and police authorities have the same functions.

10 Dr Kenneth Scott. (2011) Presentation. Police Accountability and Police Reform. Available at: [www.gla.ac.uk/media/media_195261_en.doc](http://www.gla.ac.uk/media/media_195261_en.doc) [Accessed 27 April 2012].

concerned with and commenting on policing in Scotland”.12 The Scottish Government’s online publication on police powers and functions explains:

“Scottish Ministers retain the overall responsibility for policing policy. Police authorities and joint police boards are responsible for setting police budgets and ensuring that best value is attained for the public purse. Chief constables are responsible for the operational aspects of policing within their force areas.”13

58. Police forces in Scotland are established under the 1967 Act. The current structure of eight police forces in Scotland dates from local government regionalisation in 1975. The eight forces are: Central Scotland Police; Dumfries and Galloway Constabulary; Fife Constabulary; Grampian Police; Lothian and Borders Police; Northern Constabulary; Strathclyde Police, and Tayside Police. The forces vary substantially in terms of size, area, population and levels of funding.

59. From 1975, the forces reflected geographically the regional tier of local government, with the exception of the Lothian and Borders force, which covered two regional council areas, and Northern Constabulary, which covered Highland Region and the Island Authorities of Orkney, Shetland and Comhairle nan Eilean Siar (Western Isles). Following the most recent local government reorganisation in 1996, when regional and district councils were abolished and replaced with a single tier of 32 local authorities, the direct link between local government boundaries and the police service all but disappeared. However, Fife Council and Dumfries and Galloway Council continued to cover the same geographical areas as their constabularies.

60. With devolution in 1999, the majority of policing functions were transferred to Scotland.14 The tripartite arrangements remain unchanged, except that the functions of the Secretary for State were passed to the Scottish Ministers.

61. Police forces are currently funded by the Scottish Government and local authorities. The requirement on local authorities to match central government funding to a formula is no longer in place. However, in practice most local authorities have continued to match central government funding at a ratio of 49 per cent from local government to 51 per cent from central government. Funding is also provided by the Scottish Government for national policing services provided by the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA), and for other national priorities, such as police ICT and counter terrorism.15

14 The police functions that remain reserved under the Scotland Act 1998 are those relating to the Firearms Acts 1968 to 1997, immigration and national security.
62. Before the 2007 Scottish Parliament elections, the Scottish National Party included in its manifesto a commitment to deliver 1000 additional police officers (to reach a number of 17,234). This policy was given effect through the Scottish Budget and Spending Review 2007 and the Scottish Government has since continued its commitment to maintain police numbers at a minimum of 17,234. The economic downturn has resulted in significant budget cuts to the public sector in Scotland, including to the police, which has increased the pressure for some sort of structural reform which would allow frontline policing at current levels to be maintained. It is against this backdrop that a number of reviews into policing and its structure have been conducted over recent years. Many of these are discussed below.

63. In January 2008, the then Justice Committee of the Scottish Parliament conducted an inquiry into the effective use of police resources, which concluded that resources were inadequate to meet policing commitments at that time, including the Scottish Government’s proposal for an increase of 1000 officers. The inquiry also highlighted other areas where improvements could be made in the operation and governance of the police, and recommended that the Scottish Government initiate an independent review of the role and responsibilities of the police in Scotland “to ensure that we have a service that is fit for the 21st century”.

64. Later that year, the Cabinet Secretary for Justice invited Her Majesty’s Inspectorate of Constabulary for Scotland (HMICS) to conduct an independent review of policing in Scotland, as recommended by the then Justice Committee. This review noted that policing in Scotland is a “relatively expensive concern costing more than £1 billion per annum” and that “forces are facing increasing financial pressures, arising both from current commitments and from a lack of robust costing of new demands”.

65. HMICS published a discussion paper in 2011, this time on the governance and accountability of policing in Scotland, which highlighted “weaknesses in police governance and accountability which have perpetuated since the 1962 Royal Commission and which, it is contended, must be redressed in supporting any future model of policing in Scotland”. HMICS was also critical of the inconsistent way in which national policing functions were exercised—through a mix of lead police force, collaborative arrangements, the Scottish Crime and Drug Enforcement Agency, and other less formal arrangements. The Scottish Government claims in its Policy Memorandum that the new governance arrangements proposed in the Police and Fire Reform (Scotland) Bill will address these weaknesses.

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19 Policy Memorandum, paragraph 73.
66. In 2011, the Scottish Government conducted two consultations on police reform. The first, ‘A Consultation on the Future of Policing in Scotland’, ran from 10 February until 5 May. It presented three options: a single service; a rationalised regional model; or retention of the existing eight service model with greater collaboration.

67. The consultation document outlined the Scottish Government’s position that the status quo was untenable and that reform was necessary. In his foreword to the paper, the Cabinet Secretary for Justice indicated that there was a growing consensus that the eight force structure was unsustainable given the financial situation. However, he did not make clear at that stage whether the Scottish Government favoured a single service or regional model.

68. While there was general agreement that the adverse economic climate required changes to policing in Scotland, the consultation did not produce a consensus on a particular policing structure. Of the 219 respondents, 35 per cent gave no view or said there was insufficient information to enable an informed choice on structure; 21 per cent chose a regional model; 27 per cent preferred the status quo, and 10 per cent opted for a single service structure. Key issues highlighted in responses included the need to (a) protect local policing in communities, (b) strengthen local accountability, and (c) put in place arrangements for national governance to avoid political interference in enforcing the law.

69. In July 2011, the Scottish Government invited comment from stakeholders on a draft Outline Business Case (OBC) for the reform of the police service, which had been developed by professionals, experts and stakeholders, building on work started in 2010 by the Scottish Policing Board. Each OBC used Target Operating Model (TOM) methods to assess the most efficient way of delivering the key service functions, and this was then applied to the three reform options. Non-financial benefits were also estimated by identifying a series of outcomes, applying weighting to them and ranking each option for reform in terms of their potential to deliver against these options. This exercise identified the single service structure as performing best in relation to non-financial benefits.

70. The police OBC concluded that substantial efficiency savings could be made regardless of force structure and that most of these savings could be realised within the first five years. However, it identified the single service option as achieving the most significant savings. The OBC assumes that a level of savings will continue over a projected 15-year period. The costs of reform are estimated to peak after five years, reduce the following year, and remain on a level for the projected 15-year period.

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23 The OBC describes a TOM as an optimum model for service delivery, allowing an informed assessment of the costs, benefits and risks associated with each option.
Fire and rescue services
71. The first organised public fire brigade in the United Kingdom was formed in Edinburgh in 1824 and, by the early years of the 20th century, there were over 180 municipal fire brigades operating in Scotland. The Fire Services Act 1947 established 11 fire brigades in Scotland and gave local authorities control of them through joint boards. This structure was streamlined to eight brigades in 1975 with the regionalisation of local government.24

72. The statutory framework governing the fire and rescue services was modernised in the Fire (Scotland) Act 2005 (the 2005 Act), which placed a greater emphasis on the rescue aspect of the services, and established local authorities as the fire and rescue authorities for their area.25 Scotland has two unitary fire boards: Fife, and Dumfries and Galloway, and six joint boards: Grampian, Tayside, Central, Lothian and Borders, Highland and Islands, and Strathclyde. As with the police, fire and rescue authorities and joint boards are made up of local councillors. They have responsibility for:

- establishing the fire and rescue services’ local strategic direction and aims, in conjunction with the fire and rescue service senior management team;
- ensuring accountability to the public for the fire and rescue service performance; and
- ensuring that the service is managed effectively, with probity and integrity.26

73. The majority of funding for the fire and rescue service is paid through revenue support grant made available directly to the 32 local authorities.

74. The Scottish Government’s initial consultation27 on reform of the fire and rescue services ran from 10 February until 5 May 2011, parallel to that on police reform. It outlined the Scottish Government’s view that the eight brigade model could not maintain (or improve) performance and meet public expectations in the face of “unprecedented budget cuts” because of the way it was structured and organised. In the foreword to the document, the Minister for Community Safety made clear the Scottish Government’s preference for a single fire and rescue service. Views were sought on proposals to decentralise resources and support functions, and suggestions invited on improvements, accountability mechanisms, and the balance between national and local involvement.

75. There was general agreement among the 171 respondents that the number of fire and rescue services in Scotland needed to be reduced but, of those who expressed a preference, more chose a regional structure than a single structure.

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However, a majority of submissions suggested that there was insufficient information on which to make an informed decision on structure.  

76. Stakeholders were invited to comment on a draft fire and rescue service OBC\(^{29}\) in July 2011, which had been developed in the same manner as that of the police service, building on work by a Ministerial Advisory Group. TOM methods were used to assess the most efficient way of delivering the key service functions and assessing the three reform options: the status quo (with enhanced collaboration), a regional structure of three or four brigades, or a single fire and rescue service.

77. The fire and rescue service OBC, like that of the police, suggested that significant financial and non-financial savings would be achieved by reform, but that these savings would vary depending on which of the three structural options were selected. However, the OBC suggested that the single service model would produce the largest savings, both financial and non-financial.

Scottish Government joint consultation on the police and fire and rescue services

78. On 8 September 2011, the Cabinet Secretary for Justice announced to the Parliament the Scottish Government’s intention to introduce legislation to create a single national police service and a single national fire and rescue service, indicating this would deliver estimated savings of £130 million a year and £1.7 billion over 15 years.  

79. The Policy Memorandum on the Bill outlines the main issues raised during this consultation, including the need for more clarity in respect of local and national accountability mechanisms, the composition of the new oversight organisations, and the roles and responsibilities of local and chief officers.\(^{32}\)

80. A majority of political parties represented in the Scottish Parliament made commitments similar to those of the Scottish Government on establishing single police and fire and rescue services within their manifestoes for the 2011 election. It would appear that many of those organisations and individuals initially opposed to a single service model have since accepted that it is now inevitable. Despite any previous reservations, witnesses have engaged fully with the Committee’s Stage 1 scrutiny of the Bill and have appeared genuinely committed to making the new structures and processes work as effectively as possible. The Committee wishes to thank all of the witnesses and those who provided written submissions for their valuable contribution to Stage 1 scrutiny of the Bill.

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\(^{32}\) Policy Memorandum, paragraph 14.
Outline of the Bill

81. According to the Scottish Government’s policy memorandum, the main policy aims of the Bill are:

- to protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services;
- to create more equal access to specialist support and national capacity – like murder investigations team, firearms teams or flood rescue – where and when they are needed; and
- to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.33

82. The Bill has two main parts.

83. Part 1 largely repeals the legislation underpinning policing in Scotland, the 1967 Act, and puts in place a new modernised framework for policing. The Bill also repeals Chapter 1 of the Police, Criminal Justice and Public Order (Scotland) Act 2006 (the 2006 Act), which established the SPSA and the SCDEA. The Bill also amends Chapter 2 of the 2006 Act to rename the Police Complaints Commissioner for Scotland and add investigatory powers in certain circumstances.

84. Part 2 amends the 2005 Act to establish the Scottish Fire and Rescue Service and transfers to it fire fighting, fire safety, and other functions under that Act. Aside from centralisation, reforms to the fire and rescue services are less extensive than those of police services because they were significantly updated relatively recently through the 2005 Act.

85. Further background to the Bill and its overall aims are set out in the Policy Memorandum and explored further in the briefings produced by the Scottish Parliament Information Centre on the Bill34 and on the Financial Memorandum35.

GENERAL PRINCIPLES OF THE BILL

86. The Committee is required under Rule 9.6.1 of Standing Orders to report on the general principles of the Bill. The general principles of the Bill are to merge both the police and the fire and rescue services into single services, transferring the governance and oversight responsibilities of local authorities to new national boards. The key issue for the Committee in considering the general principles of

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33 Policy Memorandum, paragraph 3.
the Bill was whether the new national structures could deliver the services effectively throughout Scotland.

87. The general acceptance that reform is now inevitable\(^{36}\) led the majority of witnesses not to focus on the general principles of the Bill, but instead to make constructive suggestions on how it might be improved, and their comments are included throughout the report. Only two respondents to the Committee’s call for evidence made it absolutely clear that they remained opposed to the key principle of a single police force. UNISON Scotland stated that it “believes that the centralisation of police services in Scotland is wrong in principle”\(^{37}\), while Reform Scotland argued that the Scottish Government had “not provided sufficient justification for taking a service which has historically been delivered at a local level and running it from the centre”\(^{38}\).

88. The Committee looked at how the traditional role of local authorities would change under the Bill and whether this could hamper the services’ ability to deliver their functions locally. The Bill does not specify if, or how many, local authority members should sit on the national boards and removes responsibility for setting local budgets for the services from local authorities. It does give local authorities a clear role in approving the local plans to be produced by the new services, but is silent on how they should make arrangements for doing so and on scrutiny of the services more generally. The Committee explores these arrangements further in the later in this report.

89. A further consequence of centralisation appears, at this stage, to be the loss of the ability to recover VAT for the provision of services under the Value Added Tax Act 1994. The Committee considers that, while it is important to highlight this issue at this stage, we do not believe that it is of such significance as to affect our decision on the general principles either way. VAT recovery is considered in more detail later in our report.

90. While the Scottish Government argued that the connection between services and communities would be strengthened by the Bill, the Committee heard evidence that it would in fact erode the local authority role in policing and fire and rescue services. Professor Jim Gallagher of Nuffield College, Oxford, argued that the new local authority powers were much weaker than at present and questioned whether they provided greater accountability\(^{39}\), while Councillor Pat Watters, President of COSLA, agreed that local authorities would no longer have any “real powers” or “something that the police are accountable for to local communities”\(^{40}\). A number of witnesses suggested that some local accountability could be achieved if budgets were devolved to local authority level; this issue is considered in more detail later in the report.

91. However, there was a strong belief amongst many police and fire bodies that the changes would not be detrimental to local policing or fire and rescue services and indeed could benefit them. For example, Chief Constable Kevin Smith,

\(^{36}\) Paragraph 32 of this report.
\(^{37}\) UNISON Scotland. Written submission.
\(^{38}\) Reform Scotland. Written submission.
\(^{39}\) Professor Jim Gallagher. Written submission.
President of ACPOS, said “we and the Government agree absolutely with each other on the objectives of reform”\(^{41}\), while Brian Sweeney of the Chief Fire Officers Association Scotland stated “where a certain service has been bound administratively and financially by its borders and boundaries, the fact that they will be removed will offer a tremendous opportunity”\(^{42}\).

92. The Cabinet Secretary for Justice told the Committee he believed that the single services would “strengthen the links between police and fire and rescue services and the communities they serve by enabling individual local councils, not regional joint boards, to take on a new role at a national level and to shape services in the local area”.\(^{43}\)

93. In June 2011, the Commission on the Future Delivery of Public Services, chaired by Dr Campbell Christie CBE, proposed an “urgent, sustained and coherent programme of public service reform”.\(^{44}\) The Commission identified a number of priorities for public service reform, including concentrating efforts on delivering integrated services and recognising that effective services must be designed with and for people and communities—not delivered ‘top down’ for administrative convenience. The Scottish Government responded by committing to a public service reform programme over this session of the Parliament with an emphasis on, among other things, a shift towards prevention, greater integration of public services at a local level, effective leadership, and improved performance.\(^{45}\)

94. In its Policy Memorandum on this Bill, the Scottish Government states that police and fire and rescue reform is one important element of its public sector reform programme.\(^{46}\) However, UNISON Scotland argued that the proposals on police and fire and rescue reform are “exactly the sort of ‘top down’ approach the Christie Commission warned against”.\(^{47}\)

95. The Committee recognises there is an economic driver for reform. However, the majority of the Committee also accepts that reform of the police and fire and rescue services provides an opportunity to enhance service delivery across communities in Scotland. We are not convinced by the argument that, because policing and fire and rescue services have traditionally been delivered through local authorities, this structure should always remain. However, we do see a key role for local authorities in the new structure and an opportunity for them to determine their own mechanisms for involvement best suited to their local areas. Some of us think that some changes might be required to strengthen and secure their role. We explore these issues in more detail later in the report.

96. Therefore, the majority of the Committee supports the general principles of the Bill.
97. One member of the Committee was not convinced that local policing and fire and rescue services could be delivered successfully through a national structure and is concerned that local accountability is being lost in the Bill. That member therefore does not support the general principles of the Bill.48

Policy and Financial Memorandums

98. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. We consider that the Memorandum provides adequate detail on the policy intention behind the provisions in the Bill and explains why alternative approaches considered were not favoured. The Committee was also content with the details of the consultations conducted by the Scottish Government prior to introduction of the Bill.

99. The same rule also requires the lead committee to report on the Financial Memorandum (FM). While the Committee considers the FM and comments from the Finance Committee later in this report, we wish to highlight here that there were concerns amongst some witnesses regarding the figures contained in the outline business cases (OBCs) used to inform the FM.

Structure

100. The remainder of this report is structured around three overarching themes relating both to the police and fire and rescue services which arose in evidence gathered by the Committee. These are: national governance; priorities, plans and reports, including local scrutiny; and implementation. The final two sections of the report explore specific issues relating to provisions on the police and on the fire and rescue service respectively.

NATIONAL GOVERNANCE

101. The Bill removes the current tripartite arrangements and puts in place new arrangements for national accountability and governance.

102. The Policy Memorandum on the Bill states that “the Bill sets out a clear legislative framework to ensure effective national governance for policing and fire and rescue services across Scotland and makes clear statutory provision for the:

- role of the Scottish Police Authority (SPA) and the Scottish Fire and Rescue Service (SFRS) Board;
- composition of the SPA and SFRS Board;
- role of the chief constable and chief fire officer;
- role of the Scottish Ministers, and
- role of the Scottish Parliament.”49

103. A key theme arising in the evidence was the need to strengthen the national governance and accountability mechanisms set out in the Bill, including by

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48 Alison McInnes MSP.
49 Policy Memorandum, paragraph 72.
enhancing the role of some of these organisations and individuals. This is explored in more detail below.

The Scottish Police Authority and Scottish Fire and Rescue Service Board

Role, size and composition of the SPA and SFRS Board

104. The Bill establishes two new statutory bodies: the SPA and the SFRS.

105. The SPA’s main functions set out in section 2 of the Bill are to:

- maintain the Police Service;
- promote and support continuous improvement in the policing of Scotland; and
- hold the chief constable to account for the policing of Scotland.

106. The SFRS will replace the existing fire and rescue authorities and joint boards and all functions currently carried out by them will be transferred to the new body. It will provide fire and rescue services throughout Scotland and be governed by a Board. The chief officer of the SFRS will be held to account by the SFRS Board.

107. The SPA and SFRS Board will each consist of between seven and 11 members, appointed directly by the Scottish Ministers on the basis of relevant skills and expertise and in accordance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland.50

108. The Policy Memorandum states that the new services will be “governed” by the SPA and SFRS Board, while both of these bodies will also “hold to account” the chief constable and the chief fire officer, and “play a critical role in scrutinising the services”.51 It further states that “the Scottish Government recognises that local councillors, especially those with experience of police and fire and rescue services, will have much to offer the governance of the new services, and the appointments process will allow the Scottish Ministers to appoint a number of members to both on the basis of skills and expertise relating to local government”.52

109. The Policy Memorandum goes on to state that—

“The role of the SPA and SFRS Board is to ensure the effective delivery of policing and fire and rescue services across Scotland. As such, members are not attending meetings as representatives but to act in the best interests of the SPA and SFRS. There is therefore a potential conflict of interest that arises from representative membership and the Scottish Government has concluded the Bill should not include any statutory requirement for representative members. Board members will be sought with a range of skills and expertise, including current or recent expertise of local government.”53

50 Policy Memorandum, paragraph 84.
51 Policy Memorandum, paragraphs 74, 75 and 95.
52 Policy Memorandum, paragraphs 74, 75 and 95.
53 Policy Memorandum, paragraph 84.
110. The Cabinet Secretary for Justice indicated in evidence to the Committee that the Scottish Government currently proposes a local authority membership of four for the SPA and SFRS Board.54

111. In its report on the Bill, the LGR Committee recommended that the SPA and SFRS Board should each consist of 14 to 16 members to “provide the flexibility to allow for sufficient democratic and regional representation, as well as allow for practical considerations, such as vacancies or absences”.55 It further agreed that local authority members should be appointed on merit through the public appointments process and that it was not necessary for a majority of board members to be from local authorities.56

112. The Committee noted differing expectations amongst witnesses as to the role of the SPA and SFRS Board. Some argued that the boards should primarily be governing bodies, overseeing and maintaining the police and fire and rescue services, while holding the chief constable and chief fire officer to account. These witnesses were broadly content with the size and composition of the board as proposed in the Bill.

113. Others took the view that the SPA and SFRS Board should take on more of a scrutiny role; these witnesses tended to favour a larger membership to ensure adequate local government involvement.

114. Robert Black, the Auditor General for Scotland, was content with the existing proposals on the basis that “the average number of members on a FTSE 100 company is about 11, which resonates with the Bill”. He went on to say—

“I am comfortable with that order of magnitude, but it will only be possible … if we are clear that it is a board of governance, not a board of representation. If it becomes a board of representation, it will inevitably become much larger and, consequently, operate at two speeds at once. At the first speed it will focus on the governance role, while at the second speed it will focus on the role of holding to account on behalf of communities, which is really difficult.”57

115. In his written submission, the Auditor General referred to an Audit Scotland report on the SPSA which found “that the composition of the SPSA Board (which was structured to reflect the local governance arrangements for policing) created tensions in the competing roles and duties of some of its members”.58

116. Brian Sweeney of the Chief Fire Officers Association Scotland said his organisation was also “broadly content on the membership of the national board”59

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58 Auditor General for Scotland. Written submission.
and Councillor George Kay from Fife Police, Fire and Rescue Committee preferred 13 members, but was “prepared to live with 11”\textsuperscript{60}.

117. Many of those witnesses who favoured a larger membership were local elected members, who had varying suggestions as to the optimum size of the board\textsuperscript{61}, but tended to the view that “councillors must be the foundation of the SPA and SFRS Board”\textsuperscript{62}.

118. Members of the Scottish Police Authorities Conveners Forum agreed that a minimum of 50 per cent of SPA members should be drawn from suitably experienced locally elected representatives.\textsuperscript{63} The Society of Local Authority Chief Executives shared this view but further argued that half of the board should be appointed by the Scottish Government and the other half by local government to create “a genuine partnership between national and local government”.\textsuperscript{64} Councillor Stephen Curran of Strathclyde Police Board stated that “diversity in the broadest sense is really significant” and is “an area that has been flagged up as a weakness in some police boards in policing generally”.\textsuperscript{65}

119. Reform Scotland believes that the SPA should be made up entirely of representatives of each of the 32 Scottish local authorities\textsuperscript{66}, but accepted the need for “people representing specialist national policing” along with Ministerial or senior civil servant representation on the board\textsuperscript{67}. Professor Jim Gallagher of Nuffield College, Oxford, was also of the view that the SPA could be a local government body—

“There is no reason in principle why a single force could not be part of local government. Rather than a quango appointed by Ministers, the SPA could be a local government body, consisting of elected councillors, perhaps with appointed members added. There would need to be rules about how the councillors were chosen, perhaps by a form of indirect election.”\textsuperscript{68}

120. Other witnesses favoured some representation from local elected members on the boards, but did not agree that they needed to be in the majority.\textsuperscript{69} Indeed, Deputy Chief Constable Gordon Meldrum, Director General of the Scottish Crime and Drug Enforcement Agency stated that “the strength of the SPA will be in its balance and blend of democratically elected representatives … and independents”.\textsuperscript{70}

\textsuperscript{61} Northern Joint Police Board, Highland and Islands Fire Board and Highland Council proposed a membership of 15 members, while COSLA and Dumfries and Galloway Council (Police and Fire and Rescue Service) suggested at least 15 members. Councillor Whyte of Lothian and Borders Police Board opted for between 15 and 18 members.
\textsuperscript{62} Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.
\textsuperscript{63} Scottish Police Authorities Conveners Forum. Written submission.
\textsuperscript{64} Society of Local Authority Chief Executives. Written submission.
\textsuperscript{66} Reform Scotland. Written submission.
\textsuperscript{68} Professor Jim Gallagher. Written submission.
121. A number of other witnesses were less concerned with the size or balance of membership on the boards and more with the skills and experience of members.\footnote{Chartered Institute of Public Finance and Accountability. Written submission.} For example, Richard Haigh of the Association of Principal Fire Officers Scotland said “it is not just about numbers, size and shape, but about the skill set and the expertise that are brought to the board”\footnote{Scottish Parliament Justice Committee. \textit{Official Report, 13 March 2012, Col 1125.}} while Professor John McNeill, the Police Complaints Commissioner for Scotland, told the Committee that his “primary concern is that the individuals on the Scottish Police Authority are competent, in the sense that they hold the command team to account”\footnote{Scottish Parliament Justice Committee. \textit{Official Report, 6 March 2012, Col 1078.}}. He went on to state that “there is a world of difference between hearing an account and holding to account” and that the national boards should concentrate on the latter.\footnote{Ibid.}

122. The Bill provides for the SPA and SFRS Board to establish “committees for any purpose” and for those committees to create sub-committees. Members of these committees and sub-committees may include individuals who are not members of the SPA or SFRS board.\footnote{Police and Fire Reform (Scotland) Bill, schedule 1 and schedule 1A to Fire (Scotland) Act 2005.}

123. Some witnesses, including the Scottish Police Federation and the Scottish Crime and Drug Enforcement Agency, told the Committee that to service any such committees or sub-committees the boards would need a larger membership.\footnote{Scottish Police Federation and Scottish Crime and Drug Enforcement Agency. Written submissions.}

124. The Northern Ireland Policing Board is made up of 10 elected members from the Northern Ireland Assembly appointed under a system of proportional representation, and nine independent members who apply through an advertisement and are selected by the Northern Ireland Department of Justice. Assistant Chief Constable Alistair Finlay of the Police Service of Northern Ireland confirmed to the Committee that the board of 19 members was sufficient to staff its six sub-committees. He said that the size of the sub-committees enabled “good dialogue … purposeful engagement and conversation” and indeed, that this was where much of the detailed work was done.\footnote{Scottish Parliament Justice Committee. \textit{Official Report, 6 March 2012, Cols 1051-1052.}}

125. The Cabinet Secretary for Justice told the Committee that the Scottish Government had opted for a board of up to 11 members on the basis of the Auditor General’s comments on the boards of the top FTSE companies. He pointed out that a large board would be “unworkable” and that he “was certain the issue should be quality, not quantity” of members, however, “we need sufficient membership not only to reflect the fact that this is a national service, but to take account of gender, ethnicity and Scotland’s geographical differences”. He said he was further not persuaded that the majority of the board should be local authority members, but would be “happy to take on board the committee’s advice” in relation to the size and composition of the boards.\footnote{Scottish Parliament Justice Committee. \textit{Official Report, 27 March 2012, Col 1232.}
Time commitment and salaries of SPA and SFRS Board members
126. The Committee was asked by the LGR Committee to consider views on “the need for clarity over the status of the part or full time nature of the SPA members”. 79 The Cabinet Secretary for Justice confirmed to the Committee that he expected positions on the boards would be part-time to allow those who have other roles and commitments to participate. 80 A Scottish Government official added that consideration was being given to the salaries of the board members but that these still had to be finalised. 81

Transparency of the SPA and SFRS Board
127. The Bill states that the SPA is expected to carry out its functions in a proportionate, accountable and transparent way. 82

128. The Committee heard evidence that the transparency of the workings of the SPA would be vital in providing a necessary link with the public. Sir Hugh Orde, President of the Association of Chief Police Officers, spoke of his experience as a previous chief constable of the Police Service of Northern Ireland, where transparency of the board was one of the most important areas in gaining the trust of the public—

“The policing board was, without question, independent and it had legitimacy, which was a vital factor. It could also, in law, hold me to account in public. We used to have 10 or 11 public meetings a year at which my senior management team and I would be held to account in front of television cameras—broadcast live if there was an exciting set of questions, not live if there was not. I would also be available afterwards for interview by the media. … The need for transparency is the main point.” 83

129. When asked whether the meetings of the SPA should be held in public and fully minuted, Chief Constable Smith of ACPOS said “anything less would be a deficit” 84, and Councillor Martin Greig of Grampian Joint Police Board made “a heartfelt plea for the SPA to meet in public and to publish its minutes, agenda and all of its business” 85.

130. The LGR Committee heard concerns that there was no reference in the Bill to any requirement for engagement between the SPA, local authorities and the public. 86 In its written submission to that Committee, the Scottish Police Federation said this “had the potential to create a disconnection” that could “harm local policing”. 87 Integrity4Scotland was also of the view that “adequate provision is not

81 Ibid.
82 The Police and Fire Reform (Scotland) Bill. Section 2(3).
84 Scottish Parliament Justice Committee. Official Report, 28 February 2012, Col 995
87 Scottish Police Federation. Written submission to the Local Government and Regeneration Committee.
included within the Bill for the people’s direct involvement in and control of the police services”.

Committee view

131. The Committee notes the differing views of witnesses in relation to the role, size and composition of the SPA and SFRS Board. We are of the strong view that the primary function of the SPA and of the SFRS Board is to govern the new services and to hold the chief constable and chief fire officer to account. We do not see the SPA and SFRS Board as bodies of local representation.

132. Notwithstanding these comments, the Committee agrees that the boards should have a balance of lay members and local elected representatives who can bring a range of experience, knowledge and perspectives to the table. We are not convinced that the Bill should specify a set number of either lay or local authority members to sit on the boards, as we believe that flexibility is required to ensure the most suitable individuals are appointed. We are of the view that all members should have equal status and should be appointed in the same manner (regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland, as proposed in the Bill).

133. The Committee is reluctant to stipulate the size of the SPA and SFRS Board, as we believe that the quality and experience of their members are far more important than numbers. However, we lean towards the view that a board of fewer than 11 members would not provide the breadth of knowledge and experience required to demonstrate effective governance, nor would it allow for the vacancies and absences that will inevitably arise.

134. The Committee welcomes the Cabinet Secretary for Justice’s statement that membership of the boards should take account of gender, ethnicity and Scotland’s geographical differences.

135. The Committee notes that the positions on the SPA and SFRS Board are likely to be part-time, but would suggest that the Scottish Government makes clear to candidates that, during the ‘setting up period’ members will have considerable demands placed on them. The Committee recommends that part of the Boards’ initial work should include suitable training for all members to ensure they are equipped to contribute effectively to the work of the boards.

136. The Committee agrees with witnesses that the SPA must be transparent in delivery of its functions, including holding its meetings in public and publishing its papers, to demonstrate accountability and gain trust, particularly with the public. We recognise that there may be occasions that necessitate consideration of items in private, but would urge that this be subject to a formal decision of the board.

137. We believe that the same principles of transparency should apply to the SFRS Board.

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88 Integrity4Scotland. Written submission.
Relationship between the SPA and SFRS Board and local government

138. The Bill does not place a duty on the SPA or the SFRS Board to establish formal mechanisms through which to engage with local authorities, which the Scottish Crime and Drug Enforcement Agency (SCDEA), amongst others, argued were needed “to ensure proper dialogue and discussion of finite police resources to meet both national and local demands.”

139. The LGR Committee also noted views of “many stakeholders” that there was a lack of clarity in the Bill in terms of ensuring that “there is a sufficiently robust and structured relationship between the national boards and local authorities”.

140. Councillor Kay of Fife Police, Fire and Safety Committee told the Committee that the issue that still needed to be addressed in the Bill was the communication between the SPA and local authorities, which he described as “crucial”. The SCDEA suggested that this could be achieved through establishment of a sub-committee of the SPA with responsibility for oversight in relation to national and local connectivity, similar to the Northern Ireland Policing Board’s community engagement committee. Deputy Chief Constable Gordon Meldrum from the SCDEA told the Committee that national accountability and local accountability could not each “sit in splendid isolation from the other”.

141. Councillor Whyte of the Lothian and Borders Police Board warned the LGR Committee of a possible “disconnect” between a national police board and local government if too much emphasis is placed on “centralised national issues” to “the detriment of local policing.”

142. Some witnesses highlighted concerns at the lack of detail in the Bill on how disagreements between national and local authorities regarding such matters as funding would be resolved. For example, Councillor Durham of the Scottish Fire Conveners Forum told the Committee that “given the level of savings that will have to be found in the years ahead, there are almost certainly going to be tensions between local aspirations for service provision and what the national plan might say” and that “if that happens there must be resolution”. He added that “ultimately, either the Parliament or the Ministers will have to engage in resolving disputes.”

143. Brian Sweeney of the Chief Fire Officers Association Scotland agreed that tensions will emerge between the national boards and local government and suggested that there might be “a natural ombudsman role for Her Majesty’s Chief Inspector of Fire and Rescue Authorities”. Councillor Blake from Dumfries and

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89 SCDEA. Written submission.
91 SCDEA. Written submission.
95 Ibid.
96 Ibid.
Galloway Council (Police and Fire and Rescue Authority) said that conflict between national government and local authorities regarding resources could be resolved through an element of devolved local budgeting flexibility\(^98\) (an issue which is discussed later in the report).

144. Chief Constable Smith of ACPOS said that there needed to be “direct connectivity between the local and the national”\(^99\) and explained this further in evidence to the LGR Committee—

“We want dispute prevention, rather than a complicated process of dispute resolution. Things will happen the way they happen just now—through effective relationships and through being able to speak to the next person up the chain. Many things will be resolved in the way that they are today—through effective dialogue and good relationships.”\(^100\)

145. Councillor Whyte agreed and said he did not think that any of his colleagues on the Scottish Police Authorities Conveners Forum would advocate a fixed dispute resolution mechanism as “the problem with those is that we would get into dispute resolution very quickly”.\(^101\)

146. The Cabinet Secretary for Justice told the Committee that any disagreements between the national boards and local government “will have to be dealt with by those who are involved at the time … it will depend on the nature of the problem” and that “representations could be made by the local authority to the police authority”.\(^102\)

**Committee view**

147. The Committee accepts the view expressed by some witnesses that including a formal dispute resolution mechanism in the Bill could encourage use of formal channels rather than retaining an element of flexibility to resolve such disagreements. We are not convinced that there is a need for a formal mechanism to be included on the face of the Bill to help resolve disputes between the national police or fire and rescue boards and local authorities.

148. We do however believe that further clarity on the relationship between the national boards and local authorities could help to avoid some of the disputes that witnesses suggest might occur. The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms (to be informed by the pathfinder work, which is discussed later in this report).

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Power to specify the type of goods and services the SPA may provide

149. Section 84(1)(b) provides that the SPA may provide goods and services of such type as the Scottish Ministers may by order specify to such other persons "as may be so specified".

150. The Subordinate Legislation Committee was concerned “that this power appeared to be very general in its terms, and (at its broadest) might be taken to enable the Scottish Ministers to make regulations permitting the Authority to supply goods and services of any description to any person". In its report on the Bill, that Committee explained that “the Scottish Ministers indicate that this power would only be exercised where they are satisfied that it was appropriate for particular goods and services to be supplied to particular categories of person, and that by making it exercisable by subordinate legislation then the Parliament also has an opportunity to satisfy itself as to the appropriateness of what is proposed”. The Scottish Government also said that they envisage that the power might be used, for example, to enable the SPA to charge overseas governments and police forces for the provision of forensic services.

151. The Subordinate Legislation Committee still however considered that the power in section 84(1)(b) was capable of being exercised “in a particularly broad manner so as to specify goods and services of any nature”. It further argued that “given the apparent intention of the Scottish Ministers is to permit the Scottish Police Authority to supply goods and services which are connected with its functions, … the power ought to be so drafted as to reflect that intention.”

152. The Committee notes the Subordinate Legislation Committee’s concerns that the power to specify the type of goods and services the SPA may provide appears to be “very general”. On balance, however, we accept the Scottish Government’s reassurances that the power will only be exercised in certain circumstances and that the Scottish Parliament will have an opportunity to examine the related subordinate legislation.

Reserves

153. The Police and Fire Services (Finance) (Scotland) Act 2001 currently allows police authorities, joint police boards and joint fire boards to carry forward unspent balances from one financial year to the next. In this way, reserves of up to 5% of revenue budgets can be held. However, the 2001 Act would be repealed by Schedule 7 of the Bill, and as a consequence, the SPA and SFRS will be unable to accrue financial reserves.

154. Concern was expressed regarding the loss of the ability to hold reserves, including by the Scottish Police Authorities Conveners Forum which argued that “the necessity of being able to hold and utilise reserves to smooth out unexpected

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105 Ibid.
operational demand is essential and well proven by current police authorities. The Chief Fire Officers Association Scotland had similar concerns regarding fire reserves—

"... the new service is not permitted to hold reserves, something which is recognised as sound financial management practice. These detrimental impacts on the service when compared to current practices are matters which we would ask the Scottish Government to consider when reviewing the proposed legislation and legal standing of the new single service."109

155. Her Majesty’s Inspectorate of Constabulary for Scotland suggested that for the first three years post-reform the police service should retain the ability to create and carry forward reserves and that this arrangement could be reviewed at the end of this period.110

156. A Scottish Government official told the Finance Committee that the majority of public services in Scotland are managed without reserves. He went on to say that the Scottish Government did “not think that the loss of capacity to hold reserves will impact adversely on either service” and “there ought to be enough scope for effective financial management within those budgets to manage without building up reserves.”111

157. The Committee notes the views of some witnesses that the ability to accrue reserves is sound financial practice. The Committee is unclear as to why the Bill does not give the SPA and SFRS the ability to accrue reserves. We therefore ask the Scottish Government to provide an explanation as to why this power, which was available to the police and fire and rescue authorities and joint boards, is being removed.

Role of the Scottish Ministers

158. The Policy Memorandum states that, while the Scottish Ministers will continue to be accountable to the Scottish Parliament for policing and fire and rescue services, the provisions in the Bill “provide a clear separation between the Scottish Ministers and the services by ensuring their role is primarily a strategic one.”112 The Scottish Ministers will be responsible for appointing members of the SPA and SFRS Board, approving the appointment of the chief constable and chief fire officer, and setting national budgets and strategic priorities.113

159. Section 5 of the Bill also requires the SPA to comply with any direction (general or specific) given by the Scottish Ministers and for such directions to be published and laid before the Parliament. Such a direction may not be given in respect of (a) a specific operation being or to be carried out by the police service, or (b) the way in which the police service carries out (or is to carry out) a specific operation.

109 Chief Fire Officers Association Scotland. Written submission.
110 Her Majesty’s Inspectorate of Constabulary for Scotland. Written submission.
112 Policy Memorandum, paragraph 87.
113 Ibid.
160. Section 116 of the Bill will amend the 2005 Act to allow the Scottish Ministers to give the SFRS general or specific directions that must be complied with. The Policy Memorandum states that “this new power of direction will not impact on the Scottish Ministers’ existing power of direction where there is a failure to act in accordance with the fire and rescue framework; this is retained as a distinct mechanism for enforcing adherence to the framework”.\(^{114}\)

161. The Policy Memorandum states that the Scottish Government did give consideration to whether a Ministerial power of direction was necessary but concluded that the power “is required to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary”. It further states that the Scottish Government had also considered specifying the circumstances in which the power might be used but concluded that this was “undesirable” and confirms that “like all such powers it would be used sparingly if at all”.\(^{115}\)

162. Some stakeholders were concerned that the powers of the Scottish Ministers within the Bill bordered on political interference. ACPOS said that the powers risked threatening the operational independence of the police, which the Scottish Government had appeared to be attempting to protect.\(^{116}\) Professor Jim Gallagher took the view that there were particular dangers in relation to increasing the powers of Ministers over policing, which did not apply to other public bodies—

“I am sure that present Ministers will want to have these powers so that they can make the police service run better: that is proper ambition, but such a wide suite of powers might also be misused. Such misuse may be unlikely, but it would happen, if at all, only insidiously and gradually. It might be better to draw some rather firmer boundaries around Ministers’ powers to affect operational policing to be as sure as possible that does not happen”.\(^{117}\)

163. COSLA questioned whether the Scottish Ministers’ power to set strategic police priorities (discussed in the next section of this report) might relate to operational matters\(^{118}\) and the Scottish Police Federation (SPF) considered that the provisions requiring the chief constable to police Scotland with regard to these priorities could “impinge on operational independence”. The SPF agreed that this provision for Scottish Ministers to set strategic police priorities, along with the requirement for the SPA to submit its strategic police plan to the Scottish Ministers for approval, could amount to “a shift in the mechanics of accountability and governance to the detriment of operational independence”.\(^{119}\)

164. Witnesses had particular concerns that the provision for Ministerial direction in section 5 could open the police service to accusations of political control or inappropriate Ministerial influence. The Scottish Police Authorities Conveners Forum argued that, “if one aim of the Bill is to keep policing separate from

\(^{114}\) See paragraph 193 of this paper for further details of Scottish Fire and Rescue Framework.
\(^{115}\) Policy Memorandum, paragraph 91.
\(^{116}\) ACPOS. Written submission.
\(^{117}\) Professor Jim Gallagher. Written submission.
\(^{118}\) COSLA. Written submission.
\(^{119}\) Scottish Police Federation. Written submission.
Ministerial control, then the general or specific power of direction does not provide the essential separation”. 120 Scottish Women’s Aid agreed—

“In terms of overall independence, accountability and decision-making powers of the Authority, we would question how this will be maintained if Ministers are to have a power of direction over the Authority, regardless of how little this power would be used in practice.”121

165. Her Majesty’s Inspectorate of Constabulary for Scotland also questioned why a Ministerial power of direction for the SPA was needed at all and suggested that the Parliament should be given a role in the scrutiny of any direction, in order to move from ministerial influence towards democratic accountability.122

166. The Association of Scottish Police Superintendents, amongst other witnesses, argued that safeguards were required regarding use of the power of direction to ensure that it cannot be misused.123 The Scottish Police Federation (SPF), for example, suggested that such safeguards could be achieved by amending the Bill so that “a direction may not be given in respect of any operation or on any issue which may affect an operational matter”.124 Others suggested that protection could be achieved by defining ‘operational’ in the context of this provision125 and Calum Steele of the SPF provided the Committee with a possible definition, which could be used as a starting point for discussions on the matter126.

167. Professor John McNeill, the Police Complaints Commissioner for Scotland, told the LGR Committee that he did not “subscribe to the myth of operational independence” as this could be construed as independence from local communities rather than from political control. He preferred “the concept of operational primacy”.127 Andrew Laing, Her Majesty’s Inspector of Constabulary for Scotland took a similar view that “it is not independence from the citizen or the system of governance, but independence to exercise the law free from undue influence”.128 The Auditor General for Scotland, who drew a parallel between this part of the Bill and legislation setting out his own role, told the Committee that it was possible to guarantee independence “without the need to define in statute such things as operational independence, which is almost impossible anyway—otherwise it would have been done by now”.129

168. However, other stakeholders were perfectly content with the provision, such as the Scottish Institute for Policing Research, which singled out section 5 as “embodying a fundamental principle that the Scottish Ministers should not issue
directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation”.  

169. The Cabinet Secretary for Justice told the Committee that “the power of ministerial direction does not allow me to interfere with operational matters, because it refers to the Scottish Police Authority”. He said he was aware of the concerns of the Committee and others, “but we have built into the Bill clear requirements to ensure that the Cabinet Secretary for Justice, whoever he or she is, cannot interfere with the operational decisions by the chief constable, whoever he or she is”.  

170. Very few views were expressed about section 116, the equivalent provision to section 5 covering fire and rescue. It appears witnesses had few concerns with this provision.

Committee view
171. The Committee acknowledges the concerns of witnesses regarding the role of Scottish Ministers and, in particular, views on the possible misuse of the power of Ministerial direction, but also notes that the power applies to the national boards rather than to the chief constable or chief fire officer.

172. The Committee believes there must be a balance between operational independence and democratic accountability of the police and, therefore, accepts the Scottish Government’s position that use of the power of direction may be necessary in very limited circumstances and in relation to non-operational matters only. It is not possible to be completely certain whether the statutory test set out in the Bill is entirely robust, but it appears to codify an appropriate balance. Furthermore, we are not convinced that including a definition of operational independence on the face of the Bill would be helpful.

173. We do however acknowledge the genuine concerns of witnesses on this matter and would urge the Scottish Government to work with stakeholders to try to allay these fears, perhaps by developing guidance or a protocol and making use of suggested definitions of operational independence, such as that provided by the Scottish Police Federation, as a starting point.

Role of the Parliament
174. The Scottish Parliament has always had the ability to inquire into the police and fire and rescue services. For instance, as noted in the introduction, the predecessor Justice Committee in Session 3 of the Parliament conducted a major inquiry into police resources in 2008.

175. However, it could be argued that the centralisation of police and fire and rescue services under the Bill requires the Scottish Parliament to have an enhanced, more institutionalised, and more formal role, especially given the

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130 Scottish Institute for Policing Research. Written submission
abolition of police and fire authorities and joint boards, which hitherto have provided the main democratic oversight. The Committee accepts that such a role should consist of examining the policies and strategies of the police service that are of public interest rather than querying operational matters.

176. Parliamentary oversight of the police varies across Europe. In general, where there is a single national chief constable or commissioner, the constable or commissioner is responsible to the Minister for Justice, who is in turn answerable to Parliament. Some countries, like Sweden, have an ombudsman system, with the ombudsman dealing with the public’s complaints and reporting their findings to the Parliament. As outlined earlier, in Northern Ireland, parliamentary scrutiny of a sort is provided by the Northern Ireland Policing Board (NIPB), 10 of whose 19 members are also Members of the Northern Ireland Assembly. However, the NIPB is more akin to the SPA rather than being a parliamentary oversight body. The Committee does not consider that MSPs should be members of the SPA as we consider that might create confusion as to its primary role which, we reiterate, should be as a body responsible for ensuring the effective governance of the Scottish police service.

Provisions in the Bill—evidence
177. The Policy Memorandum states that the Bill will, for the first time, enable the Scottish Parliament to have a formal role in scrutinising the police and fire and rescue services, and will, therefore, enhance the Parliament’s oversight. The Memorandum also notes that the Parliament’s role in approving the fire and rescue framework will continue under the Bill.132

178. Under the Bill, the key strategic planning documents, as well as the annual report and accounts for each service (all discussed later in the report), must be laid before the Parliament. The Bill also requires the Police Investigations and Review Commissioner, Her Majesty’s inspectors of constabulary in Scotland, and the inspectors of the SFRS to lay their published reports before the Parliament. This was welcomed by the LGR Committee, which said that the requirements to lay the fire and police annual reports and strategic plans before the Parliament "will provide an opportunity to establish a degree of democratic accountability for the services, and to provide parliamentary scrutiny of their progress".133

179. Not all witnesses were persuaded that the Scottish Parliament should have a scrutiny role extending beyond what was already set out in the Bill. For instance, Councillor Whyte of Lothian and Borders Police Board considered that it was the SPA’s role to provide governance and accountability and did not see how the Parliament having a further oversight role would fit into that.134

180. However, most witnesses who expressed a view agreed that the Parliament should have an enhanced role. For instance, the Fire Brigades Union agreed that “the Scottish Parliament must take an active role in both the scrutiny and setting the direction of the [fire and rescue] service”135, while Councillor Durham of the

132 Policy memorandum, paragraph 94.
135 Fire Brigades Union. Written submission.
Scottish Fire Conveners Forum said an enhanced role for the Parliament would give confidence as “there is always a concern about the centralisation of power”\(^{136}\).

181. The most detailed contribution on parliamentary scrutiny came from the Auditor General for Scotland, who called for a formal mechanism to give the Parliament “a major role in ensuring there is open, participative and transparent oversight of policing in Scotland”.\(^{137}\) He made a number of suggestions as to how this might be achieved. These included establishing a specific committee\(^{138}\) or giving additional responsibilities to the Justice Committee. In relation to the second suggestion, however, he noted the tendency for successive Justice Committees to be heavily burdened with legislation, which might compromise any enhanced scrutiny role.

182. Another suggestion from the Auditor General was the creation of a Commission, similar to the Scottish Commission for Public Audit, “which was put in place to safeguard the independence of the Auditor General … while ensuring public scrutiny of Audit Scotland”.\(^{139}\) The Auditor General’s view was that these arrangements had worked very well. (The SCPA is a body set up by virtue of the Public Finance and Accountability (Scotland) Act 2000, which laid out some of the “ground rules” for effective scrutiny of public spending, post-devolution. It is not formally a parliamentary committee but consists of five MSPs assisted and resourced by the Scottish Parliament.\(^{140}\)

183. The Cabinet Secretary for Justice told the Committee that the Scottish Government accepted “the logic and merit” of the argument that there should be parliamentary involvement and scrutiny of the single services and were “open to discussion”. However, it was ultimately for the Parliament “to decide on the shape of that scrutiny.”\(^{141}\)

Switch to single services – parliamentary scrutiny of efficiency / effectiveness

184. In relation to the key question of whether a move to single services would increase the efficiency and effectiveness of the police and fire services, the Finance Committee made the specific recommendation that (should the Bill be enacted) the Scottish Parliament should monitor the financial and non-financial consequences of the move to single forces over the first 15 years. It also recommended that the Scottish Government should ensure that the appropriate data is collated over this period.\(^{141}\)

Committee view

185. The Committee accepts that the move to national services and the abolition of local government police and fire and rescue authorities and boards places an onus on the Scottish Parliament to enhance and formalise


\(^{137}\) Auditor General for Scotland. Written submission.

\(^{138}\) It is within the power of the Scottish Parliament to set up committees for specific purposes. There is no need for the relevant legislation to “permit” the Parliament to set up a committee. Auditor General for Scotland. Written submission.


its scrutiny of the police and fire and rescue services. Accordingly, we welcome provisions in the Bill requiring strategies and plans to be laid before the Parliament. We also note that the Scottish Parliament has considerable discretion to order its own affairs in relation to this issue and that individual committees, such as the Justice Committee, always have the power to inquire into matters within their remit.

186. However, the passage of the Bill affords a unique opportunity to discuss how best to secure that enhanced scrutiny and, in particular, to consider whether some principles are so important that they should be enshrined in the founding legislation in order to ensure that the appropriate checks and balances are in place in relation to the new national services, and in particular the national police service.

187. The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police. The Committee notes that it would be possible for this enhanced scrutiny role to be undertaken for example by the Justice Committee, or by an ad hoc Committee appointed by the Parliament, or by a statutory Parliamentary body along similar lines to the Scottish Commission for Public Audit. We would wish such options and others to be explored further. There is a particular importance and public interest attached to the policing of Scotland, and the long-established principle that policing should be carried out with the consent of the people. We leave open the question whether such oversight should extend beyond the police to other bodies covered by the Bill.

188. The Committee agrees with the Finance Committee that effective post-legislative scrutiny of the move to single services will be crucial and would welcome a commitment by the Scottish Government to provide sufficient information to assist this process.

PRIORITIES, STRATEGIC AND LOCAL PLANS, AND ANNUAL REPORTS, INCLUDING LOCAL SCRUTINY

189. This section considers the strategic police priorities, strategic and local plans, and annual reports that are required to be produced under the Bill, including the role of local authorities in scrutiny of the local plans.

Strategic police priorities

190. Under section 33 of the Bill, the Scottish Ministers may determine strategic priorities for the SPA, which may relate to (a) the policing of Scotland, or (b) the carrying out of the SPA’s functions. Before determining these priorities, the Scottish Ministers must consult with the SPA, persons whom they consider represent local authorities, and others as they consider appropriate. The strategic police priorities must be published in a manner the Scottish Ministers consider appropriate.\(^\text{142}\)

\textsuperscript{142} Police and Fire Reform (Scotland) Bill. Section 33(5)
191. There was a variety of views on who should be consulted by the Scottish Ministers in the preparation of the strategic police priorities. For example, some witnesses were of the view that local elected members should, in addition to the local authority representative bodies, be included in the consultation on strategic police priorities. For example, Highland Council and Northern Joint Police Board, jointly argued—

“There may be merit in specifying in the Bill the need for Ministers to consult [on the strategic police priorities] with local elected representatives involved in the scrutiny of their local police plans, especially if the strategic police priorities are to be informed (at least in part) by community safety issues and priorities in communities. This approach may also reduce the time required to consult local authorities on the strategic police plan.”

192. Others, including Scottish Women’s Aid, argued that the Scottish Ministers should conduct a public consultation on the strategic police priorities and “have regard to any comments received” within the set period. The Scottish Police Federation suggested that the chief constable be consulted on the priorities, while Her Majesty’s Inspectorate of Constabulary for Scotland asked that it be included as a statutory consultee on the priorities, the strategic plan, and all other policing consultations provided for in the Bill.

**Fire and rescue framework for Scotland**

193. Under the 2005 Act, the Scottish Ministers are required to produce a framework document setting out priorities and objectives for ‘relevant authorities’ in connection with the carrying out of their functions. The Scottish Ministers also have a duty to report to the Scottish Parliament on (a) the extent to which relevant authorities are acting in accordance with the framework document, and (b) any steps taken by them for the purpose of securing that relevant authorities so act. The Bill does not amend this section of the 2005 Act.

**Strategic plans**

194. The Bill provides that the SPA and SFRS are responsible for developing strategic plans. Under section 36, the SPA must “involve” the chief constable in preparation of the strategic plan, but there is no equivalent provision for the chief fire officer. The Committee understands this distinction is because the chief constable is not an employee of the SPA, whereas the chief fire officer is directly employed by the SFRS.

195. Section 34 of the Bill requires the SPA, when preparing its strategic plan, to send a draft to each local authority, inspectors of constabulary, and others it considers likely to have an interest. The SPA must have regard to any comments it receives and must then submit its final plan to the Scottish Ministers for approval. Once approved, the SPA is required to lay a copy of its strategic plan before the

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144 Scottish Women’s Aid. Written submission.
146 Fire (Scotland) Act 2005, Section 42(1).
Parliament. The strategic plan must be reviewed by the SPA at least every three years or where strategic police priorities have been revised. The consultation process outlined above applies to any revised strategic plan.

196. Similarly, section 112 of the Bill requires the SFRS, when preparing its strategic plan, to have regard to the fire and rescue framework document and to consult with each local authority, persons it considers to represent local authorities, persons it considers to represent employees of the SFRS, and others as it considers appropriate. The plan would then be submitted to the Scottish Ministers for approval, and once approved, laid before the Scottish Parliament.

197. The Scottish Police Federation argued that the chief constable should be responsible for preparing the strategic plan for approval by the SPA, rather than the SPA merely being ‘involved’ in its preparation. John Duffy from the Fire Brigades Union told the Committee that “there should be a national vision of where we are all going, combined with practical station-based plans that set out what the stations will deliver and that are clustered together to form a local plan for the local authority”.

Annual police plans

198. Section 35 of the Bill requires the SPA to prepare an annual plan setting out arrangements for carrying out its functions and for the policing of Scotland for that annual period. Again, the chief constable must be “involved” in the preparation of this plan and it must be laid before the Scottish Parliament. There is no similar provision in the Bill requiring the SFRS to produce annual fire and rescue plans.

Local plans

199. The Bill provides that, for each local authority area, the chief constable must designate a constable as local commander and the chief officer must designate an employee of SFRS as local senior officer. Each local commander or local senior officer may cover more than one local authority area. The Policy Memorandum states that the local commander and local senior officer “will be the first point of senior contact for the local authority and other partners locally and the lead officer for the services in community planning”. The Bill does not stipulate the rank of the local commander or senior officer.

200. Section 48 places a duty on the local commander to prepare the local police plan, first having had regard to the most recently approved strategic police plan and, after “appropriate” consultation, to submit the plan to the local authority for approval. The plan is to set out the main priorities, objectives and arrangements for the policing of the local authority area. It is also to describe how these priorities and objectives will “contribute to the delivery of any other relevant local outcomes identified which are identified by community planning”. Local plans must be

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147 Scottish Police Federation. Written submission.
149 Police and Fire Reform (Scotland) Bill, section 45.
150 Police and Fire Reform (Scotland) Bill, section 113.
151 Policy Memorandum, paragraph 42.
152 Police and Fire Reform (Scotland) Bill, section 48(2)(e).
reviewed at least once every three years and may be revised at any time following agreement between the local commander and the local authority.

201. Section 113 places a statutory duty on the SFRS to prepare the local fire and rescue plan for each local authority area. Again, the plan will set out the main priorities and objectives for the SFRS in the local authority area and show how these “contribute to the delivery of any other relevant local outcomes identified by community planning”. In preparing the plan, the SFRS must have regard to the fire and rescue framework for Scotland and the strategic plan, and consult such persons as it thinks fit. It must then submit the plan to the local authority for approval. The SFRS can at any time review the plan.

202. Provisions in the Bill giving local authorities the power to ‘approve’ the local plans were welcomed by witnesses, many of whom had raised concerns during the Scottish Government’s second consultation on reform in September 2011, when it had appeared that local authorities would only be able to ‘comment’ on the plans.

203. The LGR Committee stated in its report that the requirements to lay the fire and police annual reports and strategic plans before the Scottish Parliament, will provide an opportunity to establish a degree of democratic accountability for the services, and to provide parliamentary scrutiny of their progress.

Annual reports

204. Sections 40 and 114 of the Bill further provide for the SPA and SFRS to prepare annual reports containing assessments of the performance of the SPA and police service, and SFRS respectively during the reporting year. Both annual reports must be laid before the Scottish Parliament.

205. The Committee generally welcomes provisions in the Bill on strategies and plans.

206. However, the Committee notes that the chief constable is to be involved in preparation of the strategic and annual plans, but we are unclear as to exactly what “involve” means in practice. We therefore seek clarification on this and on why there is no similar requirement to involve the chief constable in the preparation of the strategic police priorities.

LOCAL ACCOUNTABILITY

207. The role of current police and fire and rescue authorities and joint boards is outlined in the opening section of this report. The Committee takes the opportunity to explore local accountability under the Bill in the section below.

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153 Police and Fire Reform (Scotland) Bill, section 113(2)(e).
Local budgets

208. With reform, it is intended that funding for the new services will be provided entirely by the Scottish Government. Some stakeholders argued that budgets should be devolved to local authorities and local commanders so that there would be a form of accountability to the local authority for policing within that area. Councillor Stephen Curran from Strathclyde Police Authority argued that “it is difficult to get buy-in at local level and true accountability” if the budget is nationally controlled, while Councillor Greig of Grampian Joint Police Board, added—

“There is a very significant democratic deficit in the new set-up, because policing is a local government function. We rely on community policing to operate according to the principle of policing by consent. That means that decisions on budgets and performance relating to police forces need to be made locally.”

209. However, Chief Superintendent O’Connor of the Association of Scottish Police Superintendents said that, there have always been and always will be concerns from rural parts of the country that resources will be drawn towards the central belt, but on the other hand, some in the central belt fear that their resources will be drawn to rural areas. Chief Constable Smith of ACPOS reassured the Committee that “we will come up with a resource allocation model that will consider things such as crime and incidence, and the community-based style of policing that we want.”

Additional police officers funded by local authorities

210. Councillor Pat Watters of COSLA told the Committee that some local police authorities and boards were providing additional funding to employ extra police officers to work on particular priorities within their local authority areas. He added that between 600 and 800 additional police were being funded in this manner and sought clarity on what would happen to them after the transfer to a single force.

211. In a supplementary written submission to the Committee, COSLA commented further on this matter—

“Councillor Watters questioned whether councils would continue to fund these posts in 2012/13, given that the additional funding being provided would likely transfer with the posts out of local government and into the new single service budget to subsidise the commitment to 1000 extra police officers in the new single service. … the simplest way for a council to avoid losing the funding on 31 March 2013 is not to be funding a post at that time.”

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155 COSLA. Written submission.
161 COSLA. Supplementary written submission.
212. A Scottish Government official explained he expected that the arrangements that were currently in place would continue in the new single service.¹⁶²

**Rank of local commander and local senior officer**

213. Specific concerns were also expressed by some witnesses that, depending on their rank, local commanders and local senior officers will have varying degrees of influence within their respective services. However, the LGR Committee reported that rank of local commanders and local senior officers was not an issue; “it is the skill set of these officers that will be central to their success, especially in engaging with local communities and community planning partnerships”.¹⁶³

214. The Scottish Institute for Policing Research noted that “ranks are likely to vary across Scotland, depending on the nature and complexity of the policing arrangements of different areas” and this “may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank, which may have implications in negotiations for resources”.¹⁶⁴ Highland Council shared these concerns—

“In rural or smaller local authorities a lower ranking officer will be appointed because in an organisation with a hierarchical structure, they would have a lower level of authority within the SPS potentially limiting their capacity to influence the national policing plan and the resources required for the local police plan.”¹⁶⁵

215. Bob Jack, spokesperson for community safety at the Society Of Local Authority Chief Executives told the LGR Committee that, while all 32 local commanders could not be of the same rank “because they will be looking after areas of considerable difference in size, geography and so on”, he felt that a large span of ranks was unacceptable due to the “huge difference in seniority and authority”.¹⁶⁶

216. However, Chief Constable Smith of ACPOS suggested that the rank of the local commander was “a bit of a red herring” and that “the important thing is the professional relationships that exist locally”.¹⁶⁷ In Northern Ireland, the equivalent of local commanders under the Bill, were formerly of different rank, but now are all chief superintendents. Assistant Chief Constable Finlay of the Police Service of Northern Ireland said that rank was probably not an issue in the past in determining how much leverage local commanders had over resources.¹⁶⁸

**Committee view**

217. *The Committee believes that, in the interests of transparency and accountability, a “snapshot” of resource allocation within local authority*
areas as of 1 April 2013 should be given to local authorities so that they can measure any future changes, such as the transfer of funds, assets, and human resources.

218. The Committee notes and welcomes the evidence from Chief Constable Smith that he envisages an appropriate resource allocation model which strikes a balance between the national priorities and local community-based policing. The Committee would welcome clarification as to whether, in practice, local authorities will have a degree of influence over local police resources.

219. The Committee notes that funding for additional police officers is currently provided by local authorities. The Scottish Government has indicated that there appears to be no reason why this cannot continue under the Bill. The Committee seeks clarification on how this would work in practice.

220. The Committee agrees with the Local Government and Regeneration Committee that the rank of local commander and local senior officer is not significant, and endorses the view that the knowledge and relationships that they build will be a more significant factor in negotiations on resources.

Local scrutiny

221. The Bill is silent on how local authorities should make arrangements for their scrutiny of local policing and local fire and rescue services and their consideration and approval of the local police plan. The Policy Memorandum explains that this is deliberate—

“It will be for the local authorities to determine the most appropriate local mechanism for exercising their role outlined in the Bill, and formalising their relationship with the local commander and local senior officer and other partners to help shape and deliver local outcomes.”

222. The Scottish Government has asked local authorities to run ‘pathfinder’ projects to pilot these local arrangements prior to implementation of the legislation, if passed. The Cabinet Secretary for Justice confirmed that there are currently 16 pathfinders in operation, with more expected after the local government elections. A Scottish Government official confirmed that the pathfinders would “inform national guidance on operation of the scrutiny and accountability arrangements”, which was to be in place for 1 April 2013. He added that “instead of putting any prescriptions in the bill, we will take what we learn from the pathfinder process and put it into guidance outwith primary legislation.”

223. A number of respondents were of the view that these local arrangements should be specified on the face of the Bill. For example, Dumfries and Galloway Council (Police and Fire and Rescue Authority) argued that “a statutory basis for councils in relation to local committee arrangements for police and fire and rescue

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169 Policy Memorandum, paragraph 44.
services would be helpful, perhaps in the form of a framework setting out the role of committees, but avoiding being prescriptive, given that best practice and guidance might come from the pathfinder projects.172 Councillor Ross of the Northern Joint Police Board (NJPB) agreed—

“It is important that there is not a large and ineffective talking shop; there needs to be something with substance and influence. The real test will be whether it has those—reassurance on that is needed. Clarity on the Bill might give such reassurance.”173

224. The policy memorandum states that the impact of the Bill on local authorities is likely to be cost neutral as efficiency savings from not having police and fire and rescue boards and authorities are likely to balance out the cost of local scrutiny.174 Others suggested that having 32 local councils rather than eight boards scrutinising local policing could increase costs.175

225. The LGR Committee stated in its report that clarity from the Scottish Government on how any new committee structures would be financed would be welcome.176 In addition, the Finance Committee asked the Justice Committee to “seek assurances from the Cabinet Secretary for Justice that local authorities will be adequately resourced in order to effectively carry out their police and fire and rescue monitoring and scrutiny functions under the Bill”.177

226. Stakeholders also noted that no provision was made in the Financial Memorandum for funding to be given to local authorities to support their new role, and called for such resources to be made available.178 Furthermore, the Chartered Institute of Public Finance and Accountability suggested that, “the risk is that, local authorities could elect not to maintain committees without an appropriate funding stream”.179

227. Under current arrangements, officials, such as a clerk and treasurer, provide administrative support and professional advice to police and fire authorities and joint boards. The Committee heard that it was unclear what the arrangements for transferring such staff would be. For instance, Councillor Greig of Grampian Joint Police Board said—

“The boards have built up a great deal of expertise and the clerking function has built up the professional aspect. I am not yet clear about how that will

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172 Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.
174 Financial Memorandum, paragraph 184.
179 Chartered Institute of Public Finance and Accountability. Written submission.
transfer to the new local policing committees. It is important for the committee to think about that too.\textsuperscript{180}

228. The LGR Committee also considered this issue and recommended that the Scottish Government “takes such measures as are necessary, including working with staff and their representatives, in order to minimise any negative impact on staff morale”.\textsuperscript{181}

229. The Committee does not believe that the manner in which local authorities are to scrutinise the local plans should be included on the face of the Bill, as we believe this would be too prescriptive and would not allow any flexibility for local authorities to develop scrutiny mechanisms best suited to their own local areas.

230. However, the Committee agrees that guidance for local authorities on this matter would be helpful and therefore supports the Scottish Government’s plan to develop such guidance, informed by the outcomes of the pathfinder projects, which are currently underway. We urge the Scottish Government to ensure that this guidance is available for local authorities in time for them to put in place any scrutiny mechanisms before the single services become operational.

231. One member is, however, concerned at the speed of the process and believes that the role of local authorities in the new services should at this stage be clear.\textsuperscript{182}

Community planning

232. The Local Government in Scotland Act 2003 places duties on all local authorities to initiate, facilitate and maintain community planning, including consulting and co-operating with communities and core partners, which includes police and fire authorities and joint boards\textsuperscript{183}.

233. Section 47 of the Bill places a statutory duty on local commanders to participate in community planning, replacing the duty on chief constables under the 2003 Act. The Bill places a similar duty on local senior officers (section 113 inserting new section 41J into the 2005 Act). A number of witnesses, including Dumfries and Galloway Council (Police and Fire and Rescue Authority) called for the statutory duty to participate in local community planning activity to be extended to the chief constable and chief fire officer (in addition to the local commander and local fire officer)\textsuperscript{184}, while Professor Jim Gallagher of Nuffield College, Oxford highlighted an apparent inconsistency as regards the chief constable’s local policing duties—


\textsuperscript{181} Scottish Parliament Local Government and Regeneration Committee. 5\textsuperscript{th} Report, 2012 (Session 4). Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill, paragraph 143. NB: This quote also refers to civilian staff in the police and fire and rescue services.

\textsuperscript{182} Alison McInnes MSP.


\textsuperscript{184} Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.
“At present, the duty to participate in community planning falls on the chief constables. Under the Bill this will devolve to local commanders. This is in practice where it would be discharged for the most part, but it is anomalous that although the chief constable is under a duty to provide local policing, no community planning duty falls on him or her or the SPA.”

234. The Committee is not convinced by the argument put forward by some witnesses that the statutory duty to participate in local community planning should be extended to the chief constable and chief fire officer and is satisfied that this is a role more suited to local commanders and local senior officers.

235. The Local Government and Regeneration Committee considered in more detail witnesses’ views on how the new services could engage with the public and recommended that local commanders and local fire officers should develop strategies for engaging with the public on policing and fire services. The Committee seeks the views of the Scottish Government on this matter.

Assets and liabilities

236. Schedules 4 and 5 of the Bill make provision for the transfer of the assets and liabilities currently owned by police and fire and rescue boards and unitary authorities by means of a transfer scheme. The Bill is not explicit on how assets and reserves from the current boards and authorities will be allocated under the new structure. A submission from ACPOS states its understanding that the police reserves currently held by police authorities and boards will be returned to the Scottish Government and COSLA on a 51 per cent / 49 per cent split.

237. The Finance Committee considered this matter in more detail and sought clarification on the Government’s plans for the transfer of assets and reserves and how the funding will be re-distributed.

238. Correspondence jointly issued by the Cabinet Secretary for Justice and the President of COSLA to police and fire board conveners dated 12 April 2012 confirmed that they had reached an agreement on how existing reserves would be allocated—

“At a national level, we have agreed that all remaining uncommitted reserves at the date of establishment of the single services will be divided between central and local government on an agreed basis, with 100 per cent of fire reserves and 49 per cent of police reserves being passed back to constituent authorities and 51 per cent of police reserves to the Scottish Government”.

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185 Professor Jim Gallagher. Written submission.
186 ACPOS. Written submission.
188 Correspondence from COSLA and Scottish Government to police and fire board conveners on existing reserves (12 April 2012). Available at: [http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20120412_COSLA_and_SG_Transition_Period.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20120412_COSLA_and_SG_Transition_Period.pdf) [Accessed: 1 May 2012].
239. The Committee welcomes the agreement between the Scottish Government and COSLA in relation to the allocation of existing reserves. However, the Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint boards will be redistributed.

IMPLEMENTATION

240. On 21 February 2012, the Scottish Government announced that the single services would begin operating from 1 April 2013. A number of witnesses expressed concern that this timetable may be difficult to achieve, but highlighted a number of issues on implementation that, if resolved at an early stage, may make the timescale more realistic. These are outlined below.

Appointment of chief constable and chief fire officer

241. Chief constables are currently appointed by the police authority/joint police board for their area, subject to the approval of the Scottish Ministers. The Bill provides for the SPA to appoint the chief constable, on approval of the Scottish Ministers, and for the first chief officer of the SFRS to be appointed by the Scottish Ministers, with subsequent chief officers appointed by the SFRS, on approval of the Scottish Ministers.

242. It is understood that the first chief constable and chief fire officer will be in post around December 2012 (after the SPA and SFRS Board are in place to appoint them).

243. The Policy Memorandum explains that the Scottish Government gave consideration to whether the Scottish Ministers should make the first chief constable appointment to provide more planning time, but concluded that this would not provide the right degree of separation between the Scottish Ministers and the leader of the new service.

244. A significant body of opinion formed during the Committee’s scrutiny on the pressing need for early appointment of the chief constable and the chief fire officer, and a number of supplementary written submissions were provided to this effect. For example, Chief Constable Smith of ACPOS stated in his supplementary submission, supported by all other chief constables, the Scottish Crime Drug Enforcement Agency and Scottish Police Services Authority, that—

190 Police and Fire Reform (Scotland) Bill, sections 7 and 99 (inserting Schedule 1A to the 2005 Act).
191 ACPOS. Supplementary written submission.
192 Policy Memorandum, paragraph 153.
193 ACPOS, SPF, SCDEA, SPSA, HMICS, Auditor General, COSLA, and Councillor Kay of Fife Police, Fire and Safety Committee supported the view that the chief constable and/or the chief fire officer should be appointed as early as possible.
“As currently scheduled, there is insufficient time between December 2012 and 1 April 2013 for the new chief constable to be fully prepared to take control of a new organisation and be ready for Day 1.” 194

245. Her Majesty’s Inspectorate of Constabulary for Scotland agreed that this was “an emerging priority for police reform” and one which he considered was “so critical ... that failure to address it now is likely to present a significant barrier to progress in the interim period and, indeed, to deliver the stated aims in the mid and longer-term within the context of the Comprehensive Spending Review.” 195

246. Councillor Pat Watters, President of COSLA, suggested this might be achieved through the current police conveners working jointly with the Cabinet Secretary. 196 The Auditor General for Scotland suggested that the Bill be amended so that the first appointments of the conveners of the SPA and SFRS, the chief constable and the senior fire officer be made by the Parliament, with the possible involvement of the Crown Office in the case of police appointments, and with the agreement of the Cabinet Secretary for Justice.” 197

247. Similar comments were made by fire bodies in relation to the early appointment of the chief fire officer. 198 Highland and Islands Fire Board suggested that, if appointments to the SFRS could not be fast-tracked under provisions in the Bill, the first appointment should be made by the new chairs of the joint boards to enable the chief fire officer to be in place by September 2012. 199

248. The LGR Committee noted the suggestion of some of its witnesses that transitional board members be appointed on an interim basis to progress the work towards the establishment of the services 200, including early appointments of the chief constable and chief fire officer.

249. In response to evidence received, the Cabinet Secretary for Justice said that, while ministerial appointment of the chief constable had to be avoided, he was prepared to “listen and reflect” on the concerns raised in evidence. 201

250. The Committee agrees with the overwhelming evidence that the chief constable and chief fire officer should be appointed as early as possible, and certainly before the proposed date of December 2012.

251. One member of the Committee, while accepting the case for early appointments under the current timetable, believes that the fundamental problem is that the timetable for reform is unrealistic and considers that, rather than

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194 ACPOS. Supplementary written submission.
195 Her Majesty’s Inspector of Constabulary for Scotland. Supplementary written submission.
197 Auditor General for Scotland. Supplementary written submission.
198 Chief Fire Officers Association Scotland. Written submission.
199 Highland and Islands Fire Board. Written submission.
bringing forward the appointments, the entire timetable for reform should be revisited.\textsuperscript{202}

252. \textbf{We note that the first chief fire officer may be appointed by the Scottish Ministers and would urge that this is undertaken as soon as possible.}

253. While we understand the Scottish Government’s position that ministerial appointment of the chief constable must be avoided, the Committee considers that other procedures could be put in place for appointment of the first chief constable.\textsuperscript{203} The Committee urges the Scottish Government to consider the options suggested by witnesses and others, with a view to a chief constable being in place at the earliest opportunity, while ensuring that the independence and robustness of the process is not undermined.

\textbf{Outline business cases}

254. The Financial Memorandum (FM) on the Bill “summarises the best available evidence and analysis and is largely based on that used in the outline business cases (OBCs) to support decisions on the structure of future services in September 2011”. The FM “does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets.”\textsuperscript{204}

255. The Finance Committee explored in more detail concerns surrounding the use of the OBCs to inform the FM, along with the projected savings and redundancies it proposes, and invited this Committee to pursue the matter with the Cabinet Secretary for Justice.\textsuperscript{205}

256. A number of witnesses said that they expected a full business case (FBC) to be developed by the Scottish Government to inform the FM and were concerned that “best estimates” for the costs and savings from the OBC were instead being relied upon.\textsuperscript{206} Chief Constable Smith of ACPOS warned of the dangers of basing “significant decisions about investment” and savings on the OBCs which “outlined at a high level what might be achieved” but did not set out any timescales.\textsuperscript{207} Mr Haigh of the Association of Principal Fire Officers Scotland had similar concerns that the Bill was moving forward on the basis of the fire OBC.\textsuperscript{208}

257. Chief Constable Smith further explained that, while savings would be made, his “personal and professional view was that the savings set out in the Bill will not be achieved in the coming years” and that this is “the biggest risk to the reform and redesign of a critical public service”.\textsuperscript{209}

258. Witnesses commented on the difficulties in achieving the projected savings within the context of the Scottish Government’s on-going commitment to maintain

\begin{footnotesize}
\begin{enumerate}
\item[202] Alison McInnes MSP.
\item[203] Witnesses’ suggestions are at paragraphs 198 and 199 in this report.
\item[204] Financial Memorandum, paragraph 133.
\end{enumerate}
\end{footnotesize}
a level of 17,234 police officers and no compulsory redundancies. Councillor Grant of COSLA spoke of the impact on front-line officers of losing civilian staff through redundancies—

“The Government has a policy of no compulsory redundancies, so if people do not decide to take voluntary redundancy they will transfer, and the new police authority will have to manage the situation. If the authority is to make savings of the order that is being talked about, something like 2,000 support staff will have to go. If those support staff go because the money must be saved, the cops will have to take up the slack. We really do not want to pay police, who should be out there doing business on the street, to sit behind a desk and pick up a phone. That does not seem sensible at all.”

259. Dave Watson from UNISON Scotland told the Committee that “the chief officers will have no choice; if they are stuck with 17,234 as an absolutely rigid and no-budge figure, the chief officer will simply have to take officers off the streets to do civilian jobs”. He went on to convey the results of a recent survey of UNISON members which he says “illustrates that we are already getting police civilian posts being substituted by police officers”. However, Chief Constable Smith disputed this “notion” earlier in the meeting.

260. A large number of witnesses believe that there needs to be a balanced workforce, with duties being undertaken by the most appropriate person regardless of whether that be a police officer or a civilian member of staff. Mr Watson said—

“In five or six years, we will be sitting round a table like this with Audit Scotland, who will say that the situation is ridiculous because we are paying police officers, at great cost, to do jobs that they are not qualified to do. We should not wait until then. Let us take the opportunity of the establishment of a new police force to consider the right balance between police officers and civilians.”

261. However, Calum Steele from the Scottish Police Federation suggested that “we must look at the jobs that we do and ask ourselves not who does them, but whether they need doing in the first place”. He cited a number of existing civilian positions, including ‘change manager’, ‘business manager’ and ‘performance manager’ where he was unclear whether they were essential to the delivery of policing.

262. John Duffy of the Fire Brigades Union indicated that the fire and rescue OBC did “not allow for the protection of the front line and financial savings; it will have to be one or the other”. Some fire service bodies were concerned that the OBC

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significantly underestimated the costs allocated to cover the projected redundancies in the fire and rescue service, and that rather than costing £4 million the figure would be nearer £10 million.218

263. Others highlighted that significant savings, which had not been anticipated in the FM had already been made both in policing and in the fire and rescue service. For example, Councillor Whyte of Lothian and Borders Police Board said that police authorities and joint boards had already considered the hard choices so it was “difficult to see how we will go about producing the savings”.219

264. The Committee seeks clarification from the Scottish Government as to (a) when the full business cases for the police and fire and rescue services will be completed, and (b) whether, in principle, the annual budgets for the services will be adjusted on the basis of the full business cases.

265. The Committee notes witnesses’ concerns regarding the ability to achieve the projected savings contained in the outline business cases within the expected timescales. Therefore, we seek clarification as to the impact of the projected redundancies of civilian posts on the front line.

Merging of services – VAT consequences

266. Currently, police and fire services are able to recover VAT costs incurred (under section 33 of the Value Added Tax Act 1994) because they (a) carry out local authority functions, and (b) have a power to draw on local taxation. The FM indicates that the new services may not qualify for section 33 exemption status due to centralisation. It further states that, if the new bodies were subject to VAT, this could be a recurring annual cost of £21.5m for the single police service and £4m for the single fire and rescue service.220

267. The Finance Committee explored this issue in more detail and wrote to HM Treasury to seek some clarity. In its response, HM Treasury explained that—

“The Section 33 refund scheme was introduced together with VAT in 1973, following a commitment that VAT would not become a burden on local taxation. Since then, successive Governments have maintained its original policy objective by only granting access to bodies which both carry out local authority functions and have a power to draw upon local taxation.”221

268. The Finance Committee invited this Committee to seek an update from the Cabinet Secretary “on all steps that the Scottish Government is taking to try to resolve this issue”.222

218 Chief Fire Officers Association Scotland. Written submission.
220 Financial Memorandum, paragraph 178.
269. The Committee heard from Assistant Chief Constable Finlay that the Police Service of Northern Ireland has VAT exemption status under section 99223 of the 1994 Act—

“It is a long-standing arrangement that affects not only the PSNI but other public services in Northern Ireland. The reason is the structure of public services in Northern Ireland. A centralised model was put in place some considerable time ago due to conditions in Northern Ireland over previous years during the troubles and so on. Centralised units were put in place such that, for example, housing came from the Northern Ireland Housing Executive. That model included a decision being made—I do not know by whom or in what capacity—that we would be treated like a local authority.”224

270. Many witnesses, including Councillor Grant of COSLA, expressed concern that, if VAT could not be recovered, the new services would be required to find more savings, which could equate to additional job losses.225 Highland and Islands Fire Board agreed that this “additional cost to the public purse” will “reduce resources for the new services”226, and the Chief Fire Officers Association Scotland argued that the potential loss of VAT recovery would cost around £10 million annually, rather than the £4 million per annum suggested in the outline business cases227.

271. Chief Constable Smith of ACPOS told the Committee that, although the VAT issue was important in the context of reform, it was “not the most critical issue” and he was confident that the Scottish Government was “doing everything it can do to resolve the issue”.228 However, Dave Watson from UNISON Scotland said he was “not confident” that the VAT issue would be resolved as “we have not solved it with the Scottish Police Services Authority” and suggested that this would mean “another 600 jobs will go”229.

272. Although not commenting specifically on the issue of obtaining VAT recovery, Professor Jim Gallagher observed that the SPA could be a local government body, consisting of-elected councillors, perhaps with appointed members added”.230 It is unclear whether making structural changes along these lines might strengthen the legal case for VAT recovery. However, the Committee has already recommended that the SPA and SFRS Board should not be local scrutiny bodies.

273. In evidence to the Committee, the Cabinet Secretary for Justice highlighted the Police Service of Northern Ireland and the security services of the UK as

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226 Highland and Islands Fire Board. Written submission.

227 Chief Fire Officers Association Scotland. Written submission.


230 Professor Jim Gallagher. Written submission.
examples of similar ‘national’ bodies that were still able to recover VAT and insisted that negotiations on VAT recovery with HM Treasury were continuing.\textsuperscript{231}

\textit{Committee view}

274. The Committee notes that the Scottish Government was aware that removing policing and fire and rescue services as local authority functions could lead to removal of their entitlement to recover VAT under section 33 of the Value Added Tax Act 1994, and indeed accounted for this within the outline business cases. We acknowledge that the Scottish Government’s view is that there is a strong financial case for a move to single bodies, even if the VAT issue is not resolved to its satisfaction.

275. The Committee further notes that the Scottish Government is in negotiations with HM Treasury to establish whether this situation can be avoided.

276. \textbf{Regardless of whether the cost of VAT is to be met by the police and fire and rescue services or whether alternative arrangements are in place, the Committee is concerned at the possibility of a significant annual recurrent loss from the Scottish budget. The Committee urges the Scottish Government to pursue with HM Treasury all possibilities to resolve this issue, for example, (a) by treating the Police Service of Scotland in a similar way to the Police Service of Northern Ireland, and/or (b) by giving local authorities the capacity to contribute to police and fire budgets, so as to help clarify that the new bodies can “draw upon local taxation”.}

\textbf{Cross-border arrangements}

277. The British Transport Police (BTP) and British Transport Police Authority highlighted that the Bill would repeal the existing mutual aid and collaboration provisions in the 1967 Act. They added that the Bill does not cover how mutual aid and collaboration between the police service of Scotland and the BTP are to be provided in the future and suggested that existing mutual aid provisions and collaboration provisions be retained.\textsuperscript{232}

278. Mr Sweeney of the Chief Fire Officers Association Scotland indicated that Lothian and Borders Fire and Rescue Service had questioned whether the indemnification and insurance of Scottish-based fire fighters operating in England would be valid and, if so, whether the principles of Scots law or English civil law would apply.\textsuperscript{233} He provided supplementary evidence explaining that “this is a technical matter which needs to be resolved by the UK and Scottish Governments”.\textsuperscript{234} It is unclear whether this issue arises through the Bill or is an ongoing issue of concern.

\textsuperscript{232} British Transport Police and British Transport Police Authority. Written submission.
\textsuperscript{234} Chief Fire Officers Association Scotland. Supplementary written submission.
279. John Duffy of the Fire Brigades Union said that “boundaries just disappear” when someone dials 999 and he did not expect that to change with a single service.²³⁵

280. The Cabinet Secretary for Justice wrote to the Committee to clarify that work was ongoing to allow reciprocal arrangements north and south of the border to continue after reform—

“Scottish Government officials are currently engaging with those in the UK Government to identify and agree amendments required to UK legislation, (and related legislation in Scotland) as a consequence of police and fire reform. This includes provisions for cross-border mutual assistance between the Scottish Fire and Rescue Services and fire and rescue services in England and Wales. Some amendments will have to be made under Scotland Act orders at Westminster. I can confirm that we expect amendments to provide any necessary clarity.”²³⁶

281. The Committee asks the Scottish Government to provide an update on the outcome of discussions with the UK Government regarding negotiations on cross-border arrangements.

Policing

Police officer and staff issues

282. The impact of projections contained in the outline business case on police staff numbers and related matters are explored in the implementation section of this report. A number of other police and staff issues were considered during evidence and these are outlined in the section below.

Failure to perform duty

283. Section 22 of the Bill provides for offences and penalties in relation to a constable who, without reasonable cause, is absent from duty or who neglects or violates his or her duty. The Bill allows the offence of neglect or violation of duty, which under the 1967 Act could only be prosecuted under summary procedure, to be tried under either summary or solemn procedure.²³⁷ The Policy Memorandum outlines that “this offence was only subject to summary proceedings under the 1967 Act, and any proceedings have therefore usually been taken on common law grounds to allow for a higher sentence”. It goes on to state that “the policy intention is therefore to make prosecutions in relation to this offence easier by having a clear statutory offence with an appropriate penalty”.²³⁸

284. The Scottish Police Federation, Association of Scottish Police Superintendents, and ACPOS, all argued that sufficient powers were available at

²³⁸ Policy Memorandum, paragraph 151.
common law to deal satisfactorily with this matter and requested that the provisions be removed from the Bill.\(^{239}\)

285. The Committee seeks clarification as to why the Scottish Government feels that it is necessary for the offence of neglect or violation of duty on the part of a constable to be prosecuted under solemn procedure, when witnesses have argued that this matter can be adequately dealt with under common law.

**Police appeals tribunal**

286. Chapter 9 provides for a constable to appeal to a police appeals tribunal against any dismissal or demotion in rank, provided he or she has exhausted other available processes, and sets out the arrangements for the tribunal in such cases. This chapter largely replicates the provisions of the 1967 Act.\(^{240}\) Schedule 3 to the Bill provides that the tribunal should consist of three members, one of whom is to be appointed as chair. The Lord President of the Court of Session is responsible for appointing members (including the chair). All three members must be solicitors or members of the Faculty of Advocates with at least five years’ experience.

287. Currently, the membership of police appeals tribunal differs in appeals involving senior officers (of chief officer rank) and constables (of chief superintendent rank and below), but both have only one member nominated by the Lord President, with the others appointed from police boards or from those with a background in the service.\(^{241}\)

288. The Scottish Police Authorities Conveners Forum said it could not support the proposal that all members of the tribunal must be practising solicitors or advocates and would prefer membership to be similar to current arrangements for non-senior officers, to ensure expertise in police procedures and practice.\(^{242}\) Her Majesty’s Inspectorate of Constabulary for Scotland agreed that “the removal of tribunal members who have direct experience of the context of policing and the replacement of them with solicitors, is likely to be perceived by some as a further increase in the quasi-legal background for misconduct cases at a time when practice elsewhere is indicating that a de-escalation is likely to be more effective for all parties”.\(^{243}\)

289. However, the Scottish Police Federation had serious concerns about the way misconduct hearings were run currently and about “disregard for processes”, including “disclosure only of statements which support the ‘prosecution’” and “the admission of statements in lieu of oral evidence where no agreement between the parties has been reached”. It added that a tribunal constituted in accordance with the provisions of the Bill and with a chair from the Faculty of Advocates would assist in enforcing compliance with proper processes.\(^{244}\) The Police Complaints


\(^{240}\) Explanatory Memorandum, paragraph 61.


\(^{242}\) Scottish Police Authorities Conveners Forum. Written submission.

\(^{243}\) Her Majesty’s Inspectorate of Constabulary for Scotland. Supplementary written submission.

\(^{244}\) Scottish Police Federation. Supplementary written submission.
Commissioner for Scotland also supported the new membership arrangements for tribunals.245

290. The Committee notes the views of some witnesses that police appeals tribunal should include a member or members with direct policing experience. However, on balance we are persuaded by the argument that police appeals tribunal should have membership composing solicitors and advocates, in the interests of ensuring that proceedings are impartial and determined by an appropriately qualified body.

Retirement of senior officers
291. Section 14 provides the SPA with the power to require a chief constable, a deputy chief constable or assistant chief constable to retire “in the interests of efficiency or effectiveness”. Before calling on a senior officer to retire, the SPA must provide an explanation and an opportunity to make representations. Similar powers in relation to retirement “in the interests of efficiency” were provided under the 1967 Act.

292. Some witnesses expressed concerns regarding this provision, particularly when read alongside the power of direction in section 5 (discussed above).246 Professor Jim Gallagher of Nuffield College, Oxford, argued that “the powers are capable of misuse” as “there appears to be no reason why [they] could not be exercised in the event of a disagreement between the Board and the chief constable about how operational responsibilities should be exercised”.247

293. The Association of Scottish Police Superintendents echoed these concerns and sought clarity on the appeals process in such circumstances (as this is not provided for in the Bill).248

294. The Scottish Chief Police Officers Staff Association (SCPOSA) said that section 14 is of “considerable concern to its members in relation to the security of their employment” and argued that use of this power could potentially be challenged—

“Whilst a similar provision existed within the terms of the Police (Scotland) Act 1967 it has never, to knowledge, been used and indeed legal opinion currently to hand indicates that any attempt to use such a wide and unchecked power would be challengeable by Judicial Review. In the circumstances of senior officers, it would appear that what is being envisaged is requiring senior officers to resign with immediate effect with no compensation at all”.249

295. Deputy Chief Constable Andrew Barker of SCPOSA further told the Committee that he had “taken legal advice on the matter and been told that there is no similar power in the public or private sectors”. He went on to say that the

245 Police Complaints Commissioner for Scotland. Supplementary written submission.
246 Association of Chief Police Officers Scotland and Association of Scottish Police Superintendents. Written submissions.
247 Professor Jim Gallagher. Written submission.
248 Association of Scottish Police Superintendents. Written submission.
249 Scottish Chief Police Officers Staff Association. Written submission.
decision could come down to “a whim of the police authority or others as to whether an individual is surplus to requirements and could be required to retire”.250

296. The Committee notes the concerns of witnesses on the provision in the Bill to require a chief constable, a deputy chief constable or an assistant chief constable to retire in the “interests of efficiency or effectiveness”, and asks the Scottish Government to consider and respond to these concerns. The Committee also notes that similar powers found in the 1967 Act have not required to be used.

Regulations on governance, administration and conditions of service

297. Section 49 of the Bill requires the Scottish Ministers to make regulations as to the governance, administration and conditions of service of constables and police cadets. More specifically, regulations made under section 49 can make provision relating to, among other things, the resignation or retirement of constables; pay, allowances and expenses; duties and hours of duty; disciplinary procedures; and the keeping of personal records and taking of fingerprints and samples from constables and police cadets.

298. The Scottish Police Authorities Conveners Forum expressed concern as to “the substantial volume of regulations” under Section 49 “to be produced within such a short timescale”251, while the Subordinate Legislation Committee said this power was “a very wide one”. It went on to state—

“On balance, given the detailed nature of the matters which are to be dealt with in delegated legislation, the Committee finds the delegation of these matters to be acceptable in principle. However, the Committee draws the breadth of the regulation-making power to the attention of the lead committee so that it may consider whether it would be more appropriate for any of the subject matter of Chapter 8 [on governance and administration of police] to be dealt with in the Bill itself.”252

299. The Committee notes the Subordinate Legislation Committee’s view regarding the breadth of the power of the Scottish Ministers to make regulations as to the governance, administration and conditions of service of constables and police cadets. We also acknowledge that the Subordinate Legislation Committee finds the delegation of these matters to be acceptable in principle and therefore, on balance we make no recommendation on this matter.

Forensic Services

The ‘sterile corridor’

300. Chapter 3 of the Bill provides that the SPA must provide forensic services to the Police Service, Lord Advocate and procurators fiscal (and others as it thinks fit). The Scottish Government’s Policy Memorandum on the Bill explains the rationale for this—

[251 Scottish Police Authorities Conveners Forum. Written submission.]
[252 Scottish Parliament Subordinate Legislation Committee, 16th Report, 2012 (Session 4). Police and Fire Reform (Scotland) Bill, paragraph 26.]
“In order to maintain public confidence in the criminal justice system, the new structure will reflect the need to maintain a “sterile corridor” between police investigations and forensic investigations. In Scotland there is currently a ‘crime scene to court’ forensic service which has, since 2007, been part of the SPSA and independent from police forces. In order to maintain this arrangement, section 31 of the Bill requires the SPA to make arrangements for the provision of a forensic service which is accountable directly to the SPA and not to the chief constable.”

301. A number of the police bodies were opposed to this proposal, with some, including ACPO, the Scottish Police Federation and the Association of Scottish Police Superintendents suggesting that specific responsibility for crime scene examinations should lie with the chief constable. ACPO argued that “examination of a scene is intrinsically linked to the investigative process, responsibility for which falls under the direction of the police in accordance with the senior investigator’s policy and decision-making”.

302. Her Majesty’s Inspectorate of Constabulary for Scotland agreed that the chief constable should have “clear operational direction over forensic crime scene examination” and suggested that the proposal to place it under the responsibility of the SPA “appears to commensurately reduce the chief constable’s accountability in relation to the prevention and detection of crime”.

303. However, the Scottish Police Services Authority (SPSA) said in its written submission that “clear demonstrable impartiality is important in maintaining confidence in forensic evidence presented within the criminal justice system and also protects the police from any impression of undue influence”. Andrea Quinn from the SPSA told the Committee that—

“I agree that the chief constable and his command team should decide what scenes we go to and when we should go ... However, I believe that we can do that with a national forensics gateway. At the moment, we have eight gateways doing things in eight different ways, which is simply inefficient. We would put in place an SLA [service level agreement]—one exists today, and that is how we respond to policing demands. I envisage that that is how we would be held to account in the future.”

Provision of forensic services to others

304. The Bill permits the SPA to charge for the services it provides to public bodies and officeholders, other than for the provision of forensic services to the Lord Advocate or procurators fiscal. The Bill does not extend this exception to the new Police Investigations and Review Commissioner (PIRC).

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253 Policy memorandum, paragraph 83.
255 Association of Chief Police Officers Scotland. Written submission.
256 Her Majesty’s Inspectorate of Constabulary Scotland. Written submission.
257 Scottish Police Services Authority. Written submission.
305. Professor McNeill, the Police Complaints Commissioner for Scotland, said he assumed that the PIRC would not be charged for any forensic services provided by the SPA, but he would prefer if this was made explicit on the face of the Bill. The Scottish Police Federation agreed that forensic services should be made available to the PIRC at no cost.

306. The Committee accepts the Scottish Government's rationale behind giving the Scottish Police Authority the responsibility to provide forensic services so as to create a “sterile corridor” between police investigations and forensic investigations.

307. We do, however, seek clarity on how this will work in practice, and in particular whether forensic services will still be required to attend a crime scene where requested to do so by the police service. The Committee accepts that, once the forensic services have been called to a crime scene, it is for them to determine how they conduct the forensic examination.

308. The Committee recommends that the Bill should include a provision specifying that forensic services should be supplied to the Police Investigations and Review Commissioner at no cost.

Complaints and Investigations

Functions of the Police Investigations and Review Commissioner

309. Chapter 10 of the Bill amends the Police, Public Order and Criminal Justice (Scotland) Act 2006 to rename the Police Complaints Commissioner for Scotland (PCCS) as the Police Investigations and Review Commissioner (PIRC) and to extend the PIRC’s remit.

310. The PIRC’s remit in relation to complaints remains largely the same as that of the PCCS. However, Section 61 of the Bill places a number of requirements on the SPA and chief constable in relation to dealing with complaints, including maintaining suitable arrangements for the handling of relevant complaints and seeking views on these arrangements. The SPA must “keep itself informed about how the chief constable is dealing with relevant complaints” and the chief constable must provide the SPA with “whatever information about relevant complaints it reasonably requires” for this purpose.

311. Section 63 of the Bill extends the remit of the PIRC to include the investigation, when directed by a prosecutor, of any circumstances in which there is an indication that a person serving with the police may have committed a “serious criminal offence” and the circumstances of any death under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. The Commissioner may also investigate and report on deaths, serious injuries or firearms incidents where constables and police staff are involved.

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259 Police Complaints Commissioner for Scotland. Written submission.
261 A “serious criminal offence” for the purposes of this section is where the conduct constituting the offences results in death or serious injury.
312. The PIRC may also investigate ‘a serious incident involving the police’, defined as including deaths and serious injuries when the person had contact (directly or indirectly) with the police or was detained or held in custody at or before the time of death or serious injury, and incidents where a person serving with the police has used a firearm or other prescribed weapon.

313. Generally speaking, most witnesses welcomed the creation of the PIRC. For example, ACPOS stated in written evidence that “it is crucial public confidence in the police remains high but also that they have confidence in how we investigate complaints and the recourse available when they have concerns about investigations”.

314. Professor John McNeill, the Police Complaints Commissioner for Scotland, claimed that, “unlike those cases in which there is an indication of criminality”, the Bill does not specify how investigations into “serious incidents involving the police” would be triggered. He stated in written evidence—

“The prompt referral of such cases will be of critical importance to the exercise of PIRC’s functions and the integrity of its investigations. The PCCS therefore considers that the notification arrangements ought to be specified in the Bill, rather than within regulations which may (or may not) be made. All other police oversight bodies in the UK and Ireland operate on the basis of mandatory referrals by the police of cases involving death or serious injury. In the absence of a similar provision, it is unclear how PIRC might be alerted to a serious incident of the kind it is expected to investigate.”

315. Her Majesty’s Inspectorate of Constabulary for Scotland supported Professor McNeill’s suggestion that referrals to the PIRC be mandatory in such cases. However, the Scottish Police Federation argued this can be adequately dealt with in regulations.

‘Public interest’ investigations

316. Under section 66 of the Bill, the PIRC may also investigate ‘any relevant police matter’ that it considers is in the public interest. Any relevant police matter is defined as “any matter relating to the Authority, the Police Service or a person serving with the police”.

317. The Scottish Institute for Policing Research argued that this section is “very important and provides an area of truly independent initiative for the Commissioner in which to act”. It added that “it is particularly the inclusion of this ‘public interest’ clause which moves police complaints in Scotland from a position in which it lags behind other comparable jurisdictions to one in which it potentially leads the field”.

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262 Police and Fire Reform (Scotland) Bill, section 66.
263 ACPOS. Written submission.
265 Police Complaints Commissioner for Scotland. Written submission.
267 Scottish Police Federation. Written submission.
268 Scottish Institute for Policing Research. Written submission.
318. There was, however, confusion surrounding the meaning of ‘public interest’. The Scottish Crime and Drug Enforcement Agency (SCDEA) sought a clearer definition of the term.\(^{269}\) The Association of Scottish Police Superintendents also had concerns that the term ‘any police matter’ could be interpreted very widely—

“We are concerned that the wording of this section empowers the PIRC to conduct investigations without limit. We do understand the need for public interest investigations but would encourage the Justice Committee to question whether it is appropriate to invest such significant power to commence such investigations in one person.”\(^{270}\)

319. The Cabinet Secretary for Justice told the Committee that the Scottish Government was “happy to look at any further change to the bill if it is necessary to ensure that, while we maintain public confidence, we do not perhaps provide for a role that would be prospective rather than reactive.”\(^{271}\)

**Appointment of the PIRC and team**

320. Clarity was sought from witnesses on “where the specialist knowledge and skills would be sourced from” to provide the PIRC’s staff.\(^{272}\) The SCDEA questioned whether the police service would be expected to provide the relevant knowledge and expertise to staff the PIRC and, if so, whether this would provide the necessary independence required of the role.\(^{273}\)

321. Many of the main police bodies in Scotland argued that the PIRC and head of investigations should be appointed as soon as possible.\(^{274}\) The Association of Scottish Police Superintendents said it was particularly concerned that there is insufficient time available to implement the introduction of the PIRC prior to the establishment of the police service.\(^{275}\)

**Defamation**

322. Professor McNeill, the Police Complaints Commissioner for Scotland, told the Committee that he had been subject to the threat of defamation proceedings on a number of occasions and, therefore, suggested that the PIRC be provided with “absolute, or at the least, qualified privilege” to protect the position from such proceedings. He added that other complaints bodies, such as the Scottish Public Services Ombudsman, have this protection.\(^{276}\)

**Complaints against the PIRC**

323. Section 70 of the Bill inserts a new section 42A into the 2006 Act providing for the PIRC to “maintain suitable arrangements for the handling of complaints” and to seek the views of others “as to what those arrangements should be”. The

\(^{269}\) Scottish Crime and Drug Enforcement Agency. Written submission.

\(^{270}\) Association of Scottish Police Superintendents. Written submission.


\(^{272}\) Association of Chief Police Officers Scotland. Written submission.

\(^{273}\) SCDEA. Written submission.

\(^{274}\) Scottish Police Federation, Association of Scottish Police Superintendents, Police Complaints Commissioner for Scotland and Her Majesty’s Inspectorate of Constabulary for Scotland all took the view that the Police Investigations and Review Commissioner should be appointed as early as possible.

\(^{275}\) Association of Scottish Police Superintendents. Written submission.

Bill includes the PIRC as one of the bodies to whom a referral may ultimately be made to the Scottish Public Services Ombudsman (SPSO). However it also provides that “action taken by the PIRC for the purposes of or in connection with the investigation or prevention of crime or the protection of the security of the State” may not be so referred.277

324. The Association of Scottish Police Superintendents expressed concern “about the fairness of the proposed method for dealing with complaints against the PIRC” and proposed that “there must be included ... a clearly defined procedure to address this shortfall in the current Bill, including a role for the Scottish Public Services Ombudsman”.278 The Scottish Crime and Drug Enforcement Agency agreed that the SPSO would seem an appropriate body to fulfil the external scrutiny role necessary “to ensure public confidence in the new role and responsibilities of the PIRC”.279

325. The Committee seeks clarity on how the relationship between the Lord Advocate and the Police Investigations and Review Commissioner would work regarding criminal investigations, and in particular as to the role of the PIRC in relation to serious incidents involving the police. We further seek the Scottish Government’s views on comments by some witnesses that the power of the PIRC in relation to public interest investigations is too wide.

326. As with the chief constable and chief fire officer, we consider that the PIRC should be appointed as early as possible to enable their investigating team to be in place before 1 April 2013, but that the appointments process must be both independent and perceived to be independent.

327. The Committee also seeks clarification as to whether the Scottish Government intends the PIRC to be a self-contained body or whether its staff will be seconded from the police.

328. The Committee agrees that the PIRC should have qualified privilege to protect him or her from defamation proceedings, as suggested by the Police Complaints Commissioner for Scotland.

329. The Committee notes that the Bill specifies that complaints against the PIRC may ultimately be referred to the Scottish Public Services Ombudsman (SPSO), but that there appears to be a number of areas which the SPSO cannot investigate. The Committee invites the Scottish Government to clarify whether it considers there to be sufficient independent oversight of the PIRC’s complaints handling procedures.

**Independent custody visiting**

*Background*

330. Since 1999 independent custody visiting (ICV) has been carried out by volunteers. Their role is to visit police stations unannounced to check on the

277 Police and Fire Reform (Scotland) Bill, page 90.
278 Association of Scottish Police Superintendents. Supplementary written submission.
279 Scottish Crime and Drug Enforcement Agency. Written submission.
welfare of those in police custody. All police authorities and joint police boards provide and support a scheme for their area.\(^{280}\)

331. Chapter 16 of the Bill seeks to place the arrangements for ICV in Scotland on a statutory footing, in line with the rest of the UK. The Scottish Government believe that this is necessary to ensure that ICV in Scotland is fully compliant with the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The grounds on which access to detainees (or to a category of detainee) can be refused are determined by the Scottish Ministers. Before making such a determination or issuing any relevant guidance on ICV, the Scottish Ministers must consult the SPA, the chief constable, independent custody visitors or their representative body, and such other persons as they consider appropriate. The Scottish Ministers are required to lay a copy of any such determination or guidance before the Scottish Parliament.

332. Access to a detainee may only be refused where it appears to a constable of the rank of inspector (or above) that a ground set out in a determination by the Scottish Ministers is satisfied in relation to the detainee, and where any other procedural requirements the SPA considers necessary have also been met.\(^{281}\)

333. The intention behind the decision to place ICV on a statutory basis was broadly welcomed by witnesses. The SIPR said that making ICV a statutory requirement was "very much in line with recommendations that it made in its evaluation of custody visiting in Scotland".\(^{282}\) However, some witnesses, such as Robert Wyllie of Lincoln College, Oxford, had concerns that the arrangements fall short of the OPCAT requirements—

"The Bill does not provide for a comprehensive visiting scheme. It allows for access to be denied to custody visitors. This is inconsistent with Articles 19(a), 20(c) and 20(e) of OPCAT together with paragraphs 24 and 25 of the Guidelines.\(^{283}\). The justification of this is unclear, especially given the unlimited powers of access which are given to other bodies. Indeed it can be argued that it is precisely when serious incidents take place that custody visiting is most required."\(^{284}\)

334. The Scottish Human Rights Commission (SHRC)\(^{285}\) also had concerns regarding the determination to refuse access to a detainee, and the UK National Preventative Mechanism\(^{286}\) argued that—

\(^{281}\) Police and Fire Reform (Scotland) Bill, section 91(4)
\(^{282}\) Scottish Institute for Policing Research. Written submission.
\(^{283}\) United Nations Guidelines on National Preventative Mechanisms CAT/OP/12/5 (9 December 2010)
\(^{284}\) Robert Wyllie. Written submission.
\(^{285}\) Scottish Human Rights Commission. Written submission.
\(^{286}\) The UK National Preventative Mechanism is a group of 18 organisations which monitor places of detention across the UK in accordance with OPCAT.
“The exceptional nature of any refusal of access should be made clear in guidance and there should be a memorandum of understanding between custody visitors and the police service regarding how operational issues will be dealt with and how necessary security measures will be taken.”

335. The Committee is broadly content with provisions on independent custody visiting. However, we note some witnesses’ concerns about the potential for access to be denied and invite the Scottish Government to clarify whether it is satisfied that this is consistent with international obligations.

Human Rights

336. The Committee received evidence suggesting that human rights standards should be embedded into the structure, policy and practice of policing in Scotland, following the lead of the Police Service of Northern Ireland. Indeed, the Scottish Institute for Policing Research argued that there should be a reference in the Bill to all police duties being carried out in compliance with the Human Rights Act 1998 and a specific duty on the SPA to monitor this compliance (in line with duties of the Northern Ireland Policing Board).

337. The SHRC stated that the development of a single police force and oversight structures in Scotland provides a “unique opportunity to embed human rights into the new police structure” but added that “regrettably there are no references to human rights in the bill despite the distinct human rights obligations for the police under the Human Rights Act.” The SHRC also called for a duty to be placed on the SPA to issue, following consultation, a code of ethics for the Police Service of Scotland laying down standards of conduct and practice for police officers and making them aware of the rights and obligations under ECHR.

338. Amnesty International Scotland said that accountability for the human rights performance in the new police structure in Scotland could be achieved by “including human rights references in the police purpose, the oath, a Scottish Police Service code of ethical practice, and in training and appraisals.”

339. Sir Hugh Orde, President of the Association of Chief Police Officers, told the Committee that human rights was at the core of policing in the PSNI, including the oath that constables are required to take which refers to “upholding fundamental human rights”. He added—

“The human rights agenda was embedded in every training course. I was inspected on our compliance with that agenda by independent people. The people who held me to account were independent advisers to the policing board, not to me. The principle was not just window dressing; it was embedded in everything that we did. The human rights agenda was

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287 UK National Preventative Mechanism. Written submission.
288 Scottish Institute for Policing Research. Written submission
289 Scottish Human Rights Commission. Written submission.
290 Amnesty International. Written submission
embedded in our system, and public order and everything else were policed against that agenda, which was hugely important.”

340. The Committee notes the good practice from Northern Ireland in relation to embedding human rights within all aspects of policing and recommends that the Scottish Government gives consideration to the Bill being more explicit on human rights.

FIRE AND RESCUE

Fire and rescue functions

341. The Bill provides for the functions of the fire and rescue authorities and joint boards set out in the 2005 Act to be transferred to the new Scottish Fire and Rescue Service. Additional fire and rescue functions are contained in the Fire (Additional Function) (Scotland) Order 2005. The Policy Memorandum indicates that the Scottish Government intends to transfer these functions to the new Scottish Fire and Rescue Service by secondary legislation.

342. The Policy Memorandum indicates that a new fire and rescue framework will be brought into effect through secondary legislation, to “reflect these existing statutory functions, and give them a renewed focus by placing them within a context of promoting community engagement, prevention and partnership working to improve outcomes.”

343. The Fire Brigades Union (FBU) argued that the 2005 Act “crucially changed fire brigades into fire and rescue services” but that the legislation “did not anticipate that the public understanding of the definition of ‘rescue’ would mean a much wider and altogether more onerous role for the service.”

344. The Association of Principal Fire Officers Scotland (APFOS) suggested that “it is timely to introduce new functions which better reflect the contribution that the fire and rescue service already makes to a much wider community safety agenda”, and Brian Sweeney from the Chief Fire Officers Association Scotland (CFOAS) told the Committee that the legislation “needed to be clear about the purpose and functions of a 21st century fire and rescue service”. Steven Torrie, Chief Inspector of Fire and Rescue Authorities and Head of the Fire and Rescue Advisory Unit, said “it would be helpful if the bill broadly recognised the fire and rescue service as the rescue organisation for Scotland, as long as we do not get caught up in too much detail at the level of the law.” He went on to explain—

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292 These functions are: (a) promoting fire safety; (b) fire fighting; (c) responding to road traffic accidents; (d) enforcing fire safety legislation in relevant premises; and (e) responding to any other eventualities likely to cause death, injury or illness, or harm to the environment (including buildings).
293 Additional functions are: (a) responding to chemical, biological, radiological or nuclear incidents; (b) providing urban search and rescue capability; (c) responding to serious flooding; and (d) responding to serious transport incidents.
294 Policy Memorandum, paragraph 66.
295 Fire Brigades Union. Written submission.
296 Association of Principal Fire Officers Scotland. Written submission.
“If you try to be too clever and precise about defining functions, you could end up tying the service up in knots with different arguments. For example, when is a serious flooding incident a serious flooding incident and not a rescue from rapidly moving water, such as a river? I could give you countless examples; that is just one.”

345. Stakeholders, including the CFOAS, commented that prevention, including road safety should also have featured more prominently in the fire and rescue functions specified in the Bill, while the APFOS and FBU argued that the community safety role should have had more emphasis placed on it.

346. The LGR Committee noted views expressed by the FBU and CFOAS that the Scottish Government should take the opportunity to amend the 2005 Act to ensure that those functions regularly carried out by the fire and rescue services are defined and funded as fire service responsibilities.

347. The Cabinet Secretary for Justice told the Committee “we think we have the correct balance” and said “there is a danger that if it goes too far in that regard, the service will become too specific.” A Scottish Government official, added—

“The service’s functions were last reviewed by the Parliament in the Fire (Scotland) Act 2005. We have not been persuaded that anything has changed significantly enough in the intervening period to change what is in the legislation. That said, in addition to the legislation there is the fire and rescue framework [for Scotland], which we are consulting on at the moment. That document is much more flexible and easier to change, so our preference would be to have more detail on the Government’s priorities in the framework, which is a document that comes before the Parliament.”

348. The Committee accepts that it would be helpful for the rescue aspect of the fire and rescue service’s functions to be clarified to a greater degree, but does not believe that this should necessarily be included in the Bill. We therefore ask the Scottish Government to discuss with fire bodies where best to clarify or codify their rescue functions, such as in the Fire and Rescue Framework or the next Fire (Additional Function) (Scotland) Order.

Fire officer and staff issues

349. The impact of projections contained in the outline business case relating to fire and rescue staff redundancies and related matters are explored in the implementation section of this report. A number of other fire fighter and staff issues were considered during evidence and these are outlined in the section below.
**Industrial relations**

350. The Bill removes section 49 from the 2005 Act on statutory negotiation arrangements regarding conditions of service of employees of the fire authorities and joint boards. The Fire Brigades Union argued that a partnership approach on negotiation of conditions of service could be harder to achieve without this provision. Mr Sweeney of the Chief Fire Officers Association Scotland said “as a result of consultation and negotiation with management, we have reached a stable industrial relations position where most authorities throughout Scotland work directly in partnership with all the unions, not just the Fire Brigades Union, in a mature, stable environment”. However he added that there was a lack of clarity about what the negotiating and consultation arrangements would be on pay, terms, conditions and pensions of fire fighters and staff.

**Fire service pensions**

351. The Finance Committee welcomed a commitment from the Scottish Government that, “should the position in relation to fire fighter pensions change, then any resulting financial implications will fall on the Government and not on the new fire service”. It invited the Scottish Government to confirm that this would be the case where there is a permanent reduction in pension income.

352. The Cabinet Secretary for Justice provided a written submission which stated that “there were no plans to change the current benefits for pension scheme members as a result of the reform of Scottish fire and rescue services”. He added that separately, the “Scottish Government is continuing to work closely with stakeholders, including the trades unions, on the implications of the UK Government’s proposed pension changes”.

353. The Committee notes the comments of the Fire Brigades Union and the Chief Fire Officers Association Scotland regarding the provision in the Bill which removes section 49 (on negotiation arrangements in relation to conditions of service) from the Fire (Scotland) Act 2005. We therefore invite the Scottish Government to explain the rationale for removing this provision.

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ANNEXE A: REPORTS FROM OTHER COMMITTEES

The Local Government and Regeneration Committee’s Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill is available at:


The Finance Committee’s Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill is available at:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/48609.aspx

The Subordinate Legislation Committee’s Report on the Police and Fire Reform (Scotland) Bill is available at:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/48806.aspx
ANNEXE B: EXTRACTS FROM THE MINUTES

2nd Meeting, 2012 (Session 4) Tuesday 17 January 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee agreed to issue a call for evidence on the Bill at Stage 1.

3rd Meeting, 2012 (Session 4) Tuesday 24 January 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee considered its approach to the scrutiny of the Bill at Stage 1 and agreed (1) to forward the Finance Committee’s correspondence on the Stage 1 timetable to the Cabinet Secretary for Justice; (2) the proposed timetable for Stage 1 scrutiny of the Bill; (3) witnesses for evidence sessions on 28 February and 6 and 13 March; and (4) to delegate to the Convener authority to agree the final composition of witness panels.

7th Meeting, 2012 (Session 4) Tuesday 28 February 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
- Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland;
- Chief Superintendent David O’Connor, President, Association of Scottish Police Superintendents;
- Deputy Chief Constable Gordon Meldrum, Director General, Scottish Crime and Drug Enforcement Agency;
- Andrea Quinn, Chief Executive Officer, Scottish Police Services Authority;
- Deputy Chief Constable Andrew Barker, Scottish Chief Police Officers Staff Association;
- Calum Steele, General Secretary, Scottish Police Federation;
- Dave Watson, Scottish Organiser (Bargaining and Campaigns), Unison Scotland.

John Finnie declared that he was formerly a police officer and full time official of the Scottish Police Federation. Graeme Pearson declared that he was formerly a police officer and member of the Association of Chief Police Officers in Scotland, and that he had previously advised software companies about information and communication technology.

8th Meeting, 2012 (Session 4) Tuesday 6 March 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
- Assistant Chief Constable Alistair Finlay, Police Service of Northern Ireland;
- Professor Nick Fyfe, Director, Scottish Institute for Policing Research;
- Dr Kenneth Scott, Director of the Centre for Criminal Justice and Police Studies, University of the West of Scotland;
- Alison Payne, Research Director, Reform Scotland;
Professor John McNeill, Commissioner, and Ian Todd, Director, Police Complaints Commissioner for Scotland; Andrew Laing, Her Majesty’s Inspector of Constabulary for Scotland, and Chief Superintendent David McCracken, Principal Inspection Manager, Her Majesty’s Inspectorate of Constabulary for Scotland; Robert Black, Auditor General for Scotland, Audit Scotland.

John Finnie declared that he was previously on a police appeals tribunal. Graeme Pearson declared that he was previously a member of the Association of Chief Police Officers in Scotland.

Police and Fire Reform (Scotland) Bill - witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses on the Bill.

Police and Fire Reform (Scotland) Bill (in private): The Committee considered the evidence received and agreed to invite an additional witness to give evidence at a future meeting. The Committee also agreed to seek an extension to the timetable for completion of Stage 1.

9th Meeting, 2012 (Session 4) Tuesday 13 March 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Richard Haigh, Scottish Regional Secretary, Association of Principal Fire Officers (Scotland);
Brian Sweeney, Chief Officer (Strathclyde Fire and Rescue), Chief Fire Officers Association (Scotland);
Steven Torrie, Head, Scottish Fire and Rescue Advisory Unit;
Councillor Richard Durham, Highland and Islands Fire Board, Scottish Fire Conveners Forum;
Sir Hugh Orde, President, Association of Chief Police Officers;
John Duffy, Scottish Secretary, Fire Brigades Union;
Sarah Duncan, Regional Organiser and Secretary of the Scottish Fire Committee, Unison.

John Finnie declared that he is a member of Amnesty International. Colin Keir declared that he is a member of the City of Edinburgh Council.

The Committee agreed to request a paper from SPICe on models of Parliamentary scrutiny in relation to the Bill.

10th Meeting, 2012 (Session 4) Tuesday 20 March 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Councillor Ian Blake, Convener, Dumfries and Galloway Police, Fire and Rescue Committee;
Councillor George Kay, Convener, Fife Police, Fire and Safety Committee;
Councillor Martin Greig, Convener, Grampian Joint Police Board; Councillor Iain Whyte, Convener, Lothian and Borders Police Board; Councillor Ian Ross, Vice Convener, Northern Joint Police Board; Councillor Stephen Curran, Convener, Strathclyde Police Authority; Councillor Pat Watters, President, and Councillor Barbara Grant, Community Safety Spokesperson, Convention of Scottish Local Authorities.

Colin Keir declared that he is a member of the City of Edinburgh Council.

11th Meeting, 2012 (Session 4) Tuesday 27 March 2012

Decisions on taking business in private: […] The Committee also agreed to consider the main themes arising from the evidence received on the Police and Fire Reform (Scotland) Bill, as well as the draft Stage 1 report on the Bill, in private at future meetings.

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—
Kenny MacAskill, Cabinet Secretary for Justice;
Liz Sadler, Head of Policy and Legislation Unit, Nick Bland, Head of Police Reform Unit, and Lorna Gibbs, Head of Fire and Rescue Reform Unit, Scottish Government.

13th Meeting, 2012 (Session 4) Tuesday 17 April 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee considered the main themes arising from the evidence received on the Bill at Stage 1 in order to inform the drafting of its report.

14th Meeting, 2012 (Session 4) Tuesday 24 April 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee considered a draft Stage 1 report. Various changes were agreed to and the Committee agreed to consider a revised draft report at its next meeting.

15th Meeting, 2012 (Session 4) Tuesday 1 May 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee considered a revised draft Stage 1 report. Various changes were agreed to and the Committee agreed its report on the Bill.
ANNEXE C: INDEX OF ORAL EVIDENCE

7th Meeting, 2012 (Session 4) Tuesday 28 February 2012

Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland;
Chief Superintendent David O'Connor, President, Association of Scottish Police Superintendents;
Deputy Chief Constable Gordon Meldrum, Director General, Scottish Crime and Drug Enforcement Agency;
Andrea Quinn, Chief Executive Officer, Scottish Police Services Authority;
Deputy Chief Constable Andrew Barker, Scottish Chief Police Officers Staff Association;
Calum Steele, General Secretary, Scottish Police Federation;
Dave Watson, Scottish Organiser (Bargaining and Campaigns), Unison Scotland.

8th Meeting, 2012 (Session 4) Tuesday 6 March 2012

Assistant Chief Constable Alistair Finlay, Police Service of Northern Ireland;
Professor Nick Fyfe, Director, Scottish Institute for Policing Research;
Dr Kenneth Scott, Director of the Centre for Criminal Justice and Police Studies, University of the West of Scotland;
Alison Payne, Research Director, Reform Scotland;
Professor John McNeill, Commissioner, and Ian Todd, Director, Police Complaints Commissioner for Scotland;
Andrew Laing, Her Majesty’s Inspector of Constabulary for Scotland, and Chief Superintendent David McCracken, Principal Inspection Manager, Her Majesty’s Inspectorate of Constabulary for Scotland;
Robert Black, Auditor General for Scotland, Audit Scotland.

9th Meeting, 2012 (Session 4) Tuesday 13 March 2012

Richard Haigh, Scottish Regional Secretary, Association of Principal Fire Officers (Scotland);
Brian Sweeney, Chief Officer (Strathclyde Fire and Rescue), Chief Fire Officers Association (Scotland);
Steven Torrie, Head, Scottish Fire and Rescue Advisory Unit;
Councillor Richard Durham, Highland and Islands Fire Board, Scottish Fire Conveners Forum;
Sir Hugh Orde, President, Association of Chief Police Officers;
John Duffy, Scottish Secretary, Fire Brigades Union;
Sarah Duncan, Regional Organiser and Secretary of the Scottish Fire Committee, Unison.
10th Meeting, 2012 (Session 4) Tuesday 20 March 2012

Councillor Ian Blake, Convener, Dumfries and Galloway Police, Fire and Rescue Committee;
Councillor George Kay, Convener, Fife Police, Fire and Safety Committee;
Councillor Martin Greig, Convener, Grampian Joint Police Board;
Councillor Iain Whyte, Convener, Lothian and Borders Police Board;
Councillor Ian Ross, Vice Convener, Northern Joint Police Board;
Councillor Stephen Curran, Convener, Strathclyde Police Authority;
Councillor Pat Watters, President, and Councillor Barbara Grant, Community Safety Spokesperson, Convention of Scottish Local Authorities.

11th Meeting, 2012 (Session 4) Tuesday 27 March 2012

Kenny MacAskill, Cabinet Secretary for Justice;
Liz Sadler, Head of Policy and Legislation Unit, Nick Bland, Head of Police Reform Unit, and Lorna Gibbs, Head of Fire and Rescue Reform Unit, Scottish Government.
ANNEXE D: INDEX OF WRITTEN EVIDENCE

Evidence received in alphabetical order

Amnesty International Scotland (236KB pdf)
Association of Chief Police Officers in Scotland (349KB pdf)
Association of Chief Police Officers in Scotland (supplementary submission) (84KB pdf)
Association of Principal Fire Officers Scotland (78KB pdf)
Association of Scottish Police Superintendents (264KB pdf)
Association of Scottish Police Superintendents (supplementary submission) (292KB pdf)
Auditor General for Scotland (182KB pdf)
Auditor General for Scotland (supplementary submission) (71KB pdf)
Baldwin, David (64KB pdf)
Black and Ethnic Minority Infrastructure in Scotland (75KB pdf)
British Transport Police and British Transport Police Authority (81KB pdf)
Chartered Institute of Public Finance and Accountancy, CIPFA Directors of Finance Section and Scottish Local Authorities Chief Internal Auditors Group (199KB pdf)
Chief Fire Officers Association Scotland (195KB pdf)
Chief Fire Officers Association Scotland (supplementary submission) (86KB pdf)
Chief Inspector of Fire and Rescue Authorities/Head of the Fire and Rescue Advisory Unit (71KB pdf)
Convention of Scottish Local Authorities (281KB pdf)
Convention of Scottish Local Authorities (supplementary submission) (70KB pdf)
Dumfries and Galloway Council Police and Fire and Rescue Authority (93KB pdf)
Equality and Human Rights Commission Scotland (210KB pdf)
Fire Brigades Union Scotland (167KB pdf)
Gallagher, Professor JD (151KB pdf)
Her Majesty's Inspectorate of Constabulary for Scotland (267KB pdf)
Her Majesty's Inspectorate of Constabulary for Scotland (supplementary submission) (191KB pdf)
Highland and Islands Fire Board (173KB pdf)
Highland Council (180KB pdf)
Integrity4Scotland (81KB pdf)
Kelly, Mel (226KB pdf)
Laidlaw, Mark (229KB pdf)
Northern Joint Police Board (177KB pdf)
Police Complaints Commissioner for Scotland (89KB pdf)
Police Complaints Commissioner for Scotland (supplementary submission) (10KB pdf)
Reform Scotland (76KB pdf)
Royal Society for the Protection of Birds Scotland (70KB pdf)
Scottish Chief Police Officers Staff Association (27KB pdf)
Scottish Countryside Alliance (116KB pdf)
Scottish Crime and Drug Enforcement Agency (146KB pdf)
Scottish Fire Conveners Forum (89KB pdf)
Scottish Human Rights Commission (186KB pdf)
Scottish Institute for Policing Research (300KB pdf)
Scottish Police Authorities Conveners Forum (144KB pdf)
Scottish Police Federation (202KB pdf)
Scottish Police Federation (supplementary submission) (70KB pdf)
Scottish Police Services Authority (133KB pdf)
Scottish Women's Aid (267KB pdf)
Society of Local Authority Chief Executives (100KB pdf)
Stonewall Scotland (161KB pdf)
UK National Preventive Mechanism (100KB pdf)
UNISON Scotland (152KB pdf)
Victim Support Scotland (117KB pdf)
Wyllie, Robert (101KB pdf)
Zero Tolerance (73KB pdf)

Other written evidence

Letter from the Cabinet Secretary for Justice on the timescale for consideration of the Bill (7 February 2012) (92KB pdf)
Response from the Scottish Government to the Convener (10 April 2012) (63KB pdf)
Response from the Chief Inspector of Fire and Rescue Services to the Convener (11 April 2012) (74KB pdf)
Letter from the Convention of Scottish Local Authorities and the Scottish Government to Police and Fire Board Conveners (12 April 2012) (12KB pdf)
The next agenda item is our first evidence session on the Police and Fire Reform (Scotland) Bill at stage 1.

I welcome our first panel of witnesses. They are: Chief Constable Kevin Smith, who is president of the Association of Chief Police Officers in Scotland; Chief Superintendent David O’Connor, who is president of the Association of Scottish Police Superintendents; Deputy Chief Constable Gordon Meldrum, who is director general of the Scottish Crime and Drug Enforcement Agency; and Andrea Quinn, who is chief executive officer of the Scottish Police Services Authority. Thank you for your very full submissions—I know that they are very full, because I read them all.

We will move straight to questions from members. Witnesses should self-nominate if they wish to respond to any question that is not specifically directed at them, and I will come to them in turn. The microphones will come on automatically—at least, that is the plan.

Humza Yousaf (Glasgow) (SNP): All at the same time—that was very good.

Chief Constable Smith: It is the only thing we agree on. [Laughter.]

Humza Yousaf: I would like to hear from each of the panel members—as long as they self-nominate, of course—about the financial savings, which have been much discussed. I am particularly interested to hear whether Mr Smith and Mr O’Connor think that the savings that have been mentioned are reasonable and achievable and what the constraints might be in that regard.

Chief Constable Smith: Savings are the biggest issue in the reform and raise the question whether we will have the opportunity to reform and
redesign what is a very important part of public services or have to focus on financial cuts. At this stage, there is a risk that the latter will happen.

Let me articulate what I mean. The savings are to be made in three main areas. First, a small amount—£5 million—is to be saved in police officer delayering, or rationalisation. Secondly, another £30 million is to be saved in non-staff costs. That element must be explored to the nth degree before we get into the third and most critical part: the potential reduction in police staff, which is to account for up to 60 per cent of the savings. Because of the commitments on police numbers, on there being no voluntary redundancies and on there being limited changes to terms and conditions, that is the biggest issue.

For example, according to the business case in the bill, we are expected to lose more than 1,100 people by 2013-14. That is a significant figure. I stress that it is not that we do not want to do it, but if we follow the law, due diligence and due process in relation to redundancies, such a move will make running the organisation impossible. The earliest possible date for the new police service of Scotland to be a legal entity is 1 April 2013; in other words, that will be the first opportunity for the new chief constable and police authority to engage in meaningful consultation and dialogue with the union, to present plans and to secure agreement. We all know how long that process takes. At the very least, there has to be 90 days’ consultation with the union and the individuals who will be affected.

The very recent—indeed, current—experience of forces is that the consultation period is followed by an implementation phase; for example, it took Strathclyde Police more than 18 months and four phases to take 200 people out of the organisation through voluntary redundancy. Based on what our professional human resources people have told us about recent experiences, our professional assessment is that, at the very best, it might be the third or even the final quarter of 2013-14 before we achieve the redundancies, which will very quickly eat into the savings that have already been set out in the bill.

Of course, the other practical question is whether—because of the limitations on compulsory redundancy—we will get that number of volunteers. Our assessment, based on recent experience, is that over the next two to three years we will not attract the expected 2,000 people. That is not because of lack of commitment in the police service: the simple fact is that not enough people will leave the organisation.

We have reached this point because of the outline business case, which was—although it has been very much informed by people in the service and subject experts—never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings. Moreover, although it outlined at a high level what might be achieved, it did not set out any timescales. Finally, it did not say anything about what I would call due diligence and whether you could actually move up to 2,000 people out of the organisation in that time.

That, for me, is the biggest risk to the reform and redesign of a critical public service. The service is as one in trying to deliver a new reformed and redesigned national police service, in trying to do everything that we do locally and in trying to deliver what we can nationally within a very constrained financial envelope. We will make savings, but my personal and professional view is that the savings that have been set out in the bill will not be achieved in the coming years. I do not say that easily, but I would rather say it now than come back here in two years to answer your questions about why the savings have not been made.

Chief Superintendent O’Connor: I will build on that. There is a clear need to focus on maintaining a balanced workforce in the new service: there must be a balance between police officers and police staff. There is no doubt—because more than 84 per cent of the police budget is spent on staff costs—that there will be an impact on staff as we go forward. We have heard from Kevin Smith about the position on maintaining officer numbers, having no compulsory redundancies, the terms and conditions of police officers and, potentially, a dispersed service delivery model in the future.

I sense that the challenges that we face are about maintaining service delivery. Police performance is very high and crime is at a 35-year low. We must maintain public confidence and reassure the public about the service as we move from the current eight-force structure to the new single-service structure. Fundamentally, we need to maintain staff confidence and staff morale as we build the new model and the new service. That is about striking the right balance between police officers and police staff—the right people with the right skills must be doing the right jobs. I sense that that will be a significant challenge for everybody in the service.

Andrea Quinn: I will build on the support-staff side of the discussion. The specialist professionals in my organisation and across the forces play a crucial part in policing. We often hear of staff being badged as either front-line or back-office staff: that is disingenuous. I will give a few examples. Would we call an accountant who was working to track down a serious organised crime group and their ill-gotten gains “back-office staff”? Would we call a forensic scientist who is dealing with the body of a
murdered child “back-office staff”? Would we call information and communications technology experts in restoring police communications “back-office staff”? No. We would not.

It is vital that you appreciate the balanced team that all my colleagues have mentioned and the importance of getting the balance right.

Deputy Chief Constable Meldrum: I agree with everything that has been said and can be reasonably brief. As Andrea Quinn said, it is helpful to put into perspective what we mean by “police staff”. Perhaps it is not the case in this room, but when people elsewhere talk about police staff they conceptualise that as someone who is in an indoor back-office job.

I have a number of crucial staff at the Scottish Crime and Drug Enforcement Agency in disciplines such as e-crime, cybercrime, technical support, forensic accountancy and so on. They are police staff who have unique skills that many police officers do not have and they work as close to the front line as you can get without wearing a uniform. The notion that some police staff are tucked away in back offices and so on does not hold; many of them perform critical front-line operational roles.

The Convener: That is a very helpful elaboration of the definition.

Humza Yousaf: I find those comments very useful and reiterate that it is somewhat “disingenuous”—to use the word that Ms Quinn used—to make a simple black-and-white differentiation between back-room and front-line staff. Does it really become an operational matter, as it should be, for the chief constable or local commanders in terms of how best to deliver the service in the appropriate manner? Perhaps you can elaborate on that. I suppose the point, before I let other members plug away—

The Convener: No: I will let them plug away.

Humza Yousaf: Yes, indeed.

The Convener: I have to keep sorting this young man out.

Humza Yousaf: That’s me telt.

The Convener: That’s you telt, all right.

Humza Yousaf: Many of you indicate in your submissions that the Government is in negotiations about a VAT exemption. How much of an impact would it have if you did not have to pay that £22 million liability?

Chief Constable Smith: I will touch on the first point that you made about whether such decisions should be left to the chief constable. There is a need for a mature debate about the workforce mix.

My colleagues can probably articulate the point far better than I can.

For me, as a chief constable and someone who is leading reform, there is an issue of pragmatism. An elected Government has said that we will have 17,234 police officers. For the avoidance of doubt, I think that that is not a bad thing; it is a good thing. The Government has also said that there will be no compulsory redundancies. That is a strong statement to our people and is also a very good thing. However, when such factors come together we get pushed certain ways. Is it about the money that will be saved if those factors cannot be altered, or is it about phasing? I hope that I have articulated the problem.

10:15

The VAT issue is important and we have been trying to resolve it since the SPSA came into existence in 2007. I am confident that the Government is doing everything that it can to resolve the issue—I do not think that anyone wants it. However, in the context of reform, VAT liability is not the most critical issue; the most critical issue is the savings that are anticipated, particularly in year 1, and the timing, given the due diligence and legal process that we need to go through. We will not deliver the savings that are based on the expected reduction in staff numbers if we follow due process and do what is right, legal and fair to our people—we will save only a very small proportion of that part of the budget. That is the single biggest threat and risk in relation to reform and the single biggest threat to what we want to do for the Parliament, the Government and the people of Scotland, which is to redesign and reform an effective public service and make it even more effective.

Chief Superintendent O’Connor: From an operational commander’s perspective, the mature debate that Kevin Smith talked about will be critical. In the potential 32 local area commands, and whatever structure sits beyond them, there will need to be a debate about how to strike the right balance between police officers and police staff in the range of public protective services that will need to be available in each area. That is key, and the debate must be had in the near future.

Humza Yousaf: Perhaps I did not express my question well. If the police had additional money, be it from VAT exemption or anything else, would you cut fewer police staff, or can you achieve an effective single police force alongside such a reduction in staff?

Chief Constable Smith: My understanding of the Government’s current position is that the savings that are anticipated in our budget are expected and that VAT liability, if it becomes an
issue, will be for the Government to resolve. I speak as a public servant in the wider sense when I say that I do not think that any of us would want £22 million to be taken out of the public sector, because we would expect at least part of the effect to drip down to policing at some point. In essence, it is for Government to determine where it wants to go in that regard. However, I understand that as recently as last week the Government said that the savings that we are expected to deliver would remain the same and the VAT liability would be for Government to resolve.

**Jenny Marra (North East Scotland) (Lab):** I want to pick up on two points that have been raised. First, Kevin Smith said that the police service will not attract the number of volunteers for voluntary redundancy that would enable you to make the savings that the Scottish Government is asking you to make over the first year. Is there anything that would make it easier to meet those demands?

**Chief Constable Smith:** The difficulty with the process is the commitment to there being no compulsory redundancies. That is a laudable and positive contribution to policing, but it restricts the people who are expected to deliver reform in their ability to make savings. If there is a commitment to having 17,234 police officers and to there being only voluntary redundancies, we must ask whether the anticipated savings are too high, or whether the time in which they are expected to be made is too short.

My view is that it is all about phasing. I think that most of us follow the logic of investing in reform and expecting the outcome in the following year. However, the budget has been set in such a way as to expect the investment in voluntary redundancy and so on and the savings in the same year. Government has also told us that if we do not spend all the money that has been laid aside for redundancy in that year, simply because of a process, the money will be lost to us. If we are looking for a logical, strategic way of reforming a service, that does not seem to be the best approach.

**Jenny Marra:** What if there was more time to meet the demands of the process? Am I right in saying that, if you are getting rid of resources and human resources quickly in order to construct a service that will be fit for purpose three to 20 years down the line, you cannot immediately get rid of people whom you might need in two years?

**Chief Constable Smith:** Absolutely. The problem with voluntary redundancy is that it restricts us to making redundant only the people who raise their hands. Redundancy cannot then be decided on the basis of who we need, where we need them and what posts we could do without. It is, at best, an ad hoc way to reform a service.

As you have said, we may lose our human resources people and finance people, but when we are trying to manage our redundancy process during a period of reform, those are the very people whom we need in the organisation to help us deliver it. Equally, if we were to lose people who serve an important function that is part of the savings, for example staff in police control rooms, but were then unable to reach the reform stage quickly enough, that would be counter to good management of reform.

I am absolutely committed to maintaining police numbers and to avoiding compulsory redundancies, about which there are also strong Government commitments. If the Government expects savings to be made as part of a wider budget, we are the very people who will turn every stone to find them, but my professional view is that what is expected cannot be done according to the suggested timescale, for simple reasons of employment law and due process, which were never factored into the outline business case. It came upon us.

**Jenny Marra:** I will ask David O'Connor about the balance between police officers and civilian staff. At a time when we are trying to make savings, it seems to be counterintuitive to have police officers stepping in for civilian staff who are being made redundant. In effect that means, for example, a police officer who earns £45,000 might be doing a job that could be done by someone who would earn £25,000. At a time of financial savings, is that counterintuitive? Is there an optimum balance between civilian staff and police officers that would make the police force more effective?

**Chief Superintendent O'Connor:** There has to be a balance. From the operational commander’s perspective, police officers are highly skilled and highly trained and come fully equipped. We would much rather see them out in communities, performing the jobs of preventing and detecting crime, and enforcing the law. We need to consider the skills that are needed for the critical roles that are performed by police staff and which allow officers to stay on the street. I sense that some of that debate still needs to take place, because we are still talking about the structures, what they will look like in the 32 areas and how they will work in the relationship between the 32 areas, the chief constable and the team.

To expand on Kevin Smith’s point, we have to be careful in the short term that we do not throw the baby out with the bath water. We have a lot of very loyal, competent and experienced police staff with a lot of corporate knowledge, skills and expertise. I fear that at some point down the line it
may dawn on us that we still need those skills and, indeed, that we may have to buy them back.

The Convener: I remind members to keep their questions brief, because nearly all the panel members have already given evidence to the Finance Committee. I do not want to prevent members from asking questions about finance, but I remind them that the Finance Committee has already done so, as recorded in the Official Report of its meeting of 22 February, which I am sure members have read, along with lots of other stuff. We need to leave space in this meeting to ask about other matters, such as the independence of the police and other important principles.

Lewis Macdonald (North East Scotland) (Lab): I want to follow up on Kevin Smith’s evidence on staff redundancy and the potential savings. You said clearly that the envisaged savings could not be delivered on time in line with legal requirements on the employer. What will happen if the Government maintains its commitment to introducing the reforms on 1 April next year?

Chief Constable Smith: That is a difficult question. I stress—in case there is any doubt—that we will do absolutely everything that is humanly possible to squeeze out money from the police-officer side and from the non-staff part. That is something that we do year on year.

It is a really difficult issue. The convener talked about making sure that we do not just focus on finance but look at other aspects of reform. For me, however, finance is the most critical part, because if it is not handled properly it will undermine the key objectives of reform, which are to maintain local policing, to enhance the national capacity and to increase local engagement. The savings are critical to those things. If there is no movement, the savings requirements will be pushed into the following year, which will compound the problem, or we will return to debates and discussions about, for example, police numbers and compulsory redundancy, which we do not want to do.

For the avoidance of doubt, I suggest that having 17,234 cops in Scotland and no compulsory redundancies are good things and we want to maintain those. We stress however that, because of the timing, not all the expected savings will be made in year 1. We can provide evidence of that, given recent experience. There is, therefore, a discussion to be had with the Government about how to proceed.

The Convener: The only reason I said that we should not focus solely on finance is that I do not want us to duplicate the work of another committee. If the other committee has asked cogent and thoughtful questions and has received responses already, I do not want us to duplicate that when there is much else in the bill. I am aware of how serious finance is, but we do not want to duplicate effort. The Local Government and Regeneration Committee is looking at another aspect of the reforms.

Lewis Macdonald: The way that you have described redundancies, savings and the outline business case suggests that you are being asked to meet a fairly arbitrary target of 2,000 posts over the period. In other words, there is no design that says, “In merging the forces, these are the posts that we will save and this is the financial consequence of that.” Is that approach not the wrong way round? Am I right in thinking that, if you are struggling to find 2,000 volunteers for redundancy, you will really struggle to say no to anyone who volunteers, no matter what post they hold?

Chief Constable Smith: I am sorry; can you please repeat your last question?

Lewis Macdonald: You said that you had struggled to find enough volunteers to meet the redundancies target. Does that mean that, if members of staff whom the police service wants to keep are among the volunteers, it will be very difficult for the police service to refuse them?

Chief Constable Smith: Absolutely. One force received 500 expressions of interest over the past couple of years but could release only 200 people. The other 300 people were in roles that were such that it would have been expensive to allow them to go. More critically, they were in posts that had to be maintained—posts in control rooms, custody, front-office counters and so on. If those people were released, the force would have been in the silly situation of taking cops off the streets. I and other chief constables will make every effort to ensure that we do not pull cops back in, but if the redundancy situation is not managed properly, that is unfortunately a threat and a risk.

Lewis Macdonald: So, there is no design behind the target of 2,000 posts.

Chief Constable Smith: Last year, in trying to find out how we were going to meet the financial challenge, the sustainable policing team looked across a range of policing functions and, over a period of six weeks, along with support from consultants, reported to Government on what might be achieved. That work was never intended by those who did it, nor by the consultants who advised them, to be used in making such a significant decision on police reform. It was seen as a means by which Government could consider three options—a single force, a regional model and the status quo—and say, based on a level playing field, which one looked the best. The Government’s intention was that, thereafter, that
would be subject to a full and robust business case, which would more fully articulate costs, savings and achievability and would do the bit of work that I call due diligence, which would involve an examination of the mechanics of achieving the financial savings, if they amounted to the loss of upwards of 2,000 posts, and what the timescale for that would be. That was not done. We are doing that now.

10:30

**Lewis Macdonald:** I have a simple yes or no question for all the witnesses. Would an additional year make the process more manageable and effective?

**Andrea Quinn:** Yes.

**Deputy Chief Constable Meldrum:** Yes.

**Chief Superintendent O’Connor:** Yes.

**Chief Constable Smith:** What I would say is that we will start the new single service on day 1. It will be functional and operational and it will deliver what we are delivering today. What is required is greater thought in terms of the phasing of savings and investment. Just now, there is investment upfront, with anticipated savings at that point. Our sense suggests that the savings will filter through in due course, following the investment. However, I do not want that to be construed in any way, shape or form—as, unfortunately, it can be—as representing a lack of commitment to police reform. Our approach is about making reform work. In order to make reform effective, we need to get these wicked issues out in the open, challenge them and resolve them.

**The Convener:** I think that we follow that.

**Graeme Pearson (South Scotland) (Lab):** I suppose that I should state my personal background. I was previously a police officer and a member of ACPOS and, as a result, I have a particular interest in these matters.

Following on from what Mr Smith has just said, it occurs to me that day 1 is April fool’s day. If we were not debating such a serious issue, I would note that that was probably a good choice of day to begin the exercise that we have just discussed.

You have mentioned the issue of redundancies among civilian staff. Hopefully, the fact that some of us have been raising that issue on the floor of Parliament over the past six months will give you some comfort.

Mr Smith concentrated on the fact that maintaining 17,234 officer posts is a good thing. However, maintaining those posts has implications, in terms of the 2,000 redundancies. You have made a clear statement of the damage that can be done in relation to that. The issue has obviously been discussed at length in the development of the current position. What has been the response from Government and the civil service in connection with the options that are available to you? Has it just been the pressure of time that has meant that a gateway review of the current business case and the development of due diligence that you mentioned earlier has been avoided?

**Chief Constable Smith:** The discussion has been that the Government is committed to maintaining police numbers. It is a very strong statement. I absolutely believe that that is a good thing and I am committed to there being no redundancies. However, you are right that that clashes with the other concerns. That is why one of the resolutions involves a more informed phasing, which should combat that to some extent.

What was the second part of the question?

**Graeme Pearson:** Let me deal with what you have just said, first. It is one thing to say that the Government wants to maintain 17,234 officers. However, is the subtext therefore that we should just get rid of 2,000 staff? Surely the budget should come along to maintain the service, in addition to the 17,234 officers.

**Chief Constable Smith:** While we and the Government agree absolutely with each other on the objectives of reform, we differ with regard to the practicalities of the financial aspects. The Government’s position is that the outline business case was the most informed position ever on policing, and that the savings that were highlighted were achievable. That is the Government’s position, and I disagree with it.

**Graeme Pearson:** Was it merely the timescale that prevented due diligence and a gateway review?

**Chief Constable Smith:** The Government’s position was that it would do an outline business case and then a full business case. It moved from that to an expectation that we would do the full business case. That is what we are doing. Given your experience, you can imagine that we are going through a complex and detailed analysis of what we have now, what we want on day 1 and what we want for the future. It takes time to ensure that that is done properly.

**The Convener:** When do you expect to conclude the preparation of your business case?

**Chief Constable Smith:** I will attend workshops tomorrow with the executive leads. I expect to have the day 1 position by the end of next month. The work on savings will go on thereafter.

The Government’s position was that the savings could be made, but my view was that there had been no due diligence. We are now going through
that, and part of that process is looking at employment law and how we deal with redundancies. My professional view, based on current experience, is that we will not move out 2,000 people in the time given, particularly through a voluntary scheme.

Graeme Pearson: May I ask Andrea Quinn a question, convener?

The Convener: I was waiting to see whether anybody else had a question. Is your question on the same point?

Graeme Pearson: Yes.

The Convener: You did not nominate yourself, Ms Quinn, so I was leaving you in peace. However, you can comment if you want to.

Graeme Pearson: My question is about the types of people who would be released from the civilian side of things or the support side, as it is sometimes described. Do police officers necessarily have the skills to replace the expertise that would be released through redundancies?

Andrea Quinn: I would say that they do not have the skills. On average, it takes four years for an accountant, a forensic scientist or an information and communications technology expert to qualify to do the job that they do.

Graeme Pearson: Thank you.

John Finnie (Highlands and Islands) (SNP): Like Graeme Pearson, I declare that I am a former police officer and full-time official of the Scottish Police Federation.

I address my question to the panel collectively, but ask Mr Smith to respond first. It relates to the term “balanced workforce”, which has been much used today and in the evidence that we have received. Accepting the 17,234 figure and the no-redundancy figure, I wonder whether the debate that seems to be skewed as support staff against police officers in some quarters is not the correct debate, given that there is, and will remain, a statutory requirement to have an efficient police service, as gauged by HM chief inspector of constabulary. That being the case, the police would not allow any highly trained accountant or forensic scientist to leave, because they would not be in a position thereafter to discharge the obligation to have an efficient police service.

I wonder whether I can move the discussion slightly further on to the resource allocation model, which of course is key to everything. The written submission from ACPOS refers to the implications of that for the local resourcing of the police service. Paragraph 43 of the submission states:

“ACPOS does not anticipate this will have a detrimental effect on local policing”.

So, it would have a positive effect. How would efficiency be reflected in a resource allocation model so that it would deliver better local policing?

Chief Constable Smith: In this debate there have always been concerns, which generally come from areas outwith the large urban areas that are primarily in the central belt, that we will see a migration of resources towards the cities and towns. My own experience would reflect such concerns. However, elected members, members of the public and police officers in the large urban areas have an equal concern that the resources that they currently have will be spread more thinly. There are two sides to the issue.

To give some reassurance before we get into the technical aspects of the resource allocation model, every one of the existing chief constables was brought up from being a young cop to their current rank with community policing in their DNA. Whether someone is the chief in a large urban area or in a small rural force, delivering local policing remains the fundamental building block.

One force, Strathclyde, is often mentioned because it covers half of Scotland. However, it can ensure not only that there are enough officers on the streets in the city centre of Glasgow, in Govan and in the housing schemes but that there are enough officers in Tiree, Oban, south Lanarkshire, south Ayrshire and so on. I have little doubt that whichever chief constable comes into place in the new service will have a desire to maintain the delivery of local policing, irrespective of any governance influences to ensure that he or she maintains that element. I am in no doubt that there will be greater scrutiny by local authorities to ensure that what we have on day 1 continues.

We will come up with a resource allocation model that will consider things such as crime and incidence, and the community-based style of policing that we want. We hope that the model will be open and transparent so that people can see what is there.

There are two other parts to that. Local policing is delivered not only by the well-known local community cop. It is delivered by the Scottish Crime and Drug Enforcement Agency and by counter-terrorism and public protection people. Those are all key components. The issue should not be a mere pursuit of numbers, but that is what we will have on day 1 and we want to maintain it. Ultimately, if the will of Government and Parliament is that savings are to be made, the chief constable will need some degree of flexibility in moving resources across the country.

John Finnie: The key point is that there will still be a statutory requirement to provide an efficient service.

Chief Constable Smith: Absolutely.
John Finnie: To return to the issue of support staff, the service could not be delivered if you were to dispense with the services of those people.

Chief Constable Smith: I have a couple of points to make about support staff. There is a notion that for every member of support staff that goes out, we put a cop in, but we have not done that. In the past two or three years, we have reduced our support staff by about 1,000 people, and that has not been followed by cops simply migrating in.

The fact that we have already lost 1,000 people indicates that there is a diminishing pool of people who might be willing to take voluntary redundancy. The blunter the instrument of redundancy becomes, the greater likelihood there is that it will not work.

One of the key considerations will involve deciding which jobs we can stop doing, support staff-wide, before we even think about putting cops in.

John Finnie: Which jobs can we stop doing eight or nine times?

Chief Constable Smith: Chief constables, deputy chief constables, assistant chief constables, staff officers, directors of human resources, directors of finance and so on: there will, for the avoidance of doubt, be opportunities for savings there. However, although those posts have high salaries, there is a small number of them.

Chief Superintendent O’Connor: Building on Mr Smith’s points in response to Mr Finnie’s questions, there will, with regard to the resource allocation model, certainly be fears in some of the more rural parts of the country that resources will be drawn to the centre. Likewise, however, we have members in the central part of Scotland who fear that their resources will be drawn to rural parts of the country.

We must remember that police resources belong to the people of Scotland and should be deployed in the areas in which they are most needed. In addition to the points that have been made about resource allocation, although there must be a focus on demand, crime, incidence and the number of calls, there must also be a clear focus on rurality and sparsity. Geography and logistics are significant matters in policing Scotland.

The Convener: I am sorry to say this, but we are nearly three quarters of an hour on. We have been wandering, but we have focused mainly on finance. That is perfectly right, but the committee needs to ask about so much else. I ask for discipline from committee members when it comes to asking questions that have already been asked.

Graeme Pearson can ask a short supplementary, and then I will bring in Roderick Campbell. I think that Mr Meldrum wants to say something first.

Deputy Chief Constable Meldrum: If I may, convener, I will respond briefly to Mr Finnie’s point.

The Convener: Of course—we are here to listen to you.

Deputy Chief Constable Meldrum: With regard to the resource allocation model for policing the national threats that we face—which Kevin Smith already mentioned—I firmly believe that there is a great opportunity in Scotland’s police service to bring together all the assets that are currently within the eight forces and the SCDEA that police counter-terrorism, organised crime, major crime and public protection and brigade them in certain parts of the country. We can then use them in an intelligent manner, based on the threats, intelligence and risks that we have. That will enable us to deploy a balanced workforce of police officers and staff to protect 5.2 million people in a very good fashion.

The Convener: Thank you—that was very helpful.

Graeme Pearson: Have any police officers replaced some of the 1,000 staff who have already disappeared? Are you saying that no police officers have been redirected?

Chief Constable Smith: Never say never, as they say. It would be rash to say that in relation to the 1,000. However, my understanding and my view—certainly in my force—were that, as a general policy, police officers would not be put in such roles. I am confident that, as a matter of policy, cops would not backfill posts. That would not be a good operational use of the resource, and making someone redundant then filling their post with a cop would be challengeable.

10:45

The Convener: I will let Jenny Marra ask a short question on the same point. After that, I must take Roderick Campbell, then we must move on.

Jenny Marra: Mr Smith said that he was not aware of police officers filling a whole backroom staff member’s role, but is there function creep? Are police officers doing some roles that civilian staff used to do, but not as their full-time jobs?

Chief Constable Smith: In the past 10 to 15 years, the number of civilian posts has grown. Some of those roles were never done by police officers—for example, the growth of data protection and freedom of information has required growth in posts. However, there are still police officers in roles that would be more appropriately
done by support staff. My answer to Mr Pearson was that we have not as a matter of policy reduced the number of support staff and filled their posts with police officers. I am confident that that has not been done.

Every year, forces go through a process of challenging posts. Having said that, there will still be non-operational roles in the back office—I know that we try not to use that phrase—that are done by police officers.

Jenny Marra: So some functions are being filled.

Chief Constable Smith: Not every police officer is out on the street wearing a yellow jacket, but the way to protect the people of Scotland is not by having everyone out there in a yellow jacket.

The Convener: I call Roderick Campbell, who has been patient, after which Alison McInnes will ask about a completely different topic, thank goodness. We must get through this.

Roderick Campbell (North East Fife) (SNP): Good morning. I just want some clarity. Mr Smith, you talked about the difficulties of achieving 2,000 volunteers—I took your main reason to be employment law and due process. However, according to your submission, 2,000 is a cumulative figure for 2015-16. According to the figure work that I see, the number of voluntary redundancies by the end of 2013-14 is only 1,146.

Chief Constable Smith: I think that I said that. I referred to upwards of 1,100 at the end of 2013-14. At the end of the spending review period, the figure is about 2,000. Of course, as you know, further cuts are planned for the next spending review. The question of phasing will become more difficult.

Roderick Campbell: I am still a bit troubled by how the employment law timetable would have a serious impact.

Chief Constable Smith: In year 1, the first point at which we can sit down and have meaningful negotiations with the trade union is when the new service comes into place. At the earliest, that will happen on 1 April 2013. Dialogue and consultation will be required, including a 90-day period of consultation with the union and individuals. For those who are involved, phasing will be required—we have done that in the past few years. The process will not simply involve turning on a tap at a point in time and everyone leaving the organisation; people will want to determine when they will leave.

I will give an example, so that I am not giving simply my view of the world. One force recently had to phase the departure of 200 people in four blocks over 18 months.

Roderick Campbell: My point is that the 2,000 figure creeps in only in 2015-16, so it is some way hence.

Chief Constable Smith: The 2,000 figure applies in 2014-15—

Roderick Campbell: It is cumulative and relates to 2015-16, according to paragraph 4.2 of your submission.

Chief Constable Smith: To achieve the full-year savings, all that needs to be in on 1 April—the start of the financial year. Any delay would reduce the savings.

Roderick Campbell: I will leave it there.

The Convener: We have only another 20 minutes at most with the panel and we have lots more to ask about the bill. At the end, I can ask whether the panellists want to raise any other issues. We also have the evidence to the Finance Committee. We must move on to other subjects.

Alison McInnes (North East Scotland) (LD): I will ask about the impact that the proposals will have on local accountability. The bill sets up tensions between a local policing plan and a strategic policing plan but is silent on how those tensions will be resolved. I would be interested to hear the witnesses’ views on how local accountability can be maintained or, indeed, enhanced under the proposals.

Chief Superintendent O’Connor: As the bill stands, local police plans will need to be submitted to the local authority for approval. We believe that the wording should be that the local policing priorities should be submitted for agreement.

I sense that, if approval is not given for those plans, there will be potential for dispute. We are a disciplined service that operates on accountability and, from a police perspective, the dispute resolution process would be to send the matter from the local commander to the chief constable. As we now have positive and progressive working relationships between local authorities and local commanders, I hope that such a situation would be the exception as opposed to the rule, but there is no doubt that it could arise. I sense that there would also be scope for the local authority to go to the Scottish police authority in such circumstances.

Deputy Chief Constable Meldrum: Whatever local accountability ends up looking like, it must be closely connected to national accountability. Neither of them can sit in splendid isolation from the other. If the national authority—the Scottish police authority—wished to consult the 5.2 million people in Scotland on something, a natural vehicle for it to use would be the 32 local entities.
Local accountability is critical. The shape of that local accountability—what it looks like and the relationship with the local commander—is key but the relationship between the 32 units of local accountability and the one unit of national accountability, the Scottish police authority, is equally vital. That should be a top-down and bottom-up relationship between the two layers of governance and accountability for the police service of Scotland.

Alison McInnes: Is the bill clear enough on that?

Deputy Chief Constable Meldrum: As my submission articulates, I am not convinced that we are as clear as we should be on that or that the bill is as clear as it should be on it.

Alison McInnes: Local accountability is, indeed, critical but it is being watered down from what is currently in place. Is that not the case?

Chief Constable Smith: It will be different. Of that, there is no doubt. It is not for the police to determine how we are held to account; it is for politicians to determine how we are held to account nationally and locally. However, if you are asking for a professional view on the arrangements, the first thing that I will say is that there is a danger that we think that the current arrangements are perfect. They are not; they are in need of improvement locally and nationally.

The reform debate that we have gone through over the past year started out being about improving local governance and accountability. I will make two comments on that. There is certainly a diminution in local governance and accountability because local elected members will not be able to select their chief, will not have a policing budget and will have less direct influence over the chief. However, equally there is an opportunity for more people to be engaged in the process, which will be significantly different from the current arrangements. That puts the onus on the local authorities.

The test is how local authorities, wider community planning partners and police engage with the current pathfinder projects to ensure that, whatever we do, we do not lose the jewel in the crown, which is local community policing. There is no doubt that the arrangements that are being introduced are significantly different from those that went before.

Alison McInnes: At the moment, we are fairly well respected for the way that we carry out community planning in Scotland. We have round the table chief constables and chief executives who are able to action things quite quickly. The new proposals will bring local commanders to the table, sitting with chief executives. Will they not have to go up the line to get approval for things and will it not be much harder to progress with community planning?

Chief Constable Smith: Concern has been expressed to me about lack of direct access to the chief constable. However, I cannot ignore the fact that people in half of Scotland—in Strathclyde—do not have that concern. They have direct access to their divisional commander. If we speak to some chief executives and elected members, we find that they are pretty comfortable with what they have.

It is going to be different. For me, it is not about the rank of the individual. When I gave evidence to one of the other committees, I compared my time as a divisional commander in the east end of Glasgow with the experience of one of my current force—the chief inspector in Clackmannanshire. He is far closer to the community and the local elected members of the council than I ever was. Although I appreciate that chief executive colleagues become exercised about their rank, my professional view is that that is a bit of a red herring. The important thing is the professional relationships that exist locally. As long as we have a mature tasking and co-ordinating process to ensure that the local is supported by the national, I am confident that there should not be a significant bar to moving forward. However, there is no doubt that it will be different.

Chief Superintendent O’Connor: I agree. There is no doubt that many community planning issues straddle local authority boundaries. I sense that, if we are to have the economies of scale, the capacity and capability that are needed and the resilience that is necessary to deal with many community planning issues, there will have to be some structure above the designated commander in order to ensure that community planning can operate across the various local authority boundaries.

The Convener: There are supplementary questions on the issue from Graeme Pearson, Colin Keir and Lewis Macdonald.

Graeme Pearson: I have a quick question on the connection between local accountability and national governance. I do not imagine that there will be huge conflicts at the local level, but how will concerns that develop at the local boards be represented at the national board level? Has there been any discussion about that link?

Chief Constable Smith: No, and our submission would be that is a gap in the bill. There needs to be direct connectivity between the local and the national. It might be rarely used, but the local must inform the national and vice versa. Gordon Meldrum spoke far more eloquently than I could on that.
Graeme Pearson: No options have been offered in the exchange with the Executive.

Chief Constable Smith: No. We have the bill, and we have articulated that concern in relation to it. It may well be that the Government will take the issue on board and address it in an amendment. We would welcome that, because we believe that the local must inform the national and vice versa.

Graeme Pearson: I am obliged. Thank you.

Deputy Chief Constable Meldrum: In doing research for my submission, in which I comment on the Scottish police authority and some concerns that I have about resilience, capacity and capability, I noted with interest that one of the six sub-committees in the Northern Ireland Policing Board’s structure is its community engagement committee, which has as specific terms of reference

“To ... promote, support and monitor the effectiveness of the District Policing Partnerships”

and

“To ... monitor the implementation of Policing with the Community as the core function of the police service”.

In answer to the question, that is a possible model, but only one, for how we connect the local with the national.

Colin Keir (Edinburgh Western) (SNP): Good morning. My question relates partly to Graeme Pearson’s question a moment ago. I have not been a member of a local police board but, having been on the outskirts of such things in local government, I am interested in local accountability and scrutiny and I know that problems can arise because board members do not have security clearance. It is difficult to bring reasonable scrutiny to local issues when the people who are meant to be doing it are unable to do so. How could the bill improve the situation?

Chief Constable Smith: If the new police authority is to properly hold the chief constable to account, at least some, if not all, of its members must be vetted to an appropriate level. That would allow them to access secret material and look at the covert side of policing, which would ensure that that very high risk area was properly scrutinised by the authority. That should be a given for the make-up of the new authority. If it is simply about people who can bring in corporate, financial or human resources experience, we will be missing a trick. It must be about people who can get into the nuts and bolts of one of the more critical areas, which is the one that Gordon Meldrum focuses on in his day-to-day job. That area needs to be scrutinised, and security clearance is essential to that.

Deputy Chief Constable Meldrum: My own submission calls for the vetting of the Scottish police authority members for that very reason. As Kevin Smith says, we could either vet the entire authority, or vet just a subset of it to a higher level, with that subset then forming one of the committees. A good conversation could then be held in some kind of scrutiny session with the lead chief officer team on the side of the business that required that level of vetting.

Colin Keir: This clearly identifies a problem that we have at the moment with police boards, in that they cannot possibly scrutinise to the level that is perhaps required in this day and age.

Deputy Chief Constable Meldrum: I do not report to a local board; I report to the board of the Scottish Police Services Authority. Over the past four and a half years, we have had a workaround with that board, to which Andrea Quinn also reports. There are two chief constables on the board, both of whom are vetted to developed vetted status, so if I need to have a conversation about such issues, I have it with those two members as opposed to with the entire board.

Without this being too much of a hospital pass, regarding the local level there are others on the panel—

Colin Keir: Yes, perhaps it would have been better to direct my question to someone else.

Deputy Chief Constable Meldrum: Apologies, Mr Smith.

Chief Constable Smith: I can fully corroborate Gordon Meldrum.

The Convener: You are operating as a single police force before my very eyes. You are all chummy. It has been a long morning.

Colin Keir: You also appear to be discussing corroboration.

Chief Constable Smith: Mr Meldrum just needs to remember that he is the deputy and I am the chief. [Laughter.]

Deputy Chief Constable Meldrum: Touché.

The Convener: That was an evil comment.

Chief Constable Smith: Mr Keir is right that there is a gap in current governance arrangements at the local level. I cannot say whether this applies to every board, but insufficient numbers of people are vetted to the degree that allows for scrutiny of that aspect of policing. My view is that this is a very small part of what local boards do, and they clearly scrutinise and hold us to account on a whole range of local policing issues. Much is said about the quality of the current governance arrangements, and I think that everyone would
acknowledge that they can improve, but they have overseen policing at a time of record performance and there has to be some acknowledgement of that.

**The Convener:** Mr Meldrum wants to come in, but I do not think that it is an application for promotion yet.

**Deputy Chief Constable Meldrum:** No, but I just wanted to briefly mention to Mr Smith that I am sure I heard him say in response to the community planning question that rank is not important—[Laughter.]

**Chief Superintendent O’Connor:** I want to build on Mr Keir’s point about security clearance and vetting. Section 46(3) outlines the information that will be supplied, ending with “other information about the policing of its area, as the local authority may reasonably require.”

Further clarification about what that information looks like is needed. There will be occasions locally when, in the interests of the prevention, detection and disruption of crime, it will be necessary for some information to be withheld. If information is to be exchanged as detailed in that section, what will it look like, and do the new committee members need to have the security clearance?

**The Convener:** I remind members that another committee—the Local Government and Regeneration Committee—is dealing with certain issues. It is good that there is some overlap. I do not mean to prevent members from asking questions, but I ask that we move on to issues that other committees are not dealing with. Lewis Macdonald, John Finnie, Humza Yousaf and Graeme Pearson all have questions on this topic. If anyone wants to drop out because their question has been asked, they should let me know, because I want us to move on to the question that David McLetchie wants to ask, which is on a completely different topic. We must be thorough in dealing with the bill.

**Lewis Macdonald:** I have a couple of questions. David O’Connor said that it is inevitable that community planning issues will cross local authority boundaries. I presume that police operations, as planned and delivered strategically, will also cross local authority boundaries. Is there a risk that, in seeking to improve on the current police board structure, we might throw away a significant strategic level of accountability? For example, in my area, Grampian Police reports to Grampian joint police board. Under the planned proposals, the police will have to report three times to three different authorities on smaller areas. Having to service a larger number of committees will presumably involve greater cost and greater effort for the police. Is there an argument for retaining a regional level of scrutiny to reflect the police’s regional operations?

**Chief Superintendent O’Connor:** Work on that area is on-going as part of the reform programme. We still do not know what the structures involving the 32 local commanders, the 32 local authorities and the chief constable will look like. There is no doubt that criminality and community problems straddle boundaries. As we move forward and it becomes clear what the structures will look like, I have no doubt that we can put in place the structures to deal with the problems.

We have a tried and tested tactical tasking model, which works from local force level right up to national level. That model will continue to be refined and developed so that it can fit into the work of the new police service of Scotland from next year.

**Lewis Macdonald:** That is helpful.

The other aspect that I am interested in exploring, which there has been some discussion of, is how we can link local accountability with national accountability. Given that the proposal is to have a very small national authority, the members of which will be appointed entirely by ministers, would it improve accountability and the local link to have on the national authority, for example, elected members from the regions who are chosen by their peers or who, in some other way, have a personal link that will ensure local accountability, rather than simply to have posts that are in the gift of the minister?

**Chief Constable Smith:** I believe that the worth of the authority would be greater if there was a degree of representation from elected members. My view is that they should not be in the majority. It is a question of balance. There will be a local bit and a national bit. I think that the national authority, which will have on it independents, if that is the right term, who will have experience in finance, strategic management and so on, would be informed if it were assisted by a number of people who have a record in and experience of local issues—in other words, local elected members. They should be appointed on the same basis as the other members, so that there are not two tiers of representation. They should go through the public appointments process so that they are there on the strength of their own skills, merits and worth. The national board would benefit from such representation.

**Chief Superintendent O’Connor:** With the new policing committees or whatever they are called, there will be opportunities to build on the democratic accountability that currently exists. There is no doubt that, at a national level, some form of democratic accountability needs to be built into the process. What that looks like and what
shape it takes is a matter for further discussion. I believe that democratic accountability will be reinforced locally, but we need to be quite clear about how, in future, we ensure that there is democratic accountability nationally.

Deputy Chief Constable Meldrum: I agree with those points. I think that the strength of the Scottish police authority will be in its balance and blend of democratically elected representatives who are appointed in the manner that Kevin Smith has talked about—I fundamentally agree with that—and independents. With all the authority’s members operating as corporate members, the authority’s strength will be in the balance that both sets of individuals will bring. The democratically elected representatives are critical, as citizens should be able to see a natural link through the democratic process to members of the authority.

The Convener: I will take two more questions on local accountability. We will then move on to another topic.

John Finnie: My question again relates to ACPOS’s evidence. Paragraph 1.2 in appendix A of that evidence says:

“we firmly believe that reform will not fundamentally change the policing that the vast majority of the public see ... but it will change how the service is organised.”

People have alluded to possible tensions between the local and the national. One thing that will not change is that a chief superintendent will explain his concerns about operational policing to a chief constable, and the chief constable will share concerns about operational policing down the way. David O’Connor talked about tactical tasking. Chief Constable Smith, can you reassure people that that will not do away with the good practice that already exists in sharing information across forces?

Finally, does any panel member have a view on what the contingency should be if an elected representative fails to pass the vetting process that is imposed?

Chief Constable Smith: I certainly do not have an answer to the second question, other than that, if he or she does not pass the vetting process, they cannot get access to material. How that would be managed is probably more of an issue for MSPs.

John Finnie: There would be a public manifestation of that fact.

The Convener: We will leave that question. We have been given a response, whatever we take from it.

Chief Constable Smith: From his first question, I think that John Finnie is looking for a reassurance that what currently happens with chief constables and chief superintendents ensuring that the force informs the local level and vice versa will continue to happen. That is how we have been brought up as police officers. I have said that community policing is in our DNA. It is about the whole tasking process and ensuring that where and when resources are required, we have a process for that. That does not mean that everybody will get everything where and when they want it. It is about ensuring that we make the best use of scarce resources. The processes that are in place are part of the professionalisation of policing that has happened over the past 10 to 15 years, and I am confident that that will be a key part of what we will have in Scotland.

I hope that we can give some comfort on the notion that areas will lose out. The chief constables whom I know would certainly want to ensure that what is best about Scottish policing—what we see as the jewel in the crown—is maintained. I suppose that we bring greater capacity and capability in the national stuff where and when that is required. The good thing, of course, is that that specialist resource is not required all the time in most of Scotland, as most places in Scotland remain pretty safe and free from harm. We should look at the big issues that there have been in policing in my time. I was at Lockerbie. What happened there happened in the area with the smallest police force in the United Kingdom. Dunblane was in a small force area, and there was the Chinook helicopter disaster. Big things happen in small places. We often say that we are the biggest gang in Scotland. It is about ensuring that, on the rare occasions on which we are required, we can muster resources to help out.

The Convener: Did you call yourselves “the biggest gang”?

Chief Constable Smith: I did.

The Convener: That may be the headline tomorrow.

Chief Constable Smith: It will be now that you have said that.

The Convener: Don’t mess with me. [Laughter.]
The Convener: I thank Humza Yousaf for withdrawing his question so that we can move on.

Graeme Pearson: One of the virtues of the current set-up is that joint boards operate in public, so the public are able to access their discussions and hear what is going on, but the bill is silent about that in terms of both national and local accountability. One presumes that the local boards will meet in public—I hope that that will be the case, without any debate. The only comparative board at national level is the SPSA, which operates outwith the public gaze. Do you accept that there would be a virtue to the national board operating in public, subject to arrangements to go in camera for the confidential and challenging issues that will need to be discussed in that way? Will meetings of the national board be held in public and fully minuted?

Chief Constable Smith: Anything less would be a deficit. To be honest, that has not come up during discussions. I assume that it will happen.

Graeme Pearson: I just want it on the record.

Chief Constable Smith: Absolutely. I think that that should happen.

The Convener: It is a good question. I want to move on. David McLetchie has been extremely patient.

David McLetchie (Lothian) (Con): It is not like me.

The Convener: No, indeed. I do not know what has happened to you. Is this the real David McLetchie?

David McLetchie: Good morning, everyone. I want to ask some questions about operational independence and the separation of the police service and police authority from Government. Some have suggested that the concept of operational independence should be enshrined in the bill itself, but I want to explore the issue from the other way round: what are the limits of operational independence, and what is the legitimate role of Government in giving directions? What some might regard as political interference in operational independence might for others be a reflection of the democratic accountability of the service. Where does the boundary lie, and what is a legitimate direction from a minister?

Chief Constable Smith: Far more informed people than me have spent a lifetime debating operational independence and whether we truly are operationally independent. National and local government has a legitimate role in influencing people in relation to the type of policing and strategic priorities that they want.

On the direction and nature of specific policing operations, an easy example to highlight is the policing of industrial disputes. One of the criticisms of policing during the miners' strike some years ago—this is probably more true of England and Wales than Scotland—was that the police were politicised to a degree. I am not offering a view on that—it is a political issue—but it would be folly to ignore it. It is difficult to describe an elephant, but we know one when we see it, and the same principle relates to decision making for specific operations or specific classes of operations.

HMIC has made a significant contribution to the debate on the bill. During its evidence to a committee last week, it said that there was an opportunity to tease out some of the issues so that there is clarity for all as we enter this new era.

Chief Superintendent O'Connor: There has been a great deal of discussion of operational independence, operational primacy, operational responsibility and other such terminology. The starting point for us is that it is the first duty of Government to protect its citizens. Mr McLetchie's point about democratic accountability is, therefore, absolutely right. However, operational independence has been enshrined in case law and has been commented on in many cases over many years. The enforcement of the law is a technical exercise that requires mutual expertise. I think that there needs to be accountability, but that accountability should not go to the stage of issuing directions in relation to specific policing operations. That has to remain the responsibility of the commander or, indeed, the chief constable.

David McLetchie: I take that point in relation to specifics. Some of the evidence has discussed the minister's power of general direction over the authority, and some concerns have been raised about the exercise of such a power.

I will give a couple of examples of what I am talking about—they might not be good ones, but hopefully they are. As you will be aware, a few

Chief Constable Smith: Ultimately, there will always be conflicting priorities and competing demands for a finite resource, even within the new service. Knowledge, experience and understanding will be shared but, ultimately, professional judgment will have to be applied, whether that be by the chief constable or the local area commander. It will be very much part of the national intelligence model.
years ago there was some controversy about whether police officers should be entitled to use tasers. Would it be a valid matter of specific direction by a minister to the Scottish police authority that police officers in Scotland should not use tasers? I just throw that into the pot for discussion.

In Parliament, as you know, we recently passed legislation concerning offensive behaviour at football matches. Whatever you might think of the merits of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, it has been passed by Parliament and would appear to reflect the general public concern that that sort of behaviour needs to be tackled more vigorously. Would it be a reasonable subject of ministerial direction to the police authority that resources and priorities in the service should be adjusted to reflect the law that Parliament has passed, which reflects an underlying public sentiment that that matter should be dealt with?

I simply throw those relatively recent examples into the discussion. Where do you see those examples fitting into the divide between operational independence and accountability?

**Chief Constable Smith:** There is never an easy yes or no answer to these questions.

The first part of the answer is, yes, I think that it is right and legitimate that elected members of the Parliament should be interested in an issue such as whether the number of police officers who are armed with tasers should be increased. I say that as an example—I do not want anyone to construe that as meaning that that is what I am advocating. However, ultimately, I think that it would be a matter for the chief constable, based on threat and risk and his or her duty to protect his or her officers and the people of Scotland.

On the second issue, I think that there should be an expectation that, if Parliament passes a law, the chief constable would take due cognisance of that. However, there are many laws that the chief constable should be expected to take cognisance of, and it should be left to him or her to make the operational decisions about the resource that should go into them. Equally, he or she should be held to account for those decisions. If the chief constable does not do enough, a scrutiny committee such as this one, the police authority or the local mechanisms should have the role of challenging the chief constable on that.

The basic example is that politicians should not be able to say to me, “Arrest that man!” but they should be able to say, “Why did you arrest that man?”

**Deputy Chief Constable Meldrum:** I agree strongly with everything that Kevin Smith has just said.

**The Convener:** That is helpful for you.

**Deputy Chief Constable Meldrum:** I was going to make a point about whether chief constables should take cognisance of Parliament’s passing of a law when they allocate resources and so on. Kevin Smith has already said that there are many laws, and that we have to take cognisance of them all. Critically, as well as our role in balancing the many laws that are passed and the responsibilities that that places on us, there is a 24-hour process of balancing all the threats, all the intelligence and all the risks that all our communities face. We have to be incredibly light on our feet in balancing and analysing all of that and deploying our resources as we see fit. That should always take precedence, as those are the pressing threats and risks that members of our communities face. I believe that that is firmly a matter of operational independence for the chief officer and their command team.

**Chief Superintendent O’Connor:** Police officers have a great number of powers at their disposal, including the power of discretion in many circumstances. When it comes to accountability, I have no doubt that the first thing that goes through police officers’ minds is their accountability to the courts for any acts or omissions in the way in which they perform their duties.

**David McLetchie:** Let us get to the content of the bill in this area. I hope that I am not putting words into people’s mouths. If you know what operational independence is but it is difficult to describe, I presume that it is difficult to define for the purposes of statute. That suggests that having the phrase “operational independence” in the bill would not be very helpful. Equally, it would be generally accepted that ministers should not have a power to make the specific direction, “Arrest that man!” as Chief Constable Smith graphically illustrated. That leaves the issue of a general direction up in the air. Where do you sit in relation to that? What should we, as legislators, do relative to the content of the bill on the aspect of general direction?

**The Convener:** I think that Chief Superintendent O’Connor told us that there was much case law defining operational independence. As a lawyer, Mr McLetchie, you will know that that is quite often what happens with statute.

**Chief Constable Smith:** When I said that operational independence is difficult to define—like the elephant—it would probably have been more accurate to say that it is difficult to get an agreed definition because many commentators have a different view on what operational independence would do.

When we have asked Government about ministerial direction, we have been told that it is
rarely used. Therefore, our question is why we would have it. We have also been told that, as a national body, we should be no different from any other national body or Government department. Critical services such as health are still subject to ministerial direction. However, in our view, we are different because we are the only people with coercive powers and authority, so we need to be seen as something more than just a Government department. Although we operate on behalf of Government, local authorities and citizens, we cannot be seen simply as a department of Government.

We ask that there be further articulation in the bill of where and when ministerial direction can be used. Although it cannot be used directly in respect of the chief constable, if the direction is to the authority, there is still a degree of influence that the authority can impose. We are uncomfortable because we are not used to it. At the time of the consultation last summer, the cabinet secretary recognised that there is some discomfort around the politicisation of the police and the ministerial control of policing, so he took some time to explore that with people. We all recognise, as we move into the new era, that there is an issue of perception. Therefore, we ask for greater articulation in the bill of where, when and how ministerial direction can be used and for the definition to be broader than just saying that it should not be in relation to specific crimes.

The Convener: That issue might be for guidance rather than primary legislation.

Committee members can see the time. Graeme Pearson and John Finnie have supplementary questions on the same issue, and Alison McInnes and Roderick Campbell want to start new areas of questioning. Do members want to sit here until 3 in the afternoon?

11:30

Graeme Pearson: Definitely.

David McLetchie: Yes.

The Convener: You are rotters. I wish that I had not said it now. Well, I do not want to be here until 3 in the afternoon.

I ask for short answers, because we have to explore other issues in the bill. We have full written submissions, so we also have those to work on.

I want to finish this evidence session, for the sake of the witnesses as well, by 11.45, so we have another 15 minutes. That means that we will have overrun by half an hour. I thought that I would tell you that, because I am getting cross.

Graeme Pearson: Thanks, convener. I know that you appreciate that we are dealing with a very important issue. It deserves the time that we are allocating to it.

We have spent a great deal of time talking about redundancy issues and so forth, but a major part of ACPOS’s submission is about operational independence. It states that “provisions within the Bill threaten ... operational independence”.

If I can summarise—and save a bit of time, convener—is your basic concern that the minister chooses the board of the authority, directs the board, pays the board, provides the budget to the board, approves the appointment of the chief officer and the policing priorities set by the board, which are decisions that are outwith the influence of the chief constable, who is left to try to manage a police service with operational independence? Is that the bottom line?

Chief Constable Smith: You have read our submission.

The Convener: I do not think that he missed anything out.

Chief Constable Smith: He did. He missed out that there is also the “Power to call on Chief Constable to retire in the interests of efficiency and effectiveness”.

One would imagine that that is actually in the interests of inefficiency and ineffectiveness. We believe that that provision has been lifted from the Police (Scotland) Act 1967. It comes without any safeguards.

Graeme Pearson: In fairness, you mixed up identities in your first response to David McLetchie about policing by consent, when you talked about Parliament directing. In fact, as far as the bill is concerned, it is the Government that directs, and Parliament has very little oversight. Given that we are talking about policing by consent, is that not a major issue?

Chief Constable Smith: I anticipate that, in the new era, people such as members of the Justice Committee will play a crucial role in scrutinising aspects of policing, whether that is directed at the chief constable or the police authority. Although that might not be articulated in the bill, given that there will be a single national service and it is a very important public service, my expectation is that whoever is lucky enough to get the job as the chief constable and whoever is convener of the new authority will come before the committee reasonably regularly to discuss significant issues.

Graeme Pearson: As a panel, would you welcome that?

Deputy Chief Constable Meldrum: Yes.

Chief Superintendent O’Connor: Yes.
Chief Constable Smith: Absolutely. It is an important aspect.

The Convener: Thank you. I am sorry for keeping your responses short, but we spent far too much time on finance, which is being done by somebody else, so we are now squeezing the other stuff in.

John Finnie: This is an important issue. It is not only the police that have a significant influence on people's lives. Social workers can take children into care, teachers can exclude pupils from school and housing officials can evict people. I am not aware of them calling for their operational independence to be enshrined in statute. Is it not the case that the bill is very clear that ministers cannot direct the chief constable or, indeed, make directions on any specific operation? Section 17 makes it clear that only the chief constable "has direction and control of the Police Service."

Given that provision, I am not sure that I understand your concerns.

Chief Constable Smith: We are concerned that there is a power of ministerial direction, and when we have asked what it would look like very few examples have been given.

John Finnie: Does section 17 not say that only the chief constable "has direction and control of the Police Service"?

Chief Constable Smith: It is a question of influence. Our view is that if there is ministerial direction to the authority on the allocation of resources or on the style or type of policing—

John Finnie: With respect, we are not talking about the operational autonomy of the police authority, because it is not an operational body; it is the chief constable who is responsible. It is clear that direction and control lie with the chief constable.

Chief Constable Smith: Despite the fact that the bill says that the authority will be subject to ministerial direction, we remain concerned that the authority itself will still have significant influence over the chief constable. We are not saying that there should be no ministerial direction but, in the brave new world of national policing, the provision needs to be refined more and articulated better; for example, it should be made clear that it applies more broadly than specific police operations.

The Convener: We can put these questions to the cabinet secretary, Mr Finnie, so I suggest that we move on.

Alison McInnes: At the moment, the bill separates out forensic services and gives responsibility for them to the SPA instead of the chief constable. According to the Government, such a move will create a necessary "sterile corridor between police investigations and forensic investigations".

I note from the panel's written submissions that there are differing views on the matter and think that it would be worthwhile to take some time to explore that.

The Convener: Rather than replicate the views set out in the written submission, we should simply focus on the SPSA's very clear points about forensic examination at the locus of a crime and investigation back at the laboratory, as it were.

Andrea Quinn: ACPOS and SPSA differ on the issue of scene examiners. Instead of repeating all of what I say in my submission, I should, as you suggest, focus on that point.

I must point out that, over the past five years, we have operated in exactly the way that the bill suggests we should operate and that the bill itself suggests no change in the relationship between policing and forensics. What is different is the proposal that forensic services be accountable not to the SPSA board but to the SPA.

Since as far back as 2006, the police themselves have acknowledged the value of putting scene examination and laboratories together. Because we believe that the sterile corridor begins with the collection of evidence, through its analysis and on to its reporting to the procurator fiscal, we think that scene examination should stay where it is. To do anything else would be a retrograde step.

The Convener: So the only change is to do with accountability.

Andrea Quinn: It is also about preserving and demonstrating the impartiality of evidence to ensure that the police are not open to claims of undue influence. As I have said, going back would be a retrograde step.

Alison McInnes: I would be interested to hear what the other panel members think.

Chief Superintendent O'Connor: Clearly we take a different view from Andrea Quinn on this matter. We believe that a sterile corridor can be created by separating analysis in the laboratory from scene examination and the local gathering of evidence.

The bill focuses quite rightly on the delivery of local police services, and we see no trust and confidence issues arising from scene-of-crime examiners, photographers, fingerprinters and others working with senior investigating officers and local commanders in the service and collating evidence for submission to the laboratories. If you accept the other argument, where will it stop? Will
it be applied to the gathering, collation and submission of other productions to the courts? I accept the proposal to create a new national forensics authority with responsibility for laboratory analysis but, nevertheless, I think that we should separate out and retain local services working in local communities.

Alison McInnes: Are you saying that that is not the status quo or are you simply saying that, given the bill before us, such a change should be made?

Chief Superintendent O’Connor: We are making the case that, operationally, the control and direction of those assets should be at the disposal of the local commanders and the chief constable.

Andrea Quinn: I agree that the chief constable and his command team should decide what scenes we go to and when we should go—I do not dispute that. However, I believe that we can do that with a national forensics gateway. At the moment, we have eight gateways doing things in eight different ways, which is simply inefficient. For me, becoming part of a single force means having the opportunity to design a national gateway that would task forensic services nationally, which in turn means that we would manage the priorities across Scotland, and do so better. We would put in place an SLA—one exists today, and that is how we respond to policing demands. I envisage that that is how we would be held to account in the future.

The Convener: I am grateful to Graeme Pearson for telling me that an SLA is a service-level agreement. That is for anybody else who is as daft as me and does not know what it means—although nobody is admitting to it.

Mr Smith, do you want to come in?

Chief Constable Smith: I will take just 30 seconds because we articulated our view in our written submission. We do not believe that the case for questioning the independence of police involvement is made at all. We have asked for evidence in that regard, but have seen little. We laid out our case in our paper. What we have are two professional views about a very important service. ACPOS’s view is that if what the bill proposes is the will of the Government and Parliament, the two services together will ensure that it works seamlessly. I have asked scientists and scenes-of-crime people whether they have ever felt any compulsion to do anything that was not right, and their reply is “Absolutely not.” Their own professional integrity would not allow it, but they have never felt any pressure anyway.

The main point for the committee to recognise is that there are different professional views. Whatever is decided, we will make it work.

The Convener: I am going to move on now. Roderick Campbell has a question.

Roderick Campbell: Rather helpfully, convener, I want to ask questions on the same area. I will keep it brief. Has anything happened since the 2007 regime came in that you would say has been detrimental to the interests of criminal justice? The question is primarily for Mr O’Connor and Mr Smith.

Chief Constable Smith: In relation to crime scene examination?

Roderick Campbell: Yes. Can you point to examples of problems that have occurred since 2007?

Chief Constable Smith: There has been none that I am aware of.

Chief Superintendent O’Connor: I am aware of none.

Roderick Campbell: That is fine.

The Convener: I am going to conclude this long session. Thank you very much, gentlemen.

Chief Constable Smith: I just want to say that Mr Campbell was right regarding the figures for 2014-15 and 2015-16.

Roderick Campbell: I took the figures from your submission.

Chief Constable Smith: Absolutely. You were right, but the issue of unachievability remains the same, no matter what the figures are.

The Convener: I do not want to go back to the issue of finance. Thank you very much indeed. I see that you are all still friends.

I suspend the meeting for eight minutes.

11:42

Meeting suspended.

11:50

On resuming—

The Convener: We move on to our second panel of witnesses. Welcome, gentlemen. I understand that you were in the public seats while the previous panel was giving evidence. Deputy Chief Constable Andrew Barker is from the Scottish Chief Police Officers Staff Association; Calum Steele is general secretary of the Scottish Police Federation; and Dave Watson is Scottish organiser, bargaining and campaigns—an intriguing title—at Unison Scotland. Thank you all
for your full and helpful written submissions. I invite questions from members.

Humza Yousaf: Like all elected members, I talk to police officers on the ground and, from my limited perspective, I do not find them particularly resistant to change. There are concerns, of course. The Scottish Police Federation said in its submission that it represents more than 98 per cent of all Scottish police officers, right through the ranks. I imagine that there is no homogenous view among your members; what is the broad picture on reform and a single police force? What are people’s main concerns?

I have a second question—

The Convener: Let us first have an answer to your first question, so that we do not confuse people.

Calum Steele (Scottish Police Federation): Thank you. The broad position for police officers—and I suspect for almost everyone who is in employment—is that they must put bread on the table and clothes on their children’s backs, and anything that enables that to happen is a good thing and anything that threatens that is a bad thing. We know that there is a general shrinking of expenditure in the public sector in the United Kingdom across all areas of life. The police service is no different in that regard.

Police officers in Scotland take a slightly more positive view than their colleagues in England and Wales, who regard themselves as being on the receiving end of a particularly poor deal. In England and Wales, officers’ terms and conditions are being eroded and politicians and the Government’s general attitude towards and language about the police service is negative, which does not inspire much confidence or trust in the service. In general, the police service in Scotland is much happier than our colleagues south of the border.

In respect of the bill, it is fair to say that our concerns are not deal breakers but issues that the service and politicians locally and nationally can work through. Our concerns centre around the issues that the previous panel explored, such as the relationships that will exist in respect of governance and accountability and the link between local and national in that regard, various aspects of staffing, the locus and capacity of the police investigations and review commissioner and the operational independence of the chief officer.

I have nothing startling to say. Police officers in Scotland are generally happier than our poor colleagues in England and Wales.

The Convener: That is a start.

Humza Yousaf: The SPF said in its submission that, in relation to section 5(2):

“SPF has asked Scottish Government if this sub-section means:

‘A direction may not be given in respect of any operation or on any issue which may affect an operational matter.’

SPF received a positive response that this was the meaning and therefore the Bill should be amended to state that precisely.”

How would your proposed approach differ from what sections 5(2)(a) and 5(2)(b) currently say?

Calum Steele: I suspect that this is almost identical to the earlier debate between Mr McLetchie and the president of ACPOS, Kevin Smith, around the inability almost to define what is meant by operational independence; it is inherently understood, but difficult to write down. That said, we in the Scottish Police Federation have made an attempt to write down what is meant by operational independence, which expands on the sentence in our written submission. With the convener’s indulgence, I will share these 140 words with the committee. It is our view that

“Police operational independence means that the police should carry out their duties in accordance with the law, but without direction from any other person or agency. It is for the chief constable, taking cognisance of the law, to decide which incidents and matters are to be policed and how they are to be policed.

Police should apply their discretion where it appears to them appropriate.

Police should consider the views of all interested parties in assessing how to carry out their duties and whether, and to what extent, they exercise discretion.

In these matters, what to police, how to police it and whether to exercise discretion, the police are accountable to the law alone.

Operational independence, free from undue central or local political influence, underpins policing by consent and ensures policing is of the people, not the State.”

We believe that those 140 words would not only provide the comfort that the service needs, but address the general unease that exists among the wider population that we may be on the verge of a police state. However valid or otherwise those concerns may be, I think that those 140 words could go some significant way towards addressing them.

Humza Yousaf: You think that those 140 words should be in the bill—that is interesting. Thank you.

The Convener: I go, “Ouch!” to suggesting putting 140 words in the bill. I think that I might take you to task on that, but we will see.

Still on this topic, it is Jenny Marra next, followed by Roderick Campbell.

Jenny Marra: Is it okay to address at this point the balance of civilian staff in the police force?
The Convener: Yes, certainly.

Jenny Marra: I will return to a point that the first panel raised. We heard a powerful endorsement from the four earlier panellists of the critical role that civilian staff play in the police force. It is my understanding from the conversations that I have had on the issue that it is important in a modern and efficient police force to get the balance of civilian staff absolutely right. What do the present panellists perceive to be the optimum ratio for civilian staff and police officers, bearing in mind the points that I raised earlier about efficiency savings and how financial stability is achieved through the ratio?

Dave Watson (Unison Scotland): Our concern is that there will not be a balance, because we are essentially talking about the large-scale decivilisation of the Scottish police force. The last major study of civilisation in Scotland’s police was the Stewart report in 2009, entitled “Civilisation of Police in Scotland”. At that stage, civilians made up 28 per cent of the Scottish force, whereas in the force in England and Wales they made up 39 per cent, although that figure is 32 per cent if we exclude what are called in England police community support officers, which we do not have in Scotland. The best Scottish forces met that English average, but the worst did not. There were huge variations among forces in Scotland, with some achieving a higher figure in that regard than others.

Where are we going? In 2009 we were talking about around 6,300 police civilians and we are now talking about 1,000 of those having already gone. The committee heard earlier that, under the current plans, about 2,000 police civilians will go, but the position is far worse than that. If our members do not accept massive pay cuts, the ACPOS evidence shows that another 400 will go. If the VAT issue does not get resolved—we have not solved it with the SPSSA, so I am not confident that we will solve it now—that will mean that another 600 jobs will go. On that basis, we are talking about 3,000 police civilian jobs coming out.

We have just completed a survey of members in which we got lots of feedback that, I am afraid, illustrates that we are already getting police civilian posts being substituted by police officers. Our recent survey shows that it is rare for police officers to substitute in full: the figure for that is between 10 and 17 per cent. However, 30-odd per cent of the police civilian posts are being substituted in part by police officers. We are talking about 53 per cent of the police civilian posts that have already gone being covered in part or in full by police officers. If we extrapolate that to another 2,000 to 3,000 police officers substituting on that basis, we are talking about 2,000 police officers by the end of the process being taken off the street, in part to cover for police civilian staff. I accept entirely that there are statistical risks in making that extrapolation, but one police officer taken off the streets is one too many, and 2,000 is clearly a scandal.

12:00

We know that in hard numbers police civilianisation will come down from where it was at 28 per cent to around 15 per cent, in comparison with the England and Wales figures, which are double—and more—that particular figure. That takes policing in Scotland back to the 1980s. I enjoy watching back episodes of “The Sweeney” like anybody else, but it is not a model for a modern police force.

Jenny Marra: Just to clarify, the Government’s commitment is for 1,000 front-line police officers on the beat. Are you saying that a lot of those police officers will be doing back-room or civilian tasks?

Dave Watson: Yes. That is inevitable. That is the only way that the Government can do it. You have heard the evidence—not only from us, but from everybody else—about the roles that police civilian staff now occupy. It is inevitable that those roles will require police officers. That is already happening, and it will happen in greater numbers in future unless we get a proper balance.

Jenny Marra: How does that affect the Government’s savings targets? Is it correct that those jobs are being done on much higher salaries than your members were expecting or were used to?

Dave Watson: You can see from the figures that police civilian staff salaries make up 15 per cent of the cost, in comparison with police officers at 75 per cent. That is more expensive, but it is not just about cost; it is, as you have heard in other evidence, about particular skills. There are specialist skills that did not exist in the 1980s: the world has moved on and crime is more complex. The generic police officer is fine, but specialist roles are required and that is what police civilian staff do.

Jenny Marra: Does any other panel member have anything to add?

Calum Steele: Yes. As was discussed with the previous panel, we should never get into a situation in which we talk about the value of a police officer versus the value of a support member of staff. A balanced workforce is very important.

Before we start talking about staff numbers, we must remember what our original starting point is. The commitment to 1,000 police officers came at the beginning of the previous parliamentary
session. In the 10 years prior to that, from 1997 to 2007, police officer numbers in Scotland grew by only eight per cent at what was a time of general growth in overall expenditure in the public sector. In the corresponding period, police support staff numbers in Scotland grew by 71 per cent. That is undoubtedly a consequence in some ways of how the police service has evolved, but it would be beyond the pale to suggest that those levels of growth were a consequence of essential civilisation where it took place. I am sure that many roles were undertaken and created not because they were essential, but because they were desirable or nice to have.

Although there are any number of titles and job roles that contribute very much to what is generally termed front-line policing, the stark truth—and it is hard to say—is that there are countless others that do not. I do not believe for a minute that by rhyming off six or seven of them we would identify 2,000 people, but if the police service wants to be considered as more businesslike, it must take a businesslike approach to such things. We must look at the jobs that we do and ask ourselves not who does them, but whether they need doing in the first place. I may be doing someone a disservice here, but I do not know what a change manager, a performance manager, a service delivery manager or a business manager is. I can guess what a graphics officer is, but I do not know whether that officer is essential to the delivery of policing. Posts such as marketing officer and environmental awareness co-ordinator exist.

We must not lose sight of the fact that the provision of those 1,000 extra officers was the Government’s commitment, although I am sure that Mr McLetchie would say that his party was strong in ensuring that that commitment was delivered on. I know that, as elected members, we stop doing those roles, police officers will not know whether anyone in the room was at it. A speaker at the conference challenged the collective genius of the SPF by asking whether we wanted to live in a society that had a police officer on every street corner or whether we wanted to live in a society that did not need a police officer on every street corner. The answer in the hall—which, I would like to think, would also be the answer among the rest of the 5.2 million citizens of Scotland—was that we would very much want to live in the latter, but that we would not get to the latter unless we put considerable investment into the former. That is what we have seen with the provision of 1,000 extra police officers.

I take the committee back a few years to a Scottish Police Federation annual conference; I do not know whether anyone in the room was at it. A speaker at the conference challenged the collective genius of the SPF by asking whether we wanted to live in a society that had a police officer on every street corner or whether we wanted to live in a society that did not need a police officer on every street corner. The answer in the hall—which, I would like to think, would also be the answer among the rest of the 5.2 million citizens of Scotland—was that we would very much want to live in the latter, but that we would not get to the latter unless we put considerable investment into the former. That is what we have seen with the provision of 1,000 extra police officers.

We must not lose sight of the fact that the provision of those 1,000 extra officers was the Government’s commitment, although I am sure that Mr McLetchie would say that his party was strong in ensuring that that commitment was delivered on. I know that, as elected members, you hear on the doorsteps that is what the communities of Scotland have been crying out for. They have not been crying out for fewer police officers. They want more police officers because they want to feel safe. They want to ensure that the success of the 35-year low in crime, the increases in detection rates and the reduction in violent crime will continue.
I know that many academics argue that the correlation between the number of police officers and the amount of crime is tenuous and that many more sophisticated elements come into play, such as overall environmental considerations, but given the present financial situation in the country, why on earth would we jeopardise a key element of keeping crime down by reducing police officer numbers when the economic circumstances indicate that the propensity for an increase in criminal activity is probably greater now than it has been for a long time?

**Graeme Pearson:** You mentioned the 35-year low. You will know that, in America, crime is at a 43-year low and that, across Europe, crime figures are plummeting. No one has an explanation for that. In the American context, crime is still going down, even though there is a depression.

I did not ask the first panel directly whether an officer was taken off the beat to replace a member of support staff. I asked whether any officers were now doing office work rather than street duty. Are you saying that, regardless of the duties that support staff perform and the specialisms that they have, it would be better to invest in police officers and to utilise those officers in such posts? Would you not acknowledge that there are many specially trained support staff members—people such as intelligence analysts and crime intelligence managers—who are paid less than police officers, and that using their services would give a better focus and be more efficient?

**Calum Steele:** I start by acknowledging your greater knowledge than mine of worldwide crime trends.

**Graeme Pearson:** Thank you.

**Calum Steele:** I am grateful for the courtesy that you extend me in thinking that I could possibly have the same information as you.

I am not sure whether what I said earlier contradicted in any way the question that you just posed. I acknowledge that many individuals perform many vital roles. Dave Watson and Andrea Quinn listed the roles and functions that are performed, which are vital to policing and the delivery of the police service. However, what I stand by is the point that some roles—I caveat that heavily by saying that I am not stating that the number will come to 2,000—are not immediately obvious to me. I do not know whether the service would necessarily suffer if those roles were not undertaken in the future.

**Graeme Pearson:** Do you feel that that figure must be more than 1,000?

**Calum Steele:** One thousand people have already gone.

**Graeme Pearson:** You are not missing them.

**Calum Steele:** In some areas, the loss of support staff has caused problems—that probably links to the question that Mr Macdonald asked the earlier panel. I have spoken to many operational police officers in one force where a number of support staff have been lost and where something that is called a virtual typing pool has been created. That has been described to me as meaning that all that happens now is that virtually no typing takes place.

**Graeme Pearson:** The job does not change.

**Calum Steele:** There are of course areas in which such losses have an impact, but to suggest that the consequence is that police officers do the typing, for example, is maybe taking it a wee bit too far. However, the situation has changed since I undertook operational policing—I was going to say that it was not that long ago, but it was that long ago. The practice of police officers undertaking elements of secretarial work and the like will continue regardless, because of the nature of recruits—they are far more keyboard literate than many of those in the past.

**Dave Watson:** The important point to grasp is that the 17,234 figure was not built up as an operational police number—it is arbitrary. We started with a figure and added 1,000 to it, which was how we got to 17,234. The creation of a new national police force provides the opportunity to review what the requirements are for police officers and civilians, and I urge the committee to do that.

A simple fact of life is that large numbers of police officers in one force do what are considered to be essentially civilian roles in other forces. Police officers are even doing HR functions in Scotland’s larger forces, although they have no qualifications to do such work. We could give many other such examples.

Humza Yousaf referred to falling crime rates. The reasons for that are complex. I would not claim that it is the expertise of our members or of Calum Steele’s members that has resulted in those numbers. However, I know that our members tell us that police officers have at least in part covered half the 1,000 posts that have gone. Only 9 per cent of that work is not being done at all.

Calum Steele can produce a few job titles that he has never heard of; equally, I could show the committee lots of police officers who do jobs that mean that they never get out on the streets. We need not to focus on such an approach but to work out the right balance between the two groups of staff.

**Jenny Marra:** Mr Steele is right that the public ask us regularly—it happened this weekend—about police officers on the beat. Do you agree
that the public expect to see every one of the 1,000 extra police officers that the Government talked about on the street performing front-line duties and not doing desk jobs in police stations?

Calum Steele: The honest answer is no. The nature of police work means that, once an officer lays hands on an individual and takes him or her back to the police station, that officer is off the street. There is no naivety in the public that police officers will spend eight, 10 or 12 hours of their shift on the streets. If that happened, it would create an interesting relationship between the police officer or police service and members of the public.

Jenny Marra: Perhaps I misworded my question. I did not necessarily mean the difference between being on the street and in the police station; I meant front-line policing duties that keep communities safe, rather than duties that could be done by the balance of civilian staff.

12:15

Calum Steele: Again, the answer is no. I would like to think that the general understanding is that much of what is involved in keeping communities safe cannot necessarily be undertaken when police are out on the street.

In preparation for today—well, I used today’s meeting as an excuse—I watched the “Coppers” programme on television. The episode was based in rural Perthshire, which is a very fine part of the world. A lot of what those police officers did every day did not require them to be visible in the community all the time. If you take every aspect of what a police officer does in relation to being visible in the community—which, in its widest sense, involves things like appearing in schools and attending community council meetings—and ask whether it requires a policing power, you get into quite complex areas. That is what has happened in policing over the years. We have micro-analysed aspects of the police service’s work and asked whether specific elements—such as visiting a school—required a policing power. If the answer was no, we said that that was 15 minutes, half an hour or an hour of a police officer’s day that could be more productively spent doing something else, and have created various roles along the lines of school liaison officers to fill those functions.

The role of a police officer is highly complicated. It is not just as simple as turning up and giving the bad man the jail. A lot of what we do does not demand coercive powers; the point is that, when they are called for, we can exercise them.

Because of what they do, police officers can be expected to perform a particular function at the whim of the chief constable, at any time of day or night, any day of the week. It is not just as simple as saying that a public-facing policeman in a yellow jacket provides confidence. There must be a greater appreciation of the sophistication that is associated with policing. Part of that, clearly, involves the ability to rely on many valuable members of support staff, who enable the police officer to perform in that way.

The Convener: I am most fascinated by the chief constable exercising whims, but I will not pursue that.

Roderick Campbell: Mr Steele, could you elaborate on the point that you make in your written submission that the chief constable should prepare the strategic police plan, not merely be involved in its preparation. Can you make the case for that?

Calum Steele: As is often the case, it comes down to defining your definitions. If the plan involves nothing more than high level governmental objectives, I have no problem with the bill as drafted. If what is meant by “strategic” becomes more advanced than that, I would have some concerns. The strategic direction of the police service, in broad terms, must be informed by the professional opinion of the chief constable. Andrew Barker will be able to give you the views of the Scottish Chief Police Officers Association on that.

The issue is simply to do with the definition of “strategic”. If it simply involves general statements, such as “healthier, fitter, stronger”, the bill is fine. However, at the moment, we do not know how it is defined.

Deputy Chief Constable Barker: I continue to draw the line between my position, as the chief officer of the SCPOA, and the position of ACPOS.

On the point that Calum Steele makes, the definition of “strategic” is important. What does the word mean? It is a relatively loose term. As Calum Steele said, if it involves statements on high level objectives, we do not have an issue with that. However, if it involves priorities of policing at a more specific level, it needs further explanation and clarification.

John Finnie: I understand the challenges that Mr Watson faces in representing his members at this juncture. The history of the current proposals goes back to 1996, with removal of central establishment controls, single-line budgets and a large measure of chief officers’ discretion in how they configured staff.

I would like to ask about what you said about having a better workforce mix of civilian and uniformed staff. None of the changes regarding establishment controls or the funding arrangements altered the requirement to have an
efficient police service. Surely, if a police chief has an evidence-based position that he has an efficient service, that is something that you would need to accept. In saying that, I acknowledge that the maintenance of the 17,234 figure is likely to impact more on your members than on Mr Steele’s.

**Dave Watson:** If only that were the case. We certainly welcome the fact that the bill will put a duty of best value on the new national police force. At present, there is only an “accountable officer” arrangement. However, in the years to come, it will be difficult to demonstrate best value if only 15 per cent of the police force are civilians. I have represented police civilian staff for more than 30 years. I remember, before 1996, going into police headquarters and stations where detective sergeants and detective inspectors were doing the work of clerks—I am sure that Mr Finnie remembers that, too—which is the sort of situation that we are going back to because of the numbers. I agree entirely with Calum Steele on micro-analysing police officers’ duties, but large numbers of police officers never need to use their warrant cards, because they only carry out roles that can be done by civilians.

The public want to see police officers on the street, as is absolutely right. Part of the function and role of police civilians is to free up police officers to be on the streets. Other jobs that police civilians do are specialist functions that have grown since the days when I first represented police staff. The chief officers will have no choice; if they are stuck with 17,234 as an absolutely rigid and no-budge figure, the chief officer will simply have to take officers off the streets to do civilian jobs. There is no other way of doing the tasks.

That will not lead to an efficient force or to best value. In five or six years, we will be sitting round a table like this with Audit Scotland, who will say that the situation is ridiculous because we are paying police officers, at great cost, to do jobs that they are not qualified to do. We should not wait until then. Let us take the opportunity of the establishment of a new police force to consider the right balance between police officers and civilians. We should work that out from the bottom up, rather than from the top down, and we can then have a reasonable debate about what that balanced police force ought to be.

**John Finnie:** How many of the posts that you suggest are presently filled by police officers involve police officers who are on rehabilitative or return-to-work programmes or protected duties?

**Dave Watson:** There will be some, but such numbers are misleading. The Stewart report considered the establishment arrangements on that basis. For example, in some forces, staff in control rooms were almost all civilian, whereas in other forces they were almost all police officers. Some forces have large numbers of police custody officers and fewer police officers, while other forces’ numbers differ. The convener used the term “whim”. Frankly, I suspect that the way in which civilisation has developed is probably down to the “whim” of the chief constables. We know that different forces have developed in different ways, because reports have shown that to be the case.

**John Finnie:** Do you acknowledge that, through a combination of such arrangements, in any force at any given time, a number of officers—although I would not say that it is a significant number—fulfil functions that were hitherto undertaken by civilian staff?

**Dave Watson:** It is perfectly reasonable to have posts to cope with those arrangements, but that is entirely different from the issue that I am talking about. To give an example from our current survey, police civilian staff tell me that, in some police stations, no police officers go on routine patrol because they are doing paperwork. The police officers—Calum Steele’s people—say that they do not want to be doing that. They want to do their job and not the paperwork that was previously done by people who were qualified to do it. That is about getting the balance right.

**John Finnie:** If I recall correctly, the outline business case alludes to an attrition rate of 3 per cent, which is fairly modest. I understand that, in the local government experience, a figure of 10 per cent is more realistic.

**Dave Watson:** We have looked at a figure of 7 per cent. However, as others have pointed out, we now have good experience of managing a job-loss programme, which is already pretty massive. It is relatively easy to lose people in the first stages of such a programme, but the further we go, the more difficult it gets to find people who are prepared to go. Age is a key factor, because the people who are left are younger. Another key factor is the current economic circumstances, and there is also the simple reality that some jobs cannot be released. Those three factors together make the process difficult.

**John Finnie:** Has the package—for want of a better phrase—improved since the initial offer?

**Dave Watson:** The situation depends on the different arrangements in different places. Of course, a huge package might attract people, but any package that will not rightly attract the attention of your colleagues on the Finance Committee is not going to solve the problem. We are talking about job functions, age and other opportunities. In the context of people who are prepared to retire at 55 to 65, the numbers will be...
few if we must lose another 2,000 or even 3,000 civilian posts during the next few years.

**John Finnie:** The Unison submission says:

“The certification and ‘fit and proper person’ test”—

**The Convener:** Wait a minute, John. A couple of members want to follow up the point about civilian staff. I will come back to you so that you can start a new line of questioning.

**Lewis Macdonald:** I guess that my question relates principally to civilian staff. Do witnesses think that the bill is properly drafted in relation to transfer of undertakings from the existing employer to the new employer?

**Dave Watson:** In our view, it is not. The arrangements in the bill have largely been lifted from the approach that was taken when the SPSA was established. The world has moved on since then and there have been changes in the UK situation, under Cabinet Office rules.

We need to go back to arrangements that were used previously, for example in relation to the Water Industry (Scotland) Act 2002 and the most recent local government reorganisation. We need a full statutory transfer order, which covers all the issues in the Transfer of Undertakings (Protection of Employment) Regulations 2006. In essence, we simply say that if TUPE does not apply—it could be argued that it does not apply, because we are talking about an administrative transfer—the principles of TUPE should apply. In fairness, I will say that the Scottish Government has consistently applied such an approach. However, it is not currently applying it, as the bill stands. I do not think that that is malicious or intentional; I think that it is an oversight.

We have concentrated on police and civilian staff, but we should remember that local authority staff also provide services to police in a number of forces and would come into the scope of TUPE. That is another area that is missing. There is a particular issue with Fife Constabulary and Dumfries and Galloway Constabulary, which are much more integrated with the local authorities than some other forces are. The bill is vague and unclear in that regard.

**Calum Steele:** There is a significant matter in respect of how TUPE relates to staff who are currently employed by the Strathclyde Police Authority. As far as I am aware, no other authority employs full-time members of staff, and if we follow the general and, indeed, the specific provisions of TUPE there is almost a read-across whereby such individuals would become staff members in the new Scottish police authority. I am not saying that those staff members would not have the skills and abilities to do that, but there might well be an issue to do with balance across the expectations of wider areas of local government, in relation to whether such an approach is fair. That is a general observation.

By and large, the provisions for police officers mirror those for the previous amalgamation schemes, with the notable exception that an officer’s protection from the expectation that they must move house in the event of amalgamation would be lost as a consequence of promotion. That is a step too far; such provision did not exist in 1976 and it does not need to exist now.

**Lewis Macdonald:** The committee has had discussions about civilisation and decivilisation of posts. In essence, the question is whether it is possible to plan in a way that identifies essential jobs and ensures that the right balance is struck. I think all the witnesses have talked about balance.

I asked the previous witnesses whether they thought that a transition year or further period in which to implement the new arrangements properly would make it easier for the police service to strike the right balance and get the right people in place. Do you think that a transition year or some other period would be helpful in that respect?

**Dave Watson:** It would be helpful, but it is not the solution. The solution is to say, “We have a national police force, which is differently structured and has different requirements; let’s build the staffing structures from the bottom up and work out what we need.” That is how we would find the right balance and work out how to make the changes. If we did that, we would get a more balanced workforce and avoid many of the difficulties that Kevin Smith and other witnesses have highlighted to you this morning.

**The Convener:** I agree, but we have covered that subject, so I ask for shorter answers. The question was fair, and you have said that the suggestion is not the solution but might be helpful. That was the essence of your answer. Do other witnesses feel that a transition period would be helpful?

**Calum Steele:** For the sake of brevity, my answer mirrors Dave Watson’s.

**Deputy Chief Constable Barker:** Yes.

**The Convener:** I like that; I really like that.

12:30

**John Finnie:** I want to ask about two matters in Mr Watson’s submission. At the bottom of page 3, you mention double jeopardy. I do not understand what you mean, so could you explain it?

In the second paragraph on page 2, you say:
“UNISON Scotland is also concerned that this could lead to police staff being redeployed to other areas, possibly at short notice and disruption to work life balance.”

I would have thought that such issues would be covered by existing terms and conditions.

Dave Watson: The bill contains separate provisions on the need for a certificate for police custody officers, because of their particular duties, and I will give members of the committee an example of how double jeopardy might arise.

If misconduct leads to disciplinary action and a final written warning, the situation might arise—under the bill as drafted—in which the chief constable decided to take away the PCSO certificate on the ground that the person was not a fit and proper person. So, following a disciplinary procedure, the person could suffer double jeopardy if the chief constable intervened. The chief constable would not have been part of the original disciplinary action, which would have been dealt with by a more junior officer or a civilian member of staff. The risk of double jeopardy is not necessary. Every police officer and every police civilian member of staff has to be a fit and proper person in order to do their job—that is implied in their contract of employment. I do not understand why it should be written into the bill. It is unnecessary, and could be abused.

Mobility clauses can be a grey area in law. Our police civilian staff have a contract of employment. Unlike the situation for police officers, that is not set down by regulations; there will be individual contracts. Arguments might arise over whether a particular move was reasonable, but the same protections that the bill builds in for police officers are not built in for police civilians. Risks might therefore arise. This would not be written into the bill, obviously, but our members are concerned that, if there is just one police force, they could end up being shunted around Scotland. Most of our members who are police civilians are women and they may have caring responsibilities, so moving may well not be a practical option.

John Finnie: That situation is not unique to the bill. Were anyone to be unreasonably shunted, I am sure that employment action from their union would follow.

Dave Watson: That is not necessarily the case. At the moment, the employer has a limited geographical area; under the new arrangements, the employer will cover the whole of Scotland. The issue has arisen during other centralising reorganisations with quangos, for example. It is not a theoretical problem; it is a real problem. The bill might not be where the problem should be sorted, but we would certainly seek reassurance from the minister on application of the policy.

John Finnie: Could there be red circles?

Dave Watson: Yes—a range of possibilities exists that are not dissimilar to the arrangements that apply to police officers.

The Convener: I remind members that we are considering the bill, not contractual matters.

John Finnie: They have been mentioned in evidence.

The Convener: That may be so, but it may be that not all the evidence is relevant.

John Finnie: Okay.

The Convener: Tush, tush.

I should not have said that, but I have.

Graeme Pearson: Andrew Barker mentioned considerable concerns over section 14 and the opportunity for the authority to "call on a senior officer to retire from office in the interests of efficiency or effectiveness".

Is it fair for legislation to include such a measure? What is the kernel issue for you?

Deputy Chief Constable Barker: My members certainly feel that they are placed at significant risk by the fact that the bill has no definitions of “efficiency” or “effectiveness”. I highlighted in written evidence that, by the very nature of the amalgamation, a number of my members will not have substantive posts within the new organisation. There is undoubtedly a fear that the “efficiency and effectiveness” proposal, which gives no process or right of appeal for what would be summary dismissal, could be viewed as an easy way to get rid of officers who are regarded as surplus to requirements as we move into the new organisation.

We completely accept the need for a system to deal with inefficient or ineffective senior officers—we do not question that. However, what we seek is fairness and protection for officers. I drew on comparisons in my written evidence, which I will touch on now very briefly. At present, a matter of misconduct on the part of a chief officer requires an independent investigation by a chief constable, consideration by a joint police board or a police authority and an independent solicitor’s view. Thereafter, the Lord President of the Court of Session appoints a panel to take action on the misconduct of the chief officer or senior officer.

It appears, however, from the wording of section 14 of the bill that the police authority can conclude that an individual is inefficient or ineffective, give the individual “an opportunity to make representations”, then require that person to retire.
Graeme Pearson: Are you aware, from your research, of a similar power elsewhere in the public sector or the private sector?

Deputy Chief Constable Barker: I have taken legal advice on the matter and have been told that there is no similar power in the public or private sectors. There are opportunities to dismiss very senior people, but they entail financial recompense and an examination of the circumstances. At the minute, my feeling is that, as section 14 is drafted, the decision can basically come down to—I will use the word that the convener used earlier—a “whim” of the police authority or others as to whether an individual is surplus to requirements and could be required to retire. I stress that there could be massive financial and career penalties for such individuals.

The Convener: On what Graeme Pearson said, I note that you state in paragraph 6.3 of your submission:

“Whilst a similar provision existed within the terms of the Police (Scotland) Act, 1967 it has never, to knowledge, been used and ... would be challengeable by Judicial Review.”

Is it not the case that if a fair process is not in place for calling on a senior officer to retire, such a request would be challengeable under article 6 of the European convention on human rights, which gives the right to a fair hearing? An individual who was called on to retire would be entitled to challenge that, irrespective of employment law. I take your point about the drafting of section 14, but if it remains challengeable as it is, I have no doubt that the Government will take cognisance of that.

Deputy Chief Constable Barker: Officials have acknowledged that work is required on the matter. The similarity to the 1967 act is in relation to the word “efficiency”; the word “effectiveness” has come from left-field, to put it bluntly, into the bill.

The Convener: Humza Yousaf has a question.

Humza Yousaf: It is on a completely different matter, if that is okay.

The Convener: Good. I might give sweeties for completely different matters. Do we have many more questions?

David McLetchie: I have one.

The Convener: David has one. Are there any more? That will give me an idea of our timetable. No? Right—Humza.

Humza Yousaf: The other panellists might have a view on this, but on the bill’s proposals for the police investigations and review commissioner, the Scottish Police Federation’s submission suggested an amendment for section 63, which is:

“S. 63(1)(d) – Change ‘Commissioner’ to ‘Lord Advocate’.”

That amendment refers to proposed new section 33A(1)(d) of the 2006 act in section 63 of the bill, which states that among the commissioner’s functions would be investigation of other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so”.

Why do you suggest replacing the commissioner with the Lord Advocate? Would not there, in that case, be a danger that the Crown would be tied in too closely with the police authority? Should it not remain for the independent police investigations and review commissioner to decide what is in the public interest?

Calum Steele: Vesting in an individual—I appreciate, of course, that the Lord Advocate is an individual—the power to decide what is in the public interest raises the questions of whose public and whose interest, I do not think that those aspects are necessarily easily understood. In any event, a decision on any investigation that takes place in Scotland is ultimately for the Lord Advocate.

Our concern about “public interest” is that it can be construed very widely and that reference to it in section 63 could provide, depending on circumstances that could unfold at any time, the ability to go on a fishing expedition. To be clear, we have nothing against the principle of a police investigations and review commissioner. There is nothing wrong with external scrutiny of the police service. In fact, I am pretty confident that a PIRC will show what we have said for many years, which is that the police service is not a closed shop but is highly efficient in its investigation of itself and deals appropriately with misdemeanours when they occur.

My fear about use of the term “the public interest” is that it can be construed very widely and that reference to it in section 63 could provide, depending on circumstances that could unfold at any time, the ability to go on a fishing expedition. To be clear, we have nothing against the principle of a police investigations and review commissioner. There is nothing wrong with external scrutiny of the police service. In fact, I am pretty confident that a PIRC will show what we have said for many years, which is that the police service is not a closed shop but is highly efficient in its investigation of itself and deals appropriately with misdemeanours when they occur.

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Humza Yousaf: I heard some grumbling in the corner when the Daily Mail was mentioned.

David McLetchie: The circulation figures are high in Scotland.

Humza Yousaf: Mr McLetchie is a robust defender of the Daily Mail.

I can understand why you might be concerned about the public interest aspect, but you have not
really explained why “Commissioner” should be changed to “Lord Advocate”. As you rightly pointed out, the Lord Advocate is still one individual. Do you accept that there is a perception—even though it may be incorrect—that the relationship between the Crown and the police service is a bit too cosy and that they are a bit too close, which could undermine the Lord Advocate having that function?

**Calum Steele:** That perception may well exist, but when legislation is being drafted we should deal with reality. I do not think that the Crown and the police service are overly close on such matters. If we try to legislate on the basis of perception, we will be on very shaky ground indeed.

**Humza Yousaf:** I admit that, but with such a role, when a complaint comes in from the public, there has to be confidence in the role. Would that not be undermined by having the Lord Advocate involved? I still do not understand the rationale for shifting the responsibility for determining what would be in the public interest to the Lord Advocate. I do not feel that you have explained it. You have explained your difficulty with the term “the public interest”, but what is the rationale for shifting the onus on to the Lord Advocate?

**Calum Steele:** Our view is that the Lord Advocate is in a position to take a more informed position on what is in the public interest, because of their general understanding of what goes on in the criminal justice system.

Now that we have touched on the PIRC, I make the point that there are some areas of conflict with regard to independence and the separation of functions. An example of that relates to external scrutiny. The provisions of the bill indicate that the PIRC will be responsible for monitoring complaints against himself or herself. That seems to me simply to move the problem from one place to another.

There is also an obvious deficiency in the proposed arrangements in circumstances in which the PIRC may be responsible for investigating a matter that turns out to be criminal, but which goes back to being misconduct. Is there a conflict in that role? To me, it seems that there is an obvious conflict, in that the PIRC, after deciding that the matter is criminal, will be expected to determine whether it could amount to misconduct. Such conflicts and difficulties will prevail. It is to ensure that the PIRC has clean hands that we believe that it would be more appropriate for the Lord Advocate to have a role in something as significant as a public interest investigation into the police service.

**The Convener:** I should never ask whether there are any more questions. David McLetchie and Graeme Pearson will ask the final questions, unless something really compulsive appears—I did not mean you.

**David McLetchie:** I am an obsessive compulsive, on occasion.

In relation to back-office and front-office functions, phrases such as “officers on the beat”, “officers in the community” and “officers on the streets” are seen as a shorthand for what policing is supposed to be. If we were to do a head count of our 17,234 officers on a typical Tuesday in Scotland, how many of them would we find were on the streets and in the community? Would you like to hazard a guess at that?

**Calum Steele:** I would hazard the guess that the figure is probably less than 10 per cent, but there are reasons for that. Police work is a 24/7 profession. If we accept that that is the nature of the beast, we must accept that police officers will work shifts and that, as a consequence of that, they will have days off. Many shift patterns have evolved over time. A common shift pattern across the police service at the moment is a five-shift rotating shift pattern, which will result in 40 per cent of the staff being on days off at any one time. If the other three shifts are allocated across a 24-hour period, 20 per cent of the police officers will be on duty at any one time. This is pure finger-in-the-air stuff, but it is not unreasonable arithmetic to suggest that half of those are probably on the street.

**The Convener:** That was wonderful. We should have you do part 1 of the Criminal Cases (Punishment and Review) (Scotland) Bill, because we do not understand the arithmetic in that.

12:45

**David McLetchie:** I will follow up the point about the number of officers who are on the street and in the community. At this moment in time, how many officers are working not on management functions but on operational matters, such as investigating things and writing reports—all of which is a necessary part of the criminal justice system—in police stations and headquarters?

**Calum Steele:** Now we really are getting into guesswork. I suspect that not even ACPOS could answer your question, despite all the resource that is at its disposal.

**The Convener:** My advice is to quit while you are ahead, Mr Steele.

**Calum Steele:** In many ways, the question links back to the exchange between me and Ms Marra about the fact that policing is not always about doing something that is linked with the criminal justice system. Policing also involves being there and providing comfort and assurance. A lot of
what takes place in police stations is linked to providing comfort to the community, although it is not necessarily directly linked to the criminal justice system.

David McLetchie: Being in a police station does not mean that someone is not doing police work.

Calum Steele: Absolutely.

David McLetchie: Lots of valuable investigative work can be done by sitting at a desk, making calls and all the rest of it. That is just as valuable as knocking on a door in the community.

Deputy Chief Constable Barker: We are getting into the huge area of difficulty about what is what. That shows the complexity of the police service. We could argue about rural policing, urban policing, public order policing, child protection and domestic violence measures—I could go on and on. The point was made that all such functions protect the communities of Scotland and that people might sit behind a desk to do such work.

Do we want our e-crime investigators, who deal with internet pornography and child abuse, to be out on the street in a yellow jacket? I do not want that; I want them to be doing their specialist task and to be protecting the public. The number of officers who are on foot on the streets of Scotland becomes largely irrelevant; the issue is the totality of policing rather than the specifics in each area.

Dave Watson: I accept that, but the phrase “on the streets” is where the political target comes from—that description was used. We would not have a difficulty with getting police officers on to the streets, which includes doing some of the tasks that my colleagues on the panel have described. However, we should not forget—we get this all the time—that large numbers of police officers are still doing tasks that are better done by civilians.

The Convener: We have explored that. I am not cutting you off, but we have the evidence on that issue.

Graeme Pearson: I ask for a brief response on one issue that we did not manage to discuss with the earlier panel, which was ICT and the challenges that the police service faces in providing a good intelligence background and information technology support. I presume that a specific plan will be needed to ensure that ICT is well supported in the single police force and that people with the skills to do such work are available.

In fairness to the committee, I should declare an interest: I previously advised software companies about ICT and I may well go back to that in the future.

Deputy Chief Constable Barker: I will speak with my day job hat on, rather than my staff association hat. I am closely involved in the programme of looking at how we rationalise eight organisations’ systems. We will prioritise the crucial systems for moving forward, rather than the desirable systems, and we will try to enhance value for money across the piece.

Dave Watson: We represent a lot of the staff who do the ICT work. It has been pointed out not just by us but by others that some of the expected savings in ICT are optimistic, given experience from past reorganisations.

The committee should also consider cost displacement. It is easy to put in place a new system when all that it does is displace work to operational staff.

Calum Steele: One of the many benefits that will come about as a consequence of the single service is undoubtedly a more joined-up approach to IT. I do not mean to be in any way disparaging about ACPOS, but it used to be said that the only thing that ACPOS could agree on was the colour of a tie—and it later transpired that even that was not the case.

The Convener: What a happy little family you are.

Calum Steele: Even when we had ACPOS working together to come up with common IT solutions and agreements, what we got was down to the individual negotiations and approaches that were taken in forces. Despite the fact that we started off with a high-level agreement for universality, we did not get that. The opportunities that arise for investment in IT will make the service better.

I will expand on a point that I made at the Finance Committee. I highlighted the fact that the police service, probably like nothing else in society, holds a fascination for the general public and, indeed, politicians. You will find that more people have an opinion on the police service than do on anything else, other than football and the family.

The Convener: Believe you me, they have an opinion on politicians.

Calum Steele: Obviously, much of the scrutiny that is directed at the police service is understandable, but it comes at a cost as the service needs to have the IT and the individuals to feed that requirement.

This is very much a quick analysis, but I checked the Scottish Parliament website and found that, in the previous session of Parliament, the word “police” features in almost 1,950 speeches in parliamentary debates. Mentions of
nurses and doctors collectively come to 250 and there were 500 mentions of teachers.

Similar but broader statistics indicate that crime and justice hold a greater fascination than health and education. Although health accounts for approximately 35 per cent of the Scottish budget, it does not account for 35 per cent of the scrutiny that is applied by elected members. If that level of scrutiny is, rightly, going to be directed at the police service, our argument is that it is entirely right that politicians step up to the mark and put the arguments over funding more vociferously to ensure that the police service is properly resourced.

The Convener: On that public relations submission for the police service, I will close the evidence session. I thank you all very much for your evidence.
10:02

The Convener: Agenda item 2 is our second evidence session on the Police and Fire Reform (Scotland) Bill at stage 1. I welcome to the meeting our first panel of witnesses: Assistant Chief Constable Alistair Finlay of the Police Service of Northern Ireland; Professor Nick Fyfe, who is director of the Scottish institute for policing research; Dr Kenneth Scott, who is director of the centre for criminal justice and police studies at the University of the West of Scotland; and Alison Payne, who is research director at Reform Scotland. Good morning to you all and thank you very much for your written submissions.

As usual, we will go straight to questions from members.

Graeme Pearson (South Scotland) (Lab): Will Alistair Finlay give us some insight into the lessons that he has learned in connection with the governance and local accountability challenges that have been faced with a single national police force?

The Convener: If other members of the panel want to self-nominate, I will indicate that I will call them to speak.

Assistant Chief Constable Alistair Finlay (Police Service of Northern Ireland): I thank the committee for inviting me to the meeting.

The subject that the member raises is so broad and deep, and experiences are so different, that I will try to keep my comments on it relatively short in the first instance.

The challenge that Scotland faces is how to get national accountability with local buy-in and the local feel that we need for policing. It is clear that that is achieved in Northern Ireland through district policing partnerships, which will change to become policing and community safety partnerships from 1 April.

As the committee will be aware, the model was devised by the Patten commission, which 10 years ago studied the future of policing in Northern Ireland and was involved in the coming into existence of the Police Service of Northern Ireland. The model has worked better in some areas than in others; it depends on who is involved in a particular district policing partnership and the make-up of the committee. However, the context is different because the politics of Northern Ireland is different, and positions are pretty polarised.

For example, in north and west Belfast, the district policing partnership meeting has become...
very challenging for the local police commander. There is a difference between the role of the policing board nationally, which is to hold the chief constable and the organisation to account, and the role of the district policing partnership, which is to be informed about local performance and to inform local issues. However, sometimes that line, which is fairly indistinct at the best of times, is definitely blurred. The area commanders, who are chief inspectors in all areas in Northern Ireland, are held strongly to account in quite a bruising and confrontational way. Success for some people is strongly to account in quite a bruising and confrontational way. Success for some people is sometimes pretty peripheral at best.

In other areas, the approach is much more constructive and the balance is different. It all depends on the personalities on and management of the committee, and how it has been set up over time. Some area committees and district policing partnerships are much more enabling and contribute a lot. They reflect local people’s needs and concerns and gain an understanding of what is happening in policing in their local area and how policing can be supported locally. That last aspect is often missed out; it is not just about holding to account and being informed, but about how we galvanise support for policing in areas where that is sometimes pretty peripheral at best.

**Graeme Pearson:** Can you give us some insight into how the Northern Ireland Policing Board operates and who is on it? How does the board manage the governance issues and at the same time acknowledge operational independence?

**Assistant Chief Constable Finlay:** The board is made up of 19 members: 10 are independents and nine are elected members of the Northern Ireland Assembly. The elected members are appointed under a system of proportional representation—the d'Hondt system—in order to get cross-party representation on the board. The independent members put themselves forward in response to an advert and are selected by the Northern Ireland Department of Justice through a process that is designed to reflect community background, the particular skills that can be brought to bear on the board and other issues.

The board operates through its principal public meetings, which are held 10 times a year. They can attract significant public interest through the media, because policing in Northern Ireland is still very political. The board also operates below that in a less visible way. It does most of the business through a number of thematic committees, such as human rights and professional standards, human resources, and resources and improvement. They deal with the people, the infrastructure, the resources and the approach to policing, which is often done through the human rights and professional standards committee.

Human rights are a core bit of the business. The difference between the Police and Fire Reform (Scotland) Bill and what we have in Northern Ireland is that human rights are absolutely up there in lights and up front as the underlying, core principles for policing in Northern Ireland. That is reflected in how we deal with our code of ethics, the number of human rights advisers involved and how the issues inform training and manifest themselves in policing on the ground.

That is all done against a background of Patten designing a new police service for a different time and seeking to involve all communities. It is only a short time since Sinn Féin became actively involved in the governance of policing, so we are relatively young, in terms of our overall governance involving people from across the political spectrum.

Patten talked about operational accountability, and we are operationally accountable for, but independent of decision makers on, what we do and our priorities. Our priorities are set through the policing plan, but operational priorities are developed as they arise and as we go about our business. My experience is that we are held to account particularly on the policing of public order, which is contentious, forceful and impactive in Northern Ireland. People hold us to account for the style of policing, the amount of force that is used and why we took certain decisions.

**Graeme Pearson:** I will ask one last question and then allow others to come in.

**The Convener:** No, I will allow others to come in, Graeme. You are doing a Humza.

**Graeme Pearson:** Sorry.

Assistant Chief Constable Finlay mentioned different styles of local accountability and accountability through the national board. One of the matters that exercised the committee at last week’s meeting was how to connect local issues to the national board to get an effective response. Is there a connection between the local community safety partnerships and the board? If so, how does that operate and how is it traced through the system?

**Assistant Chief Constable Finlay:** The principal connection is within two plans: the policing plan, which the board produces for and in conjunction with the PSNI, and the local policing plans, which are developed by the district policing partnerships—or the policing and community safety partnerships, which is what they will become.

In developing the national plan, the board consults to find out what key issues exercise the
local areas, some of which are gathered up. They are unsurprising and tend not to differ from area to area. They tend to concern antisocial behaviour, burglary—or housebreaking, as it is known in Scotland—and road safety. Road safety is more of a concern in some areas than others. Northern Ireland had a long history of road deaths, but we have managed to turn that round quite successfully.

The local and national plans have a large degree of overlap. We have eight policing districts, each of which is headed by a chief superintendent and within each of which there are a number of area commanders, who are chief inspectors. The challenge for the district commanders, as we term them, is to strike the balance between performing against the organisational aims under the policing plan and meeting local needs. That involves some footwork in resource allocation, addressing most of the overlapping aims and doing some local initiatives to try to tackle issues that are specific to a particular area and about which people are exercised—it can be as localised as the impact of antisocial behaviour in a particular housing estate.

Graeme Pearson: If local people are unhappy and do not feel that they are receiving a response from the community safety partnership, is there a mechanism for raising that with the national board?

Assistant Chief Constable Finlay: The structure of the public meetings that we hold 10 times a year has changed. The board recently decided that it would be useful to allow the public to ask questions of the chief constable and the senior management team. What happens depends on the number of people who come along. Most questions are answered by correspondence in the first instance, but the facility exists to ask a question at the meeting. More often, questions are asked by a member of the board on behalf of the community.

The other principal route is through the Police Ombudsman for Northern Ireland. It is more normal for people to make a complaint to the ombudsman, who will pursue it in his usual fashion.

10:15

Humza Yousaf (Glasgow) (SNP): Good morning. I will pick up on what you just said and then move on to ask other questions.

In your opinion, as long as its concerns are heard, is the local community really bothered who sits on the board for the 10 public meetings that take place every year? Do people demand that board members are local councillors, for example? Do they mind the fact that those involved are MLAs and independents, or are they just worried about whether their concerns are being dealt with adequately? Are they bothered who the individuals on the board are?

Assistant Chief Constable Finlay: I do not think that they have been asked that question or have found it an issue. The board was designed to have that balance between political and independent members. The same structure is reflected in the district policing partnerships, which have a balance of 10 political representatives and nine independent members, utilising councillors rather than MLAs. I do not know whether the public have thought about options to replace the board—that has not really been considered.

Within the structure of public services in Northern Ireland, which is significantly different from the structure in Scotland, the 26 councils have few functions. Many functions are delivered nationally in different ways, such as through a national roads service or education and library boards. That completely different public services structure may influence policing. However, the contentiousness of and the political interest in policing are such that there must be some political involvement in the representation of communities.

Humza Yousaf: Thank you. I turn to Reform Scotland’s written submission. As we can see, local accountability is a huge issue. The Reform Scotland submission states that

"the Scottish Police Authority should be made up of representatives of each of Scotland’s local authorities".

It adds:

“Due to the national elements of policing, we would be happy for representatives from the Scottish government, whether minister or senior civil servant, to also sit on the board.”

How big does Reform Scotland envisage that the Scottish police authority board will be?

Alison Payne (Reform Scotland): That is more a question about the number of local authorities in Scotland. The 32 local authorities in Scotland need to be represented to ensure that local voices are heard. However, you should not reform the police because you do not like the number of local authorities.

You asked whether the public mind who represents them. If you asked whether a function should be removed from Holyrood and MSPs and given to Westminster and MPs, there would be an outcry. Why should there not be an outcry when a function is removed from local government and given to Holyrood? Policing is a local government function at present and we feel that, although there has been a lot of debate around and justification of the bill on the basis of financial savings, no justification has been made for removing the function from local government.
Humza Yousaf: Are you suggesting that there should be a restructuring of local authorities before we proceed with the bill?

Alison Payne: No. The policy memorandum accepts that policing is largely a local function, and we are saying that, to reflect that, we need local representatives in the system.

There are potential problems that we are concerned about. We think that it is a fantastic idea to have local commanders matching up with local authority areas—that is brilliant and long overdue. However, what would happen if a local authority pushed one idea and the chief constable pushed another? The local commander would be caught in the middle. Also, what would happen when a local authority was of one political persuasion but the Scottish Government was of another? Unless the police board is made up of councillors, so that the chief constable is, in turn, answerable to councillors from across Scotland and can take all the local circumstances into account, the system will be messy. A more accountable policing structure is not created by removing councillors and replacing them with unelected, appointed quangos.

Humza Yousaf: If we pushed ahead with the bill but kept the current local authority set-up, taking on board your suggestion of having on the same board one representative from each of the 32 local authorities—different local authorities of different political persuasions—how would we be able to hold anybody to account, and how would the board be able to come to a decision on any matter, given all the local perspectives?

Alison Payne: It is not about the political persuasions; it is about the local needs and the different priorities of the different communities. For example, members of a political party who represent the Highlands may have a completely different view about policing in their area from that of members of the same political party who represent the Highlands may have a completely different view about policing in their area from that of members of the same political party who represent an urban area. It is more about taking account of the needs and priorities of local communities. We do not think that a centrally appointed quango can represent our local communities better than our elected councillors already do.

Humza Yousaf: No—I get the idea of the local police plan and the fact that there might be a conflict between national priorities and local priorities, which was mentioned at last week’s meeting. People need to be open to compromise in relation to such matters.

The aspect of Reform Scotland’s proposal that I am struggling with is the idea of having 32 local representatives on one board, each of whom would have their different priorities, depending on whether they were from the Highlands, an urban area or a rural area. I cannot see those 32 local representatives having any influence whatever, because there would be numerous different voices all speaking at once and numerous different perspectives. How could the board possibly come to any joint decision?

Alison Payne: That arrangement would reflect the structure of local government in this country. We have 32 local authorities. Equally, 32 local commanders would be involved. Those local commanders would come together and have meetings to discuss what was going on. Rather than unelected, appointed quangos being involved, it would simply be a case of bringing together individuals who represented the interests and priorities of their communities to ensure that the policing structure linked back to our communities.

Humza Yousaf: I do not know whether anyone else wants to comment.

The Convener: I am leaving it up to witnesses to nominate themselves if they want to comment. If none of them does, we will move on to the next question.

Dr Kenneth Scott (University of the West of Scotland): There is an issue with the size of the police authority and the link between the local and the national, but we must recognise that not all policing is local. We welcome the fact that the bill puts a duty on the chief constable to provide local policing—that is absolutely correct—but one of the benefits of having a single force is that it will be possible to take a much wider strategic view and to develop a capacity for operating beyond the local level.

For example, as members will know, we already have a national organisation that deals with crime and drug enforcement but which does not fit into any pattern of local accountability. It should be accountable, and the way of making it accountable is to ensure that the Scottish police authority can review what happens not just at the local level but at the national level. My suspicion is that, in the context of a single force, there will be more police operations at a national level. It would be a surprise if the capacity to investigate major incidents, serious crime and serious organised crime were not likely to be organised at a level above the local. That is important from the point of view of making best use of the resources and the experience of the police service.

Although local accountability is important and local policing will make up the bulk of policing in Scotland, the bill offers the opportunity to develop a framework that goes beyond that at a national level.

Professor Nick Fyfe (Scottish Institute for Policing Research): I will add a footnote to that.
One of the other issues that the bill raises is that it assumes that there is something called “local policing”, but it does not offer any definitional clarity on where the boundaries of local policing begin and end. That is a crucial issue as regards the responsibilities of local authorities. If local authorities are to be involved in the development of local policing plans, what can they expect to see in such a plan, given that, as other witnesses have indicated, there are so many connections with regional and national issues?

There needs to be some clarity on what local policing means, particularly as “local” will have very different meanings in different parts of Scotland. In Edinburgh or Glasgow, “local” might mean neighbourhood based, as opposed to something on a larger scale. It would be useful to have a better understanding of that.

The Convener: Is there not already a pragmatic understanding of that on the ground? If we were to ask a policeman, they would know perfectly well what was meant by “local policing”—they would know exactly what area was being talked about. Is it not the case that in different areas, such as the Highlands and Islands, my part of the country in the Borders or Edinburgh, there is already an understanding of what that means? Are we bothering about something that we do not need to bother about?

Professor Fyfe: The issue arises more in the context of the resources that are available to a local community when it requires more specialised policing support, which might be offered at a regional or a national level.

The Convener: Is it not also the case that if something happens in my area or in the Highlands, such as a murder or a missing person, the local divisional commander can call on aid from outwith the area? That already happens: the police already share resources. The commander can say that they do not have the resources—that they do not have an aircraft, say, to do a heat search for a missing person. As far as I know, that happens already. We are not starting from nothing.

Professor Fyfe: That is right, but it is about understanding where those regional resources will be based within the configuration of the new police service for Scotland and how local areas will be able to access them.

Assistant Chief Constable Finlay: Perhaps I can help from a Northern Ireland perspective. The local is scalable, from the neighbourhood all the way up. We have to judge what local means in the context of what whoever is speaking to us means by local. We describe district policing as local policing; it is what happens with the resources at the district commander and area commander level. The national level consists of the equivalent of the Scottish Crime and Drug Enforcement Agency—the serious crime branch, which is headed up by one of my colleagues—and my own resources, which are road policing and specialist uniform support. We deploy those resources and it is our job to deploy them to the right place at the right time. We weigh up risk and use all the information that we have to achieve the desired outcome, and we go in to support the district commander.

There is sometimes tension between the local and the national, and sometimes we have not been good at keeping our local level informed of a national development, which means that we step into an area with unforeseen consequences. We have recognised that and are working on ways to improve the situation. It is down to the police leadership to sort out those issues. The effect of such a scenario is that the local—right down to the neighbourhood cop—might blame the national for something that happened that was outwith our control. That creates tension in the organisation, which can potentially come to the policing board as an issue.

The Convener: I want to move on. I will bring in David McLetchie, because he will also cover local accountability. He is not jumping the queue, as he was ahead of Lewis Macdonald. We will then have questions from Lewis, Rod Campbell, John Finnie and Alison McInnes. I tell you that just to keep you all sweet, but I know that you always are—David is always sweet.

David McLetchie (Lothian) (Con): Good morning. Within our current eight-force structure, is there a misallocation of resources between different parts of the country? In other words, if we started tomorrow with a Scottish police force and you had to allocate resources for local policing, would the resources go to exactly the same places tomorrow to which they are allocated today? Are some places overpoliced and overresourced, if I can put it that way, and others underpoliced and underresourced? Do you expect the formation of a national police force to change or correct imbalances that exist in the current force structure?

Assistant Chief Constable Finlay: I will have to lean on my knowledge from before I was in Northern Ireland. The resources that we have in particular areas may reflect the funding that has been given to particular police authorities and police boards to construct their organisation. My guess is that there will not be huge changes to the funding pattern. I do not know whether the Highlands and Islands could do without a whole load of resource but, equally, I do not know whether it justifies a whole load more resource.
The whole organisation would have to look at where the risks were and at how you shape the organisation so that you put the resources in the appropriate places to meet the right level of risks. That must be balanced with not denuding areas of a standard of policing that is accepted locally in respect of its accessibility and responsiveness and its local contact and accountability. I am not sure that there would be huge or wholesale change; something might happen over a period of time, but I would have thought that whatever happened would be more marginal.

What is more likely to happen is the use of national resources or the brigading of some resources across the eight police forces to create the national force. That will sit above the local element and will float around, providing additionality and ensuring a more flexible response than we might have at the moment.

10:30

The Convener: What exactly do you mean by national resources?

Assistant Chief Constable Finlay: From my point of view, national resources would cover roads policing, specialist searches and crime investigations or surge operations, in which we would put a footprint of people on the ground over a period of time to achieve a particular outcome. That outcome might be reassurance, higher visibility after a serious crime or participation in a wide-area search and we might use, say, the air support unit and other such assets across the province or the country. The eight districts work to a resource allocation model that covers, for example, the size of demand, the number of crimes, the number of calls made, the size of the population and other issues. The allocation is constantly being reshaped in fairly small ways to reflect changes in the country’s composition or particular issues at particular times.

Professor Fyfe: This is a very interesting question to which there is not necessarily any straightforward answer. Part of the issue is the relationship between demand and need, and the police carry out a lot of work to determine risk in particular communities and therefore the need for particular resources. However, that might not necessarily map to the demand in particular communities for, say, highly visible forms of policing. As a result, balancing demand and need is a crucial issue in resource distribution and work is clearly being carried out on a resource allocation model that will ensure a level of transparency about the allocation of resources across Scotland within a national structure.

As for the style of policing that communities want, some styles, particularly those in a community-focused model of policing, require a much higher visible police presence, whereas other styles might reflect a more response-based model. Again, that will affect the level of resources required to police particular areas.

David McLetchie: Some have expressed a fear that the answer to the question of demand and need that you have identified might be different under a single-force structure than it is under the present eight-force structure. Under the current structure, there is greater political pressure and higher demand for a particular model of community-based policing; however, when all of that is dissolved into a single-force structure, there will not be the same local political pressure as evinced through police boards, local councillors and so on. The fear is that resources might be transferred from local policing needs to national policing, national priorities, surge operations and the other types of operations that Assistant Chief Constable Finlay described. Is it reasonable for people to have that fear and those concerns?

Dr Scott: The problem with that view is that it perhaps overestimates the degree of political influence on policing at the local level.

In the present structure, police forces are aware of the views of not only their police boards, but their communities, because they encourage people to express such views in surveys and so on. There is already clear thinking in Scottish police forces that community policing, for example, is an important strategy that needs to be engaged with and put in place, so I do not think that it is simply a result of external pressure. In the thinking about how best to police Scotland, there is now a clear view that community policing is a significant and important approach, and we can see that if we look at the structures of the current forces on the ground.

Although I do not disregard the fact that there might be political influence at a local level, it is probably more important to consider the influence of the public at that level, and the response of the current forces to that. I do not see that position changing as we go forward.

Alison Payne: Our concern is about who determines the balance of need. How can central decisions about resources take into account different communities’ demands for different styles of policing? If you remove local government’s ability to increase the policing budget—or decrease it, if resources are needed elsewhere—one sort of resource will be imposed on Scotland from the centre. Local authorities need to be able to take differences into account and they are best placed to judge their local communities’ needs and the different styles of policing that are needed in, say, urban Glasgow versus the Highlands. Reform
Scotland’s position on the finance is that we need to keep local government involved.

**David McLetchie:** In Edinburgh, the council has paid additional funds to the police board to enable it to recruit additional police officers specifically for community policing. In effect, the council has taken a political decision, in response to public pressure or demand, to provide an additional measure of funding support so that additional officers could be recruited for community policing. Under the funding model of the single police force, where would be the incentive for that to happen? How could it happen?

**The Convener:** Our witnesses are making faces at one another.

**Assistant Chief Constable Finlay:** I am not entirely sure. I do not know whether that is the right question. Is that what we want to achieve? Is it not that we want to spell out what we want the chief constable to achieve and he or she will then be held to account for achieving that? The chief constable, with the board or the authority, will discuss the total resource and be held to account for how he or she and the management allocate that resource and meet communities’ needs.

I would have thought that Strathclyde Police is evidence of that approach, which has been in operation for some time. It has to balance the pull of Glasgow, including the city centre and major events, and the rural areas, islands and dispersed communities down in Ayrshire. There has never been a perfect balance, because it is an imprecise science, but things have been pretty well balanced over a period of time in the 12 council areas within Strathclyde.

**The Convener:** We will move on, if that is all right, David.

**David McLetchie:** Absolutely.

**The Convener:** I have Lewis Macdonald, then Rod Campbell, John Finnie and Alison McInnes.

**Lewis Macdonald (North East Scotland) (Lab):** We heard in evidence last week that, under a single Scottish police force, much of the strategic planning and operational management might happen not at the level of the 32 local authorities or at the level of Scotland as a whole, but at a regional level. You mentioned Strathclyde, but whether that happens at the level of city regions or in another way, it is likely that there will be an important tier of service delivery that is between the local and the national. Is there a gap in the plans in relation to accountability that we need to address?

Alison Payne suggests that the 32 councils be represented on the national board, but might there instead be a case for regional accountability that comprised local councillors, which would then be represented at a national level? Would that provide the link between local communities and their concerns and the strategic level of delivery, whether it is regional or ultimately national? I would be interested to hear the views of all the witnesses on that.

**Dr Scott:** There may be a case for that, but the danger is that it might take us back—partly, at least—to the current situation. We have to moderate the argument about local council involvement by recognising the fact that Audit Scotland’s work in recent years has shown that there are problems with the way in which police boards operate and with their effectiveness in holding chief constables to account.

Perhaps the best way to consider the issue would be to approach it from the top, rather than the bottom. The bill enables the Scottish police authority to form sub-committees whose membership could include people who are not necessarily part of the authority. That would provide a mechanism for identifying and monitoring certain types of policing that are performed at the in-between level. The move towards a single force means that it would not necessarily be the best step to go back to the current wards model, which has been shown, in certain respects, not to be as effective as it could be.

**The Convener:** Ms Payne, you have been offered a middle way.

**Alison Payne:** Reform Scotland disagrees with the current structure of eight boards. The general public are not really aware of where their representation lies within it. We want the structure to be recreated. Equally, however, we want to see greater accountability targeted downwards.

Although 32 board members, plus people representing specialist national policing, would result in a large board, that reflects local government structure in Scotland. Whether 32 local authorities are too many for Scotland is a completely separate issue. We should not structure the police on the basis that we think that the local government structure is wrong. If we continue to believe, as the policy memorandum states, that policing is largely a local service, it should be structured to reflect the local government structure.

If we do not want policing to remain a local service, we should say so. If that is the case, what is next? What else would be brought into the centre because it was believed that that was the best place to deal with it? It could be housing or social work. We are concerned about setting a bad precedent for local government functions. Although 32 may seem a large number, that is what we have.
Lewis Macdonald: Do Nick Fyfe and Alistair Finlay have a view on the regional tiers? Alison Payne and Ken Scott have given us two different answers, one saying that it is the local stuff that really matters and that that is where accountability should lie, and the other saying that we can deal with the regional tier from the top, rather than the bottom. What do others think?

Assistant Chief Constable Finlay: I do not know whether regional tiers are needed or not. Perhaps we need to try something to see whether it works.

One of the frustrating things for those encouraged to get involved in and join the district policing partnerships in Northern Ireland—perhaps I did not make this clear in response to Graeme Pearson’s first question—is that they do not have the power to change some of the things that they thought they did. Whatever the number of tiers, it is important to delineate their capacity and function; otherwise, we risk frustrating those people who will develop an interest in policing.

Public interest in policing is slightly overstated. People tend not to be hugely interested until they need to use the service; then, if they are dissatisfied, we get calls. If the expectations of those who are encouraged to get involved in the governance and accountability of policing are not met, that can be frustrating for them and lead to negative energy.

Professor Fyfe: The only other point that I would add is that a lot of activity is already happening at the regional level, particularly in partnership working between police forces, health, social work and housing. It is crucial to see what happens to that under the new structure. Where will that activity move? Will it move down to the local level? Will that compromise what can be achieved in the existing strategic partnerships at a regional level, or will it be pushed up to the national level? The regional level is critical and there needs to be careful scrutiny of how it plays out under the new structure.

10:45

Lewis Macdonald: I think that roads policing was mentioned in relation to Northern Ireland. There will not be a separate strategy for roads policing for each of the 32 local authorities in Scotland, although there will be separate strategies for different parts of Scotland, depending on the character of the roads and the challenge facing roads policing.

Is there a risk that we will end up with a national board overseeing what is happening throughout the country but no accountable tier for regional decisions? For example, an assistant chief constable would be in charge of strategy at a regional level, yet the only accountability would be to the local council or to the minister.

Assistant Chief Constable Finlay: The terms “strategy” and “strategic” can be flexible, if you like, in terms of what is strategic at any one time.

Using the example of road policing, I envisage that we would have key strategic aims on reducing the number of road deaths, on pedestrian safety and on how we educate people. There will be core aims, and below those there is the issue of how that is delivered, which will depend on the geographic space, however that is defined. How that is supported will depend on whether it is on a regional or a local basis—it will be done differently in rural areas.

Analysis will have to be done of the information that we have. For example, we have done analysis and discovered that road policing is needed in rural areas in the early hours of the morning more than it is needed on motorways, because motorways are the safest roads. It is about putting the right resources into the right place at the right time, being held to account for doing that, and achieving the overall aims. How we layer that overall strategy and who is responsible for the bits of that strategy will probably depend on the structure of the organisation.

The Convener: I have a practical question. I understand what you are saying about strategy and so on. Taking roads as an example, the divisional commanders in Borders, East Lothian, the City of Edinburgh and Midlothian all co-operate practically because that is the way life is—roads do not stop at the boundaries. Do you see that changing under the legislation? Will there be any change for the public? At the end of the day, although other things are important, will we have that practical co-operation without any problems and without having to set up the middle structure that was being suggested for accountability?

Assistant Chief Constable Finlay: I think that it will continue. From the day before the new structure is introduced to the day after, people will, broadly speaking, still be talking to the same people. The noticeable difference will perhaps be how the resource is utilised.

For example, how we police the roads is not down to the roads policing branch per se—it is a policing issue. That goes right down to local involvement in speed detection: local contributions to partnerships on speed detection and whether fixed cameras are used, whether SPECS schemes are used, how marked vehicles are deployed and the use of specialists and suchlike. That becomes a policing deployment and management issue. I do not anticipate that that will be significantly different, but the resources of the specialists will
perhaps be used differently to be more effective and efficient.

The Convener: It might be better.

Assistant Chief Constable Finlay: Absolutely.

The Convener: I keep thinking about how ordinary people will see it. They want to know that if the bill becomes an act after stage 3, nothing will change, or that things will be a bit better rather than worse. That is the most important test.

Assistant Chief Constable Finlay: There is a strong potential for that.

Lewis Macdonald: Alistair Finlay talked about the size of the board at Northern Ireland level—which was 19 if I heard him correctly—and the important layer of working that is done by thematic committees made up of board members.

Is it your view that the number of board members is appropriate to the number of tasks—in other words, to the work that is required of the sub-committees? Are there too many or too few board members? Is the balance between elected members and appointed members correct? What are the other witnesses’ views on the optimum size of a board and the optimum balance between elected and appointed members?

Assistant Chief Constable Finlay: A difference of size and scale is involved. The population of Northern Ireland is 1.7 million or thereby. Geographically, a person can drive from one end of Northern Ireland to the other in two and a half hours. That will cover the province. There are now just under 7,000 police officers and just under 3,000 support staff in its police service. Its population of Northern Ireland is 1.7 million or thereby. Geographically, a person can drive from one end of Northern Ireland to the other in two and a half hours. That will cover the province. There are now just under 7,000 police officers and just under 3,000 support staff in its police service. Its size and scale are different from Scotland’s, and the context is different. That is a health warning about reading across.

I have never really thought that a board of 19 is too big or too small. The number should have moved up or down a bit, and that would have been fine. That number of people is manageable, and the balance between the elected members and the non-elected members is probably right. All the non-elected members come with some perspective—the design is that they should do that—so there will be a breakdown of groupings. The non-political representatives will align with various parts at various times. I do not think that the model is particularly bad.

Lewis Macdonald: Are 19 people enough to staff the committees?

Assistant Chief Constable Finlay: Yes. Nineteen people are enough to staff the sizes of committees that are utilised. The sizes of the sub-committees enable pretty good dialogue. Most of them have five members, which is a good number for purposeful engagement and conversation. That is where the detailed work is done.

Lewis Macdonald: Do the other witnesses have a view on the optimum size of a board?

Dr Scott: As members know, the bill does not make any statement at all about any balance between appointed and political members. It says: “The Scottish Ministers must appoint as members ... persons who ... have the skills and expertise relevant to the functions of the Authority”, although I believe that there is a policy statement from the Government on local government representation on the SPA. That would obviously be appropriate, but the “skills and expertise relevant” phrase is vital. It is also vital that those who are appointed to the authority are supported so that they can do the job properly, and part of that support must mean the SPA being separate from the Scottish Government and the civil service. There is no comment or statement on that in the bill, but it seems to me that that is central to the business of getting public confidence in such an authority and to the authority’s ability to carry out the stated purpose of holding the chief constable to account.

The Convener: Should the SPA posts be full time or part time? Should they be salaried or should there be appearance money? I do not know how often the board will sit.

Dr Scott: I do not have a particular view on that. I take it that the remuneration will be in line with other arrangements for such bodies. The point that I am making is that, if the SPA is seen simply as an adjunct to the work of the civil service, that will carry certain dangers.

Alison Payne: Our concern about the creation of a quango that is separate from the Scottish Government is who will be accountable. When something goes wrong, somebody on the political side must answer for that. If a quango is separated from the person in the street, they need to know where and who they can go to when something goes wrong, because ultimately there must be somebody who takes the blame or is in control. If councillors are on the board, there is at least a link to the public. Our concern about appointed board members is that, irrespective of their skills or their background, they will not represent anybody and will lack accountability.

The Convener: Is it not the case that if policing went belly up in a major way in Scotland, the ultimate responsibility would lie with the Cabinet Secretary for Justice and that he or she might have to resign?

Alison Payne: Equally the situation could be as happened with the Scottish Qualifications Authority when there was a big mix-up with all the
exams. It was not a huge problem, but it was a big one. It was not the responsibility of a minister but was passed over to the quango, and it was the quango’s heads who went. We feel that such a situation is wrong and that there must be political accountability.

Having councillors on the board will ensure that, if there is a difference between what a local authority wants its local commander to do and what the chief constable says, everything will be connected back and the chief constable will be answerable to local councillors.

The Convener: With respect, Ms Payne, it depends where the fault lies at the end of the day. If the fault lay with operational personnel, then it would be appropriate that they went. If it lay somewhere else, it might be appropriate that a politician bit the bullet.

Jenny Marra wants to come in, then we will go on to Rod Campbell. [Interruption.] Oh, sorry, Lewis, do you still want to come in? I do not mind your competing with Jenny. It is not my problem.

Lewis Macdonald: I think that Professor Fyfe wants to respond, and I am keen to know the witnesses’ views on the question of how many people it takes to run a national police authority and its committees.

Professor Fyfe: Echoing Ken Scott’s points, I do not have a strong view about the number of people, because it is the quality of the engagement that is critical, both at the local and the national level. The issue of the information to which the police authority has access and its ability to generate its own information about police performance is vital. One of the issues that has emerged from work in England and Wales is that the existence of masses of what has been described as unrefined police performance data has hindered proper debate about policing. Giving the Scottish police authority the ability to research, understand and investigate issues so that it can put that information alongside information that the chief constable provides is vital to enriching the debate about the nature of policing.

The Convener: Lewis, I do not want to pursue that line of questioning because I think that the Local Government and Regeneration Committee has asked those questions, rather like the Finance Committee. We will wait and see what the Official Report says about that.

Jenny Marra (North East Scotland) (Lab): Just on the back of Ms Payne’s point, is it a good thing for the balance between citizen and state for the police to be a quango?

Alison Payne: No.

Jenny Marra: I wonder whether Professor Fyfe can call on his international research to answer on that.

Professor Fyfe: What is striking about the international context is the variety of different relationships between police organisations and the state. At one extreme is France, which has a very centralised system with little local political involvement in policing, and at the other extreme is the United States, which has a hugely decentralised policing system in which there is a strong relationship between policing and electoral politics.

The different relationships between the police and state have evolved through the political traditions and cultures of countries. We have to work within the political traditions of the country in which we live, in which there has been a distribution of power between central Government and local government and the police in determining issues of governance and accountability.

Jenny Marra: Is this the ideal model for designating police?

Professor Fyfe: Clearly, the bill moves a lot of power towards a centralised model. There are concerns that that will begin to create a democratic deficit in terms of local political involvement because, historically, we have managed and governed policing in the United Kingdom by distributing power between central and local government and the police.

Jenny Marra: Does it bring the police closer to Government?

Professor Fyfe: It certainly leads to a more centralised model.

Jenny Marra: I wonder whether the other panel members have a take on this.

11:00

Dr Scott: In our policing system the crucial element is the much-quoted ideal of constabulary independence and, as far as the bill is concerned, we need to carefully consider the extent to which the chief constable has the freedom to conduct police operations in the way that is best suited to their conduct. After all, that is what is meant by constabulary independence; it means that the chief constable is not at the beck and call of politicians or ministers but is able to make operational decisions independently. This is a crucial area of the bill, which makes statements about the chief constable’s independence, which are put negatively: for example, ministers are not entitled to have any say in operational matters. That is fundamental. The extent to which the chief constable is permitted to get on with his or her job
without unnecessary interference will be the crucial test of the whole impact of this proposal on policing and the relationship between the police and the state—after all, that is the principle on which our policing system has been built—but of course that does not mean that there should not be proper monitoring and accountability.

Jenny Marra: Does the bill provide for all that?

Dr Scott: It goes a long way in that respect. One might raise questions or concerns about a couple of areas, including, for example, the fact that this is by and large a centrally funded single force and, crucially, the need for the process of appointing the chief constable to be seen as robust and independent.

Assistant Chief Constable Finlay: Chief constables will want strong governance and accountability, because a strong accountability mechanism that is routed back to elected members and the people gives legitimacy to policing by consent and gives the police the authority to do what they do. After all, they tend to be the agency that employs coercive force on citizens and strong and transparent governance and accountability are critical to giving them the right operational independence. I think that that is best achieved through the local level and through elected members, but certainly policing will look to be held strongly to account.

In recent years, the lengths of the legs of the tripartite or three-legged stool that we have hung on to have become different, with a strengthening of the central Government rather than the local leg. The bill seems like a step towards following that particular route through.

Jenny Marra: Is a non-departmental public body the ideal model for designating police?

Assistant Chief Constable Finlay: An NDPB would work, but the question is less if it is structured than what it comprises and how people get into it.

The Convener: Members have been very patient. I call Roderick Campbell, John Finnie and Alison McInnes. Believe it or not, Alison, you are on my list—I know that it seems like you have been waiting for a long time.

Roderick Campbell (North East Fife) (SNP): I want to take up with Alison Payne the issue of just how big the Scottish police authority should be. Scotland’s local authorities vary in size from Clackmannanshire to Glasgow, but nevertheless you suggest that the police authority should comprise at least one representative from each of those local authorities—I do not know whether you think Glasgow should have more than one—as well as Scottish Government representation by ministers or civil servants. However, you do not mention the involvement of anyone else with skills and expertise. Is that not perhaps a little impractical? If you are not going to include others with skills and expertise on the authority, you are replacing one body of which you are critical with another that is simply lopsided.

Alison Payne: Do you feel that the councillors who are currently on the joint boards do not have the necessary skills and expertise?

The Convener: The answer to that is probably yes.

Roderick Campbell: Why is it right for Glasgow City Council to have only one representative and for Clackmannanshire Council also to have one?

Alison Payne: We accept that our local authorities are diverse—we have done work on that at a local government level—but we have structured our response to the bill to reflect the current structure of local government. There are a number of issues to do with local government in Scotland that need to be considered, but we believe that policing should reflect the current local government structure. Ideally, there should be a representative from each local authority on the board, so that they have an input. That would be our preference. However, perhaps there is a middle ground whereby there could be a committee for each of the current eight forces, and they could be represented on the board, ensuring that it would have locally elected representation.

We accept that a board comprising 32 members based on the current structure of local government, plus additional members, would be huge. We are not kidding ourselves that that would work; we are simply saying that that is the structure of local government in Scotland. If there is a middle way, that would be better than what is proposed as long as the local electorate knew who their voice was on the board.

Roderick Campbell: What about the issue of skills and expertise? That does not feature in your model of a police authority; you have just got local people and civil servants from the Scottish Government on the board.

Alison Payne: At the moment, councillors are responsible for housing, local education and other local government functions. If you want to remove functions from local government because you do not believe that the participants have the necessary skills, that is another issue. However, we believe in local accountability, which means having councillors on the board.

Roderick Campbell: What do the rest of the witnesses think about the balance between local and national accountability and the general skills and expertise that are required on the SPA?
Dr Scott: Initially, it would make sense to use the experience of local councillors who have been conveners of police boards. My personal view is that, in the longer term, it may not be necessary to specify a local government presence, but it makes sense initially to make use of that experience, especially during the critical period of transition and change.

Professor Fyfe: I echo that. A lot of expertise has been built up over many years through local authorities’ involvement with police boards, and it is vital that we make use of that in the transitional period. That will be a critical time in the implementation of the new police service.

Assistant Chief Constable Finlay: The support that is provided to an independent police authority will be important as well. We ask elected members—whether MSPs or councillors—to be a Jack-of-all-trades in representing the interests of their communities and constituencies across a range of issues. Getting people up to the required level of knowledge, skill and insight in something as complex as policing can take quite a while and those people cannot be immersed in it full time because they have other things to do. The support of officials and the support infrastructure around performance, finance and such things will therefore be very important in helping the elected members to discharge their obligations by providing detailed briefing.

John Finnie (Highlands and Islands) (SNP): My question is for Professor Fyfe and Assistant Chief Constable Finlay and concerns the tensions that can exist between certain elements in any system, old or new. We have heard about accountability and ministerial direction. Professor Fyfe, you state in your written submission that the bill will “secure and maintain ‘constabulary independence’.”

You go on to say that it “embodies a fundamental principle that Scottish Ministers should not issue directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation.”

We know that ministerial power of direction is common across the public service. How can ministers exercise the will of Parliament without that power?

Professor Fyfe: Can I pass that over to Ken?

He drafted that bit.

The Convener: You are passing the buck—Mr Scott, you will notice that he called you Ken when he was passing it over.

Dr Scott: Yes, he is always very polite when he is putting me in it.

That statement repeats the wording in the bill, and brings us back to the dilemma around constabulary independence, which I mentioned earlier. We do not live in an ideal world, so such things are not 100 per cent one way or the other, and there is a balance to be maintained. However, there is rightly suspicion among the public about politicians telling chief constables what to do. Equally, it is a valid point that Governments are elected on policies, some of which have to do with maintaining law and order and dealing with crime.

It is a question of the level of generality at which such direction or advice may be offered. It would be quite appropriate—as has happened—for the Government to say, “We have a concern about the growth of serious organised crime in Scotland, and we would like the chief constable to take account of that.” That is different from saying, “This is what you will do in order to counter the growth of serious organised crime.”

John Finnie: And the minister would be reflecting the will of Parliament.

Dr Scott: Yes.

John Finnie: I want to ask Mr Finlay about policing in the north of Ireland. If I have noted it correctly, you said that the area commanders were chief inspectors and the district commanders were chief superintendents. We have received a lot of information to suggest that there could be tensions between certain areas based on the police hierarchy. Was it a conscious decision by Patten to have the same rank in each area, or was that subsequently developed by the PSNI?

Assistant Chief Constable Finlay: The history is that the eight districts and the eight district commanders, which is the situation that we have now, developed post-Patten. Patten used the terms “area commander” and “district commander”. When the PSNI was first formed, we had an area commander for each of the 26 councils. The rank of those commanders and the size of the areas varied depending on the geography and the nature of each council. We moved from a dispersed model to brigade those in a structured way, and we now have the eight district commands. They might have been better called area commands—we should perhaps have used your language rather than the other way round.

The district commands carve up the space of Northern Ireland into eight chunks. Each of those is coterminous with a number of the councils, and each council area has a chief inspector. Not all council areas have their own chief inspector; in some cases, one chief inspector will cover more than one council area. The legislation designates the area commander as “a rank not less than that of chief inspector.”
That will change in due course as the Northern Ireland Assembly examines the council structure, as it has undertaken to do.

We did not start from there: we ended up with that model because we were ahead of the game. Northern Ireland was going to rationalise its public administration and go down to seven councils. We moved ahead of that, and then the political decision was taken not to do that. That is how we ended up with eight areas: there were going to be seven councils, but we split Belfast into two districts. It is part of the history of the review of public administration, and is linked to getting what we think are the right spans of command and brigading those. Each of the eight districts will have broadly similar resource structures.

Assistant Chief Constable Finlay: Was the decision to move to that structure taken in light of what I presume was the Assembly’s intention to move to seven councils?

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Assistant Chief Constable Finlay: Two different processes went on. The review of public administration was an Assembly/Executive-driven process, which the councils were fully involved in, because they were to be reduced from 26 to a much smaller number. It was because of the difficulties in getting engagement with some of the councils that the decision was taken to walk away from that. The proposal is now back in the programme for government, but it involves a different number of councils—off the top of my head, I think that the figure is 11, rather than the seven that was envisaged initially.

We had recognised that we needed to reorganise to make better use of resources and to change our spans of control, our rank ratios and how we organised ourselves. We moved ahead of the game. We went to that structure and then local government did not go to the same structure, but we have stuck with that structure and we will continue to stick with it until we see what happens in due course with local government structures and what functions councils are vested with in the future. As I said, the functions of councils in Northern Ireland are significantly different from the functions of a Scottish council.

John Finnie: Given that the reform of the local authorities did not go ahead—

The Convener: Before you go ahead with that, you asked an interesting question, which I do not think was answered—I am not saying that not all your questions are interesting.

John Finnie: I will remember that.

The Convener: I think that you asked about a pecking order of ranks. If I am right, you asked whether, if the divisional commanders are of different rank and someone with more scrambled egg and braid asks for something from central resources, such a request will command more weight than a request from a divisional commander who is of a lower rank. Was that not your question? I thought that you asked about a pecking order.

John Finnie: No—

David McLetchie: It is a good question, though.

The Convener: I know.

John Finnie: With respect, I feel that Mr Finlay answered that very adequately. I asked about the parity of the two.

The Convener: If you did, I got lost. I was waiting for the answer to that.

John Finnie: Yes, it was about everyone of a certain designation being the same rank, so we have the chief superintendents for the divisions and the chief inspectors for the districts.

Assistant Chief Constable Finlay: The convener asked for clarity on whether that meant that a commander in one area could lever in more resource because they had more influence as a result of having a higher rank. The answer to that is probably no, because we have regional assistant chief constables. They are the people you work with in your management team—they oversee the whole of that—so, at that stage, their rank leverage did not have an impact.

We resolved all that in 2006, when we moved to the current structure of eight districts, with chief superintendents—

The Convener: So they are all the same rank.

Assistant Chief Constable Finlay: They are all the same rank.

The Convener: I need to be told things simply.

Assistant Chief Constable Finlay: It is now the case that they are all the same rank. We moved from a more patchwork model to a universal model.

The Convener: But that is not what the bill proposes.

Assistant Chief Constable Finlay: No.

The Convener: Should it?

Assistant Chief Constable Finlay: In Northern Ireland, the structure and the size are significantly
different, so I do not think that the pattern that we have used can necessarily be replicated.

The Convener: Does anyone else want to comment on whether all the commanders should have the same rank?

Dr Scott: Increasingly in policing, the role and function that someone carries out is what matters, rather than the rank that they have. I know that the public perception is that ranks are still extremely important, but my feeling, as someone who has worked with police forces quite a lot, is that, at certain levels, ranks are slightly less important on the inside than they are on the outside. What is important is the function, the boundaries of that function and what is expected of the people who fulfil that function. I am sure that there are many chief inspectors who can argue their case just as effectively as chief superintendents.

The Convener: We have got that on the record now.

John Finnie: Now that you have moved to that model, is there any push to revert to a previous model? You say that the present model has been in place since 2006. Is there any dissatisfaction?

Assistant Chief Constable Finlay: No. We have not had any great push. The eight commanders have had to work with the councils, the chief executives and the district policing partnerships to manage people’s expectations and make them appropriate to the roles that people undertake. There was always a demand from people for the commander to come to their meetings, but the commander covers a large span of Northern Ireland and the appropriate person to go to the meeting might be the inspector, or it could be the area commander as the chief inspector. It took time to get buy-in to that approach, but we have built and sustained local relationships and demonstrated that those people have the capacity and capability to change things in their local area by using the tools within the organisation.

John Finnie: “Local” is seen as an extremely positive word, as we heard from Ms Payne. Is it correct to say that you would not expect your local police areas to have plans on human trafficking, terrorism, drugs or cybercrime, which would be covered in larger plans?

Assistant Chief Constable Finlay: Indeed. The local is based on what local communities feed into the district policing partnership. It is about the volume issues that we deal with in terms of visibility and responsiveness, and key issues around antisocial behaviour, burglary and car crime, particularly speeding. There are local plans for those things.

There are organisational plans on counterterrorism, people trafficking and serious organised crime. All those big issues happen somewhere on the ground, and there is a connection with the local neighbourhood constable who feeds information and intelligence back up within the organisation. That information is assimilated, which allows things to happen.

All the people who commit crime and all the people who are vulnerable live somewhere and have some rooting in the geography, so the local has an essential role to play. On a day-to-day basis, officers deal with the volume issues and suchlike, but their local knowledge of what is happening in their area, who lives there and the changes that are happening there is imperative to the national.

John Finnie: If it is not possible to implement the local plan with the resources that are available, how is that dealt with?

Assistant Chief Constable Finlay: That is usually dealt with on a tasking and co-ordinating basis. People bid for resources, if you like, from the centre, whether that is for roads policing, for specialist uniform support or for additional detectives from serious crime to work on a particular case. Wherever the requirement emits from, there will be a bid for additionality against a justified business case, and we will prioritise the need with a view to fulfilling as many requirements as we can. We seek to strike the right balance with regard to not just threat and risk but geography, which is also important.

John Finnie: You used the term “business case”. Just to be clear, is that an evidenced position that does not relate to the rank of the individual local commander?

Assistant Chief Constable Finlay: Absolutely.

The Convener: I have got that sorted in my head now. Rank does not count. Is that not true? I ask the police officers in front of us to agree that rank does not count. I am sure that they will agree. [Laughter.]

Graeme Pearson: We saw that at our last meeting.

David McLetchie: Yes.

Assistant Chief Constable Finlay: We prioritise threat and risk in a measured and structured way, and that is how we allocate additional resources to a particular task for a particular period of time. Locally, we can also use tools such as overtime.

The Convener: I know that Alison Payne wants to come in, but I want to move on. Perhaps she can chip in with her comments later.
Alison McInnes has been so patient. She has almost knitted a jumper—not that she has been doing that; that is not on the record, Alison. You have been paying close attention for hours. On you go.

Alison McInnes (North East Scotland) (LD): Thank you, convener. I have a couple of questions on any lessons that can be learned from the police reforms in other European countries. Mr Finlay spent some time at the beginning of the meeting talking about how the new Police Service of Northern Ireland had to build confidence. He said that a great deal of work needed to be done. In contrast, in Scotland, there is significant confidence in the police, so we do not have that problem.

We are about to introduce to the system strong political direction, which has not previously existed in it. The minister responsible for justice will appoint the chair and members of the SPA—provided that it has a complete budget—and approve the policing plan. Does that reform put at risk our confidence in the police service in Scotland?

Dr Scott: Personally and from an operational perspective, until it begins biting on the ground—if it ever does—I am not sure whether the vast majority of people would notice.

Alison McInnes: We know from the Danish research that public satisfaction with local policing fell dramatically as a result of reform: public confidence in the police as a whole fell by 14 per cent over the three years during which the reform was implemented. Does Dr Scott think that there are lessons to be learned from that?

Dr Scott: I will do what Nick Fyfe did to me earlier and let him answer.

The Convener: I have heard someone say something similar before: “I agree with Nick.”

Professor Fyfe: We have done a lot of work on police reform in other parts of the world, in particular in Europe. It is disappointing that there is remarkably little evidence on and systematic evaluation of police reform, although Denmark and Finland commissioned long-term studies of its impact.

Denmark is an interesting case. The University of Copenhagen was commissioned to do a four-year study of the reform programme’s impact. As Alison McInnes alluded to, one of the things that it tracked was citizens’ perceptions of local policing, including local visibility. It also focused on officers’ knowledge of local crime and policing problems and discovered that, as a result of police-force mergers, officers’ knowledge of local neighbourhoods decreased dramatically, which began to undermine trust and confidence.

The study made some other interesting findings. It looked at the impact of the police-force mergers on police officers. It was agreed in Denmark that police officers did not have to relocate to the new regional headquarters; they were allowed to remain in their local policing areas. An unanticipated effect of that was that they had problems staffing many of the specialist policing functions that take place at a regional headquarters, because a lot of officers were not prepared to disrupt their family lives by commuting longer distances to work. Deployment of resources during the period of transition was an issue.

The work in Finland revealed that senior officers’ perception of the impact of reform was different from that of more junior officers. Senior officers tended to be quite positive about it and what it was achieving, but there was a significant decrease in the morale of junior officers during the reform process, partly because they felt that there was a lack of communication about what was happening and partly because there was a huge degree of uncertainty about what their jobs might entail.

The useful lessons from those studies are that you will need to monitor the implementation process carefully, to recognise that the way in which a reform is implemented will have different effects in different locations, and to realise that there is value in tracking the impact of reform so that, if things are not going as intended and amendments need to be made, you can introduce revisions to the process.

Alison McInnes: May I continue, convener?

The Convener: I feel that I should let you go on, because you have been waiting to speak for such a long time.

Alison McInnes: I believe that policing is part of the local authority family for good reason, at present. Modern policing carries out a lot of preventative work that links to social work, education, criminal justice and even the work of the fire and rescue service, which are all local authority responsibilities. The evidence from Denmark is that there is less time for preventative activity when there is no local police presence. Our community planning processes are quite well developed. What risks are involved and can you suggest safeguards for us to insert in the bill that would ensure that reform does not spoil the community planning networks?

11:30

Dr Scott: To come back to local policing, an issue that has emerged during consideration of the bill is that the more important local relationship is not between the local council and the police but between the community planning partnership and...
the police. However, I believe that I am right that the bill says little—if anything—about that significant relationship. It could be argued that, at local level, the police's prime link should be not with the local council—which is, after all, also part of the CPP—but with the CPP itself. There is a risk in that only one of the partners in the partnership is restructuring and reorganising, so a great deal of care needs to be taken to ensure that the impact of restructuring of policing has no adverse effect, that the other partners understand what is happening with policing and that policing is flexible enough to fit in. The police do not lead on all areas at local level—for example, child protection might be led by social work—so in restructuring for whatever reason, the police must accommodate the links that are not going to change and ensure a seamless transition. The point about CPPs is that budgets are getting tighter, local authorities should still be able to weigh up priorities and be able to choose to put resources not into the police but into, say, criminal justice, social work, improving housing or other measures that can help to prevent crime in the first place. However, they will not be able to do that under the current proposals, and I think that that is a risk.

**Alison McInnes:** That was useful.

**Alison Payne:** On resources, we believe that, given all the areas that link into policing and the fact that budgets are getting tighter, local authorities should still be able to weigh up priorities and be able to choose to put resources not into the police but into, say, criminal justice, social work, improving housing or other measures that can help to prevent crime in the first place. However, they will not be able to do that under the current proposals, and I think that that is a risk.

**Alison McInnes:** Can Mr Finlay quantify the amount of time the PSNI spends on community planning and preventative work?

**Assistant Chief Constable Finlay:** I am not sure that I can do that, but I can say that Northern Ireland is particularly envious of Scotland's CPPs. Northern Ireland has neither those statutory partnerships nor the crime and disorder reduction partnerships that exist in England and Wales, so it is extremely difficult to achieve partnership working there.

On the back of the review of public administration and moves to reduce the number of councils in Northern Ireland, there was a lot of interest in, and activity on, the community planning model that was adopted in Scotland and there were many mutual exchanges in order to develop such a system. However, all that came to an end when the plans for local authority reform fell. I would guard against putting in place anything that might dilute something that is so valuable that you do not actually realise how valuable it is until you do not have it any more.

As for being able to quantify prevention work, I think that our primary purpose is to prevent crime and prevent people from coming to harm. Even police patrols and police visibility are all about prevention; for example, road patrols are all about modifying people's behaviour on the roads. As a result, it is very difficult to quantify our prevention work. We have crime prevention officers who deal specifically with prevention, but part of the raison d'être of policing is to keep people safe.

**The Convener:** Two members want to ask brief questions on issues that have not been raised, but I am afraid that I cannot take supplementary questions if the committee wants to finish at a reasonable time. Graeme Pearson has a question on forensic science and Rod Campbell has one on VAT. I am sure that Rod knows that the Finance Committee is dealing with VAT in relation to the bill.

**Graeme Pearson:** Last week we heard evidence that people are in a quandary about the separation of forensic science from a chief constable's ambit and direction. There seems to be anguish about it. I think that in Northern Ireland forensic science is independent of the PSNI. How have you resolved who directs and who is responsible for management of crime investigation using forensic science?

**Assistant Chief Constable Finlay:** There are regular meetings between the director, the deputy chief constable and Drew Harris, who leads in the serious crime branch, about prioritisation of work in, and the capacity and capability of, the Northern Ireland forensic science service. In addition, as I understand it, there are mutual relationships with the forensic science set-ups in Scotland whereby their capacity is utilised, and vice versa with regard to specialisms that perhaps all laboratories do not need to have.

As you will be aware, the forensic science world has been thrown up in the air a wee bit with the Westminster decision to disband the Forensic Science Service in England and Wales, which has created some issues.

We work on the basis of having regular meetings to understand what the role of each organisation is. Those meetings feed up to the NI Department of Justice because the forensic science laboratory is a non-departmental body of the DOJ, which is where round-table discussions will take place if there is a resourcing issue.

**Graeme Pearson:** The crux is who makes the decisions at the crime scene. Is it fair to say that the police say what they want done and that forensic science dictates how it will be done?

**Assistant Chief Constable Finlay:** Yes. The scene-of-crime aspect is dealt with internally in the PSNI. We have scenes-of-crime officers who do all the forensic recovery with partners, and will do that package in such a way that we can get the low-copy number DNA analysis, if that is appropriate. That process is directed by a forensic
manager, who is part of the organisation, and the information then goes to the forensic science laboratory. I do not think that we should tell the laboratory scientists what to do, but we tell them what we want them to look for; it is then for them to decide the order of events in which things are processed to recover the best evidence.

Graeme Pearson: Do you manage the scenes-of-crime officers or are they managed by forensic science?

Assistant Chief Constable Finlay: We manage scenes-of-crime officers.

Graeme Pearson: Is that different from the setup in Scotland?

Assistant Chief Constable Finlay: Yes.

Roderick Campbell: The Police Service of Northern Ireland is able to recover VAT on supply of goods or services. What discussions have you had with the Treasury on that? Can you give advice to the Scottish Government on that issue?

Assistant Chief Constable Finlay: I can tell you what I know about it.

The Convener: That is all we can expect.

Assistant Chief Constable Finlay: It is a long-standing arrangement that affects not only the PSNI but other public services in Northern Ireland. The reason is the structure of public services in Northern Ireland. A centralised model was put in place some considerable time ago due to conditions in Northern Ireland over previous years during the troubles and so on. Centralised units were put in place such that, for example, housing came from the Northern Ireland Housing Executive. That model included a decision being made—I do not know by whom or in what capacity—that we would be treated like a local authority. As a consequence of that, we recover VAT.

The Convener: Should the police perhaps ask the Scottish Government to treat it as a local authority?

Assistant Chief Constable Finlay: I think that—

The Convener: Anyway, I hear what you are saying.

Jenny Marra: Can I ask a brief supplementary?

The Convener: I am not taking supplementaries because I know that the Finance Committee is considering VAT in relation to the bill: forgive me. I suspend the meeting for 10 minutes. The next witnesses have been waiting for a long time.

11:39
Meeting suspended.

11:50
On resuming—

The Convener: I welcome our second panel of witnesses and thank them for their patience. We are joined by Professor John McNeill, Police Complaints Commissioner for Scotland, and Ian Todd, director of the Police Complaints Commissioner for Scotland; Andrew Laing, Her Majesty’s inspector of constabulary for Scotland, and Chief Superintendent David McCracken, principal inspection manager at HM inspectorate of constabulary for Scotland; and Robert Black, Auditor General for Scotland, and Miranda Alcock from Audit Scotland.

As panel members saw in the previous evidence session, your microphones will come on automatically when you indicate that you wish to speak. If you want to answer a question, please indicate that to me and I will call you to speak.

I thank you all for your written submissions. For anyone who thinks that the Justice Committee does not work, I am holding up the written submissions—this pile does not even include the additional pieces that have come through. I thank the Scottish Parliament information centre for an extremely helpful briefing paper on international comparisons of police reform.

Do members have questions? I will take John Finnie first this time, followed by Alison McInnes—you get in there, Alison—and Humza Yousaf.

John Finnie: Good morning, panel—it is still morning.

I have a question for Professor McNeill. It is important that the public have confidence that their complaints about individual police officers are properly investigated. Given that there remains a requirement for any matter suggesting criminality to be referred to the fiscal service, with a serious incident is there the potential for three layers of investigation?

Professor John McNeill (Police Complaints Commissioner for Scotland): It is important to recognise at the outset that, when it comes to confirming public confidence in policing, the bill’s proposals raise the bar significantly through the establishment of an independent commissioner. There are a couple of areas in which we could strengthen it further, and Mr Finnie has referred to one of those areas.

At the moment I have a memorandum of understanding with the Crown, which works very effectively. I would have thought that this is a clear instance in which a well-defined MOU between the
Crown and the new police investigations and review commissioner would strengthen the existing provision rather than confuse it further. However, that opens up a much wider area because, as you know, there is a provision in the bill for all serious incidents involving the police—serious incidents being defined as any indication that the police may have caused or contributed to the death or serious injury of an individual, serious injury that is suspected of happening in police custody, and the use of firearms—to be referred to the commissioner.

To avoid any confusion, I would recommend that rather than there being a provision for referral by the police, referral is mandatory—there is an automatic trigger. That would do a lot to confirm public confidence in policing. The basis on which all oversight bodies operate is that an automatic trigger refers such cases—those in which there is a suggestion that the police may have caused or contributed to death or serious injury, where there is a suspicion that serious injury has occurred in police custody, or where firearms have been used—in a mandatory manner to the independent body. That would go a considerable way to confirming public confidence in policing.

John Finnie: I will give you a specific incident, and you can tell us how you and your staff would respond to it.

For instance, a pre-planned police operation may involve authorised firearms officers being dispatched to a location in anticipation of an armed robbery. If, unfortunately, a police officer had to discharge their firearm, where would the investigation of the armed robbery and the investigation of the use of firearms be referred to? That would go a considerable way in confirming public confidence in policing.

The primary issue from my perspective is access to forensics. The bill currently provides for the Scottish police authority to make forensic services available to the police and to the Crown at no cost. I understand that it also provides that those services may be made available to the proposed independent investigations and review commissioner. However, if they were to be made available to the commissioner at cost, that could seriously disrupt the capacity of the independent body to carry out some investigations.

One thing that we need to nail at an early stage is that, in order to conduct any independent investigations—however complex they might be, and before we start getting into MOUs about who has primacy in some areas and who does not—we need to make a clear provision that the PIRC will be provided with forensic services free of cost and will therefore be operationally effective.

With regard to what happens in the investigation of the crime, and in relation to satisfying the public about the appropriateness of the police actions, we can learn a fair bit from the experiences of Northern Ireland, the Republic of Ireland and England and Wales.

I concede that I do not have any direct knowledge of how that operates. Perhaps Ian Todd can add to what I have said.

Ian Todd (Police Complaints Commissioner for Scotland): The example that Mr Finnie gave is something that has happened in the past few days—

John Finnie: If there has been such an incident, that is not what I am alluding to. It is a general point.

Ian Todd: Okay, but it is that type of incident. The police must continue with the investigation of the crime. The investigation of the use of the firearm might currently involve an outside force. Given that there will not be an outside force in existence—and there are questions that arise from that under article 2 of the European convention on human rights—the bill proposes that PIRC would be responsible for carrying out the investigation around the use of that firearm.

The Convener: I need to know who or what “puck” is.

Ian Todd: Sorry—the PIRC is the police investigations and review commissioner, which is what the bill proposes to rename the current Police Complaints Commissioner for Scotland.

I would envisage that, as happens now, there would be two twin-track investigations: one into the crime and one into the use of the firearms. It is important that proper MOUs exist between the new body—the PIRC—and the police force to ensure that neither of those investigations would be compromised or hampered.

Professor McNeill: One element that must be strengthened to ensure that that happens is the requirement for the police—and the proposed Scottish police authority—to co-operate fully with the new independent body. Currently, a fair amount of that is expected to be addressed in regulations.
It is crucial that, up front, no gap opens up between the police and the independent investigative body and that no time is lost in investigating any alleged incidents.

12:00

Such considerations would be strengthened if the bill required the police service of Scotland and the Scottish police authority to have a duty to co-operate. If we had the combination of mandatory referrals for serious incidents involving the police, free forensic services and a requirement for the police to co-operate, a lot of other matters could be addressed in detailed memorandums of understanding. Indeed, such a package would strengthen public confidence in policing at a time of fundamental change.

John Finnie: That kind of public confidence is important. Do you envisage such memorandums of understanding covering every effort to avoid duplication?

Professor McNeill: It is in no one’s interest to have duplication of effort, not least because it is an additional expense on the public purse and a waste of scarce specialist resources. Moreover, it sends out very confusing messages to the public and it is crucial to have clarity about who has primacy. If, as I recommend, the bill’s provisions governing referral to the independent body are strengthened by requiring it to be mandatory in all serious incidents, if the police and police authority are subject to a duty to co-operate and if the forensics are available at no extra charge, the independent body has a real chance of confirming its independence and impartiality.

John Finnie: Do you envisage people from your department attending the locus of such events?

Professor McNeill: Yes. Indeed, that is the norm in other oversight bodies.

This brings me back to my point about the police having a duty to co-operate fully with the new independent body. We do not want any delay in securing the crime scene or the possibility of erosion of evidence. I should make it clear that this is not my area of expertise—I have no investigative background—but other oversight bodies have demonstrated that with the police’s co-operation and through an on-call service they have been able to secure scenes. They can be at the scene very quickly and, thereafter, can take control and have primacy.

John Finnie: So you would envisage your department having primacy.

Professor McNeill: In the categories that are set out, it is essential that the independent body has primacy. Otherwise, we simply retain the current system in which, in effect, the police investigate the police.

Andrew Laing (Her Majesty’s Inspectorate of Constabulary for Scotland): Although HMIC largely supports the bill’s proposals, I support Professor McNeill’s call for clarity and his suggestion that referrals to the PIRC be mandatory. However, with regard to the example of a shooting during a pre-planned firearms operation, we must be aware of the many tensions within that. First of all, there is the initial crime, the investigation of which is under the direction of the Crown Office and Procurator Fiscal Service; there might also be a subsequent crime, depending on the legality of the shooting. The PIRC would absolutely have a locus in providing an independent response—as, indeed, an independent force would do at the moment—but it would do so in concert with the Crown agent with responsibility for directing the investigation. In that case, it would be up to the Crown to sort out primacy. That would not happen quickly, and the important thing will be to secure both scenes quickly in a way that allows the best preservation of evidence.

As I said, there are tensions. If the bill is very prescriptive in setting out who has primacy and in determining powers that individuals have, we will not have the flexibility that will be necessary if we are to be able to adapt. We must be careful in that regard. The PIRC will be very new, and we need to allow it to evolve. If it is set in legislation, it will be difficult to unravel it.

The position that I am promoting is that the general principle should be set out, and the bill should not be overly prescriptive.

The Convener: Graeme Pearson has a question on this specific point. After that, I will let Alison McInnes in. She had to wait a long time last time.

Graeme Pearson: Given that we are aiming for April 2013, is there sufficient time for the necessary recruitment and preparation to ensure that the PIRC will be in place in time?

Professor McNeill: Subject to a number of important conditions being met, the answer is yes. In the Republic of Ireland, the Garda Síochána oversight commission required six months to develop an investigative capacity. The clock started ticking on those six months with the appointment of a head or director of investigations, who was someone who already had considerable experience of carrying out investigations. That individual had sufficient resources allocated to them to ensure that the commission was set up properly.

The provision in the bill is for some £2 million to £4 million to establish the investigative capacity,
based on the notion that there might be around 35 investigations a year. If you have enough money to appoint the body of investigators that you need for that, and sufficient time, that will be doable. One of the weaknesses in the current provision is that it is less clear that there will be sufficient for set-up costs, as opposed to running costs. For example, there are fairly heavy demands with regard to securing suitable and secure information technology, and there will be other issues to do with the accommodation and equipment that is required in order to get that body up and running.

Overall, the task is doable. The timeframe is tight, and the question of whether it can be met will be determined largely by how quickly an investigations and review commissioner is appointed. That individual will appoint a head of investigations, who will start to assemble the apparatus. In fairness, we have already scoped some of the work and have shared our experiences and the experiences of the other oversight bodies with the Crown, the forensic services, the Association of Chief Police Officers in Scotland, the Scottish Crime and Drug Enforcement Agency and the Scottish Government. Currently, we are working with the Crown and ACPOS on a Government-led project to make a reality of the proposals.

**Alison McInnes:** A couple of my points have already been explored.

The confidence in the independence of the new police complaints commissioner is important. It is important that it is there from the outset rather than being layered in after the new police authority has been set up. However, as you have commented, a number of things in the bill that relate to the new service rely on statutory instruments being introduced down the line. Do you have a view on whether the things that would trigger investigations into serious incidents involving the police, for example, should be included in the bill?

**Professor McNeill:** I accept fully the primacy of the Crown in relation to the direction of investigations. That being said, there might be a slight difference between Andrew Laing and me with regard to how they are triggered. In some circumstances, I favour an automatic trigger. The definition of a serious incident is set out quite clearly in the bill as one in which there is an indication that the police may have caused or contributed to the death or serious injury of an individual, or in which there has been a serious injury in police custody or firearms have been used. I accept that it is by no means clear cut how the process should proceed, but I remain of the view that such circumstances should be specified as triggering a mandatory referral.

There are a number of other areas in relation to which it is possible to confirm the notion that the new body will be independent. There is an extremely important provision whereby the commissioner will be able to carry out public interest investigations. That could move Scotland from being at the rear of the pack to being the front-runner. I think that we can go further. The bill talks about the commissioner holding public interest investigations when certain things have not happened. Perhaps not unexpectedly, I recommend that no qualification should be placed on that. It should be a matter for the commissioner what investigations are carried out in the public interest. Again, there is a clear link to the role and the primacy of the Crown.

**Alison McInnes:** That was helpful—thank you.

**Andrew Laing:** Just for clarity, I am comfortable with the mandate that Professor McNeill is talking about. There should be scope, outwith that mandate, for others to make referrals as and when they feel that it is in the public interest to do so. I do not think that we are in any disagreement on that.

**The Convener:** Can you give me an example of what it might be in the public interest to investigate?

**Professor McNeill:** I do not anticipate that the power would be used very often. The bar to trigger its use would have to be pretty high. There might be public concern about, for example, the use of kettling by the police. In Scotland, we are fortunate in that we have not had widespread concern about kettling, notwithstanding the fact that I have recently published a complaints-handling review which it would be used very often. The bar to trigger its use would have to be pretty high. There might be public concern about, for example, the use of kettling, notwithstanding the fact that I have recently published a complaints-handling review that dealt with the issue.

The provision might be used to investigate an issue such as that or some systemic, on-going concern about police practices. It might be used to investigate a suggestion that there were blanket practices in the police—in regard to handcuffs, say. It is difficult to determine the circumstances in which it would be used. What is crucial, and what distinguishes Scotland from some of the other jurisdictions, is that no ministerial direction is required for such an investigation to be held. This is a matter for the commissioner. The fact that there has been no attempt on the part of Government ministers to have any qualification on the use of the power moves Scotland ahead of places such as the Republic of Ireland.

**The Convener:** Sometimes we get into extremely technical language. Members of the public might like to know what is meant by certain things, and an example helps with that.

**Humza Yousaf:** My question is largely directed at the Auditor General, but I am, of course, happy for any of the witnesses to respond to it.
If I went outside on the street and asked 100 people, "Who sits on your local police board?", I would be astounded if one person could tell me anyone who sat on their local board so, in my view, although we have local representation, there is still a degree of accountability deficit. What reason for that did the Auditor General find in his report? How do we overcome it?

Robert Black (Auditor General for Scotland): Thank you very much for giving me the opportunity to respond to that question, because I think that it strikes at the heart of one of the most important issues that the committee will consider: the democratic accountability of a single police force in Scotland.

Although I would prefer not to look back too much but to concentrate on looking forward, I will begin by looking back very briefly. As committee members will be aware, Audit Scotland has conducted best-value reviews of each police authority in Scotland on behalf of the Accounts Commission, which is formally responsible for the oversight of local authorities. We found a mixed picture. We found that some police authorities are strong in some aspects of their work and others are strong in other aspects. It is difficult to generalise, and we need to recognise that the local circumstances and context of each police authority differ. Even within a police authority, the circumstances of individual local authorities differ.

12:15

My second point is not something that has emerged from Audit Scotland reports, but I venture to make it from my long experience in local government as a local authority chief executive. Councillors, perfectly properly, are concerned primarily with the interests of their community and their local authority. That tends to mean that the commitment that they can give to the governance role of policing is limited. They do not necessarily have the background to be able to fulfil that role, and the pressure on the diary means that they might not always have the time to do so.

I commenced my written submission with quite a strong statement for an Auditor General. I said:

"the Scottish Parliament should have a much greater role in providing democratic oversight of the new national force than is currently proposed."

I went on to remind us all that the Scottish Parliament operates in a very democratic way. It is open to the public, meetings are televised and Official Reports are produced. Somewhere in there, there must be a really good model for ensuring that there is no democratic deficit in Scottish policing.

From my reading of Official Reports from this and other committees, it seems that there is, understandably, much concern about the proper role of councillors in the oversight of policing. I recognise and respect the role and, as a former local authority chief executive, I would value it, but there must also be a significant critical role for this Parliament. You, ladies and gentlemen, are elected to represent the community of Scotland and you are by far and away the best-placed people to take the lead in holding the new Scottish police service to account on behalf of the people of Scotland.

In my submission I suggested two or three models, about which you might want to think seriously. There might not be time to go into that today. However, as we look to the future—and this brings me back to Mr Yousaf’s question—there is an opportunity to create a democratic forum at the level of the Scottish Parliament, which has a profile with the people of Scotland and will be recognised and trusted for what it does to hold the service to account.

Humza Yousaf: I appreciate your comments. You mentioned difficulties with the involvement of councillors in governance, given their diaries and their interest in local communities. Does the same not apply to MSPs? Might we fall into the same trap?

Robert Black: Yes, indeed. There is an issue in that regard. I observe your work at close quarters on a daily basis, and I am conscious of the huge pressures on your time. That is why I suggest in my paper that we might need to think about some kind of vehicle within the Parliament, which would have a specific focus aside from what we might call the on-going issues to do with the making of legislation and policy, and which could sit back from time to time and consider objectively the performance of policing in Scotland and the relationships with local communities. The approach would require careful attention, but the situation merits it.

Humza Yousaf: I am sure that the convener wants to move on to other questions, but—

The Convener: No, this is an important issue. The proposal is interesting and, given the pressure on parliamentary committees and their personnel, it needs substantial consideration.

Humza Yousaf: On that point, what about going down the route of the public appointments process? The Auditor General seemed fairly happy with that, in the context of his role.

Robert Black: Are you talking about appointing members of the Scottish police authority or the chief constable?

Humza Yousaf: Sorry, I should have clarified that I meant the Scottish police authority.
Robert Black: Let me try to help your thinking on the matter. There are some parallels between the need to preserve the independence of the Auditor General and the need to preserve the independence of the chief constable and the discretion that is available to the Scottish police authority. Ever since I became Auditor General, I have said that the greater the independence of judgment that is given to office-holders, the more important it is to have good systems of accountability, so that they are held to account for their decisions and for the use of resources. That is certainly true for the post of Auditor General, and I think that it will be at least as true for the chief constable and the Scottish police authority.

I have an Audit Scotland board, which consists of me in my official capacity, the chair of the Accounts Commission in his official capacity and three non-executives—we do not need a big board—who are appointed by the Scottish Parliament through the Scottish Commission for Public Audit. That means that the board has a non-executive majority, and it has the full confidence of the Parliament because it was the Parliament that appointed it.

I am conscious that, in making such comments, one tries to go with the grain of the legislation, but I encourage the committee to seriously consider whether it might play a role, at the very least in confirming the confidence that the Parliament has in the members who are appointed to the police authority. People need to have confidence in those being appointed, and the general public would, I think, welcome the committee having such a role.

Yet again, that was a rather long answer, but this is an important issue. I am comfortable with the public appointments process—it has great strengths—but I wonder whether it could be flexed a bit, to allow the Parliament to be satisfied with the make-up of the board.

The Convener: Would that be a process along the lines of the one for the appointment of the Scottish Information Commissioner, which has to be ratified by the whole Parliament?

Robert Black: It most certainly could be.

This is such an important issue that I want to add one more thing, while I am in full flow, and then I will be quiet. I understand that there is a genuine concern to ensure that that independence of the chief constable is safeguarded, and I again encourage the committee to think about the parallel with the Auditor General. Members might know that I am demitting office fairly soon, and that there is a process under way to appoint my successor. An appointments panel, chaired by the Presiding Officer, will go through a rigorous process. Once a candidate has been identified, the Presiding Officer will put a motion to the Parliament, which will then vote on it, and the candidate’s name will be presented to Her Majesty and the appointment will be made by the Crown. That person will have secure tenure of office for eight years.

I have never felt that the arrangement compromises me at all but, at the same time, I have never felt that it does not make me accountable to the Parliament through the Scottish Commission for Public Audit and the Public Audit Committee. There are arrangements that guarantee independence without the need to define in statute such things as operational independence, which is almost impossible anyway—otherwise it would have been done by now.

Professor McNeill: I have a long-standing interest in this area, having been on a police authority, studied police authorities and looked at other models, including the Northern Ireland one. This is a critical element of the bill, opening up as it does the potential for a strong axis between the police authority and the investigations and review commissioner to raise the standard of complaints handling, but that is predicated on the competence of the authority. I am not making light of any suggestion of a democratic deficit, but my primary concern is that the individuals on the Scottish police authority are competent, in the sense that they hold the command team to account. I have repeatedly said that there is a world of difference between hearing an account and holding to account. What characterises the current provisions leans more towards hearing an account than holding to account.

The Convener: We are all nodding—about police boards.

Professor McNeill: It is essential that the members of the police authority do not subscribe to any notion of operational independence. It is operational primacy. It is not a blank cheque. It is part of holding to account. They should hold the command team to account for the deployment of resources.

Andrew Laing: I am in grave danger of simply repeating what you have already heard, but the point is so important that perhaps I should do that. Perhaps I can give it a slightly different tint.

Last year, as a supplement to the best-value 2 reviews that we and Audit Scotland conducted jointly of authorities and forces, HMIC published a report on the governance and accountability of policing in Scotland. I do not wish to take up too much of your time, but I will paraphrase it. It stated that local elected members were highly interested in policing and were dedicated to it, but they were appointed to their positions through a process of election, not selection. We found deficits in relation
to the professional knowledge and competences that we might expect to see on a professional board, and that extended to some of the back-office support.

In professionalising the Scottish police authority, the bill will address much of that. However, that leaves the question of democratic accountability. If we have a completely professional board, where does democracy come in? There are two areas in which I believe it can come in. The first is through the Parliament, which will have an oversight responsibility, and the Auditor General has suggested a number of ways in which that could be exercised. The second lies in some definition of what accountability is.

I am in danger of stealing Professor McNeill's adage about holding to account, but a clear statement is needed that accountability comes with consequences. In the model that is proposed at a national level, accountability of the chief constable has to be drawn by the board. The chief constable needs the freedom to exercise day-to-day management of his staff and resources, but that does not preclude those at a local level, including local authorities and elected members, from calling on local commanders to answer questions and provide reports.

At the moment, policing is largely self-regulated. Chief constables often provide police boards with reports according to their timescales and on subjects that they select, and they invite the boards to question them on those reports. We need to strengthen that significantly.

The other aspect is around operational independence and primacy. Professor McNeill and I tend to use different language, but I think that we largely agree. The question that has to be drawn out and answered in the bill is what the independence part means and what it will be independent from. As I think I said at the Local Government and Regeneration Committee, it is not independence from the citizen or the system of governance, but independence to exercise and execute the law free from undue influence. The bill does not go far enough in setting that out.

That presents two problems. The first is that we have evidence through some of the earlier reports that chief constables have the liberty of exercising their better knowledge of operational independence over boards. They can use it, in effect, as a defence mechanism. Secondly, in the absence of that definition, we will get into muddy waters at the Scottish police authority when we start to talk about the use and allocation of resources. The bill goes some way towards defining what is meant by independence, but there needs to be a clear statement that draws it closer together for the benefit of both parties.

**The Convener:** We look forward to somebody presenting us with an amendment on that.

I will take members in the order in which they put their hands up, because we are now mixing lots of questions and I do not think that there are any clear supplementaries. I have Rod Campbell, then Colin Keir, then Graeme Pearson, then Lewis Macdonald, then David McLetchie.

**Roderick Campbell:** We have heard a lot of evidence this morning about local accountability. Mr Black, I note that in your written submission you say that "a vital element" is provided by the "local policing plans to be considered by local authorities". However, you go on to say that "the SPA board could establish its own mechanisms for engaging with local communities and ... councillors."

Will you elaborate on what those mechanisms should be?

12:30

**Robert Black:** That is a good and somewhat challenging question. One must talk about the matter in context. It is very important that the members and officials of the proposed Scottish police authority be able quickly to build trust and confidence with local councillors, particularly if the model will be of the Scottish police authority being primarily a body that operates at national level.

It is extremely important that the members of the board get a good understanding of the real and proper concerns that councils will have in their areas, and that they have an informed discussion around that because the circumstances in local authority A will be significantly different from the circumstances in local authority B.

What kind of discussion might that be? For me, it would involve asking the local council about what issues are of major concern to it in respect of effective and proper policing in the interests of the safety of its community, and how that might be reflected in the local plan—the Scottish police authority must take an interest in that—and the national plan.

I understand that HMIC is working intensely on some key performance indicators for the police service. We welcome that and are supporting it, so the discussion could also be about what performance measures the local authority and councillors would want to be incorporated in the local plan and reflected in the national plan, so that we can have a good conversation about the performance of policing.

That is just to give an indication of the range of conversations that could take place. In the interests of time I will stop there, although I can think of other ways that local accountability could
happen. However, that set of conversations is really important.

One other thing I would mention—

**The Convener:** I am sorry to interrupt, but if you have additional comments that you want to make that are not in your submission and that you have not given us in oral evidence, I ask you to write to the committee about them. That goes for all panel members.

**Robert Black:** I will take that opportunity.

**Roderick Campbell:** Could I ask about something else?

**The Convener:** I think that Mr Black has finished.

**Robert Black:** That is fine. I will stop there.

**The Convener:** If you have cut yourself off it would be helpful if you would give us the supplementary information in writing.

**Professor McNeill:** One area in which there is an opportunity to strengthen local accountability is in complaints handling. As I understand it, there is a requirement on the local commander to provide the local authority with statistical information about complaints, which the local authority can interrogate for patterns and trends. That will also give the local authority an opportunity to escalate any concerns, not just within the police on professional standards but to the Scottish police authority. Admittedly it is fairly narrow, but there is an opportunity to address complaints handling at local level.

**Andrew Laing:** Perhaps I can paint a bit of a picture that is more practical than what you would see from the bill. What we are talking about generally is a fundamental change to policing in Scotland; it will bring about a fundamental change to the governance system. However, governance is not just the board, and accountability is not just at the top and bottom levels—it is that whole thing about scrutiny, inspection, audit, performance reporting and how public those are.

My expectation of the proposals in the bill is that there will be a national policing plan, which will filter down to local-commander level. There will continue to be a close relationship between local commanders and local partners, although it is yet to be established whether that will come through community planning partnerships or some other body. Perhaps I can come back to touch on the pathfinders.

With regard to scrutiny, audit and inspection, HMIC will stop looking at eight forces and will start to look at 32 building blocks—the local authority areas. That will include performance information and best-value reviews at local level. Best-value reviews are based on the characteristics of good governance and good police forces. Within that, we will be looking to see how the relationships are. Although there is, in my view, no direct accountability at local level, there is an absolute need for a strong relationship, and we will report that back through the governance system and, ultimately, to the Scottish police authority.

Pathfinders have been set up within local authority areas to try to establish how that relationship can be built up. There is a danger, in some areas, that significant bureaucracy will be created, with a divisional commander of whatever rank servicing the needs of local policing, the community planning partnership, the local vulnerable people board and a new police committee. There is a grave danger that local commanders will be stuck in that bureaucracy and will not have time to pay attention to policing. At the moment, the pathfinders are set up to go in a number of directions. Some relate to community planning partnerships and some are new police committees. HMIC has a concern about how that will evolve over the coming period.

**Chief Superintendent David McCracken (Her Majesty’s Inspectorate of Constabulary for Scotland):** To emphasise the role of Parliament, I should say, as Andrew Laing said, that we would submit the reports about best value and the effectiveness and efficiency of the police service not only to the Scottish police authority but to Parliament. There has been discussion about the mechanism by which Parliament would scrutinise, of course, but the point is that for the future service to be effective and efficient it has to be able to cater to local and national needs.

**The Convener:** Perhaps the next Justice Committee will have less legislation to deal with and will have time for other matters. At the moment, we are not really in that position.

**Colin Keir (Edinburgh Western) (SNP):** All the questions that I had written down have been answered, but there is one other question that I would like to ask.

With regard to national priorities and local priorities, councillors are always going to think about their local area and national politicians might think more about the strategic concerns. That will be reflected in the board; but how do you see that situation being resolved, when those two levels will be pulling in different directions?

**Andrew Laing:** I do not think that the situation will be greatly different from the situation that we have at the moment. Nationally, ACPOS creates a Scottish strategic assessment, which outlines the pressures that are building up around policing in the period ahead. That is disseminated among the forces, each of which adopts it and creates a force plan, which is disseminated among local...
commanders who, in a slightly different way, create their local priorities and police towards them, and also take on board the views of local people, the community planning partnerships and so on. That will be perpetuated.

Will there be tensions? The independent review of policing, which was dealt with by this committee’s predecessor committee in 2009, highlighted those tensions. I suggest that there is always overdemand for policing. Everybody would like police on the beat—rightly so, because that provides confidence and reassurance. In the background, we know that we have more to do around serious organised crime, terrorism and crimes involving sexual offences and so on, which are hidden from the public eye.

The challenge is for the chief constable to devise a system that ensures that local and national needs are met, and for the governing body to hold them to account on that. As I said previously, tensions should be highlighted through the performance review scrutiny and audit mechanism. The system will deal with that.

12:45

Outwith that, on whether there should be an escalation or resolution mechanism in the bill, I genuinely believe that, on 95 per cent of occasions, the national and local plans will be reflective. They will not be completely different aspects. Where they are not reflective, the mechanism that is being designed will allow for communication back up through the system. That might mean that an individual goes to their local councillor, who then takes up the issue with the local commander. Alternatively, that person might go to an MSP, who takes the issue to the Scottish police authority. There are mechanisms built into the bill to allow that communication to take place.

The Convener: The national policing plan must have a degree of flexibility. In my patch—the Scottish Borders—the issues will not be about terrorism or serious organised crime. They are more likely to be road traffic accidents and vulnerable missing persons. In other patches, there will be different issues. I take it that, although there will be priorities in the national plan, flexibility will have to be built in for local areas. Consider the diversity of areas that members of the committee represent.

Andrew Laing: That is absolutely right. The majority of policing happens at the local level. Earlier, the committee heard evidence about Ireland. If we cast our minds back, we will see that the reality of counterterrorism is that it does not just happen in big cities; it also happens in the Borders and in central Scotland, for example. The local plans will focus on local issues that are absolutely important to local people and communities, but they must take cognisance of the overarching aims.

The Convener: I do not dismiss the prospects of such issues arising in those areas—heaven forbid that they do—but the volume and nature of policing will be different in different parts of the country.

Andrew Laing: Yes.

Robert Black: I simply want to reinforce your line of thinking, convener, and to return to the conversation that I had with Mr Campbell a few minutes ago. It is important that there is good dialogue between local commanders and councillors—with the involvement, as appropriate, of the Scottish police authority—about councils’ perception of the needs and priorities of their areas. It is also important that the chief constable, along with the SPA, help to give local commanders the confidence and skills to enter into such dialogue and to have a good discussion that builds local trust and confidence.

Some time ago, for another purpose, I asked someone in Audit Scotland to list all the things that police do; it came to a list of more than 50 things. Not all those activities are relevant to local policing in all parts of Scotland: for example, wildlife crime might be more relevant in one area than it is in another; royal and VIP visits tend to take place in some parts of Scotland and not in others; and counterterrorism activity appears randomly across the country. It is important that we build local diversity into the mesh of police planning, which is exactly the point that HMIC is making.

Chief Superintendent McCracken: Rightly, there is much discussion about the tension between local and national priorities, but there is a difference between a healthy tension and an unhealthy one. It is fair to say that there will be a set of ministerial priorities that many people will not recognise as being relevant to them. The bill contains certain facilities that go some way towards obviating the issue and, in our submission, we suggest other things.

For example, sequencing is important. We have said that, before the ministerial priorities are set, the Scottish ministers should pay due regard to the professional assessment of need that the service produces. At present, the bill says that the Scottish Government should consult people, but that provision should be strengthened. A professional and independent assessment of need throughout Scotland should be placed before ministers before they make the decision.

While we are talking about checks and balances, a second point is simply the fact that the service cannot be effective and efficient unless it
manages to balance local and national need appropriately.

**Graeme Pearson:** I declare an interest, as a member of ACPOS and because all my previous writings and submissions are completely in sympathy with what Mr Black has said. I had no reason to expect that, so I am grateful for his submission today.

Mr Laing has indicated that governance is not only about the board. However, if we get the oversight and governance of the service right and that process is displayed in public view, that will form a healthy beginning to what will be a step change in how policing is delivered in Scotland. If policing is to be by consent, that consent can only be knowing, and that knowing can be based only on information.

The only model that we currently have in Scotland is the Scottish Police Services Authority, which was formulated largely by many of the people who have contributed to the bill that we are considering. I checked the website last week to find out what is going on in the SPSA—for public knowledge—and discovered that the most recent minutes were from June last year.

Given that the suggestion that Mr Black made in his submission would cause some inconvenience in trying to reorganise public governance and put some pressure on people in Parliament, does the panel have any view on whether it is worth the effort? Will we be satisfied instead that a minister will be in the very strong position of influencing the membership of the board, paying for the board, providing the budget and having the board be accountable to them?

The bill is silent on the citizen and on the duties of Parliament. Proper governance is the key issue in the bill, and I would welcome the panel’s view on that.

**Professor McNeill:** In my view, a board takes on a life of its own once it is established; it is not static. I will go back a little bit and talk about my experience of board appointments. The role of ministers in the process is perhaps overemphasised. It is the public appointments process, and there is a prioritised list. There may occasionally be attempts—it has happened most markedly in Northern Ireland—to reflect political realities, but in general, ministers throughout these islands have, in my experience, taken a fairly cautious approach.

As I mentioned, boards take on a life of their own, which means that they flex their muscles. I have had direct experience of boards holding officials to account. They can—and many do—account to the public by giving people an opportunity to question them; we heard from Alistair Finlay that that is quite common practice in Northern Ireland. They can also do that by moving around the country, and by checking their performance against that of other bodies such as the National Audit Office south of the border and the equivalent body here.

I am more of a glass-half-full person with regard to boards and their ability to hold people to account in a way that is not constrained by political whim.

**Robert Black:** You will not be surprised to hear that, as an auditor, I am more of a glass-half-empty person.

**The Convener:** You are smiling when you say it.

**Robert Black:** I will say simply that I think that Mr Pearson’s comment is absolutely on the button. As I mentioned earlier, the bill is significantly deficient in giving recognition to the role that the Scottish Parliament should play in holding the new policing system to account on behalf of the people of Scotland. I encourage you to give that issue serious consideration—as, I am sure, you will.

I will draw on the experiences that we took from the performance audit of the Scottish Police Services Authority that we carried out a couple of years ago. It is important to distinguish between the role of holding to account in governance terms—that is the Scottish Police Services Authority’s role of ensuring that the authority uses its resources properly, efficiently and in accordance with the Scottish police plan—and democratic accountability, which involves members of Parliament and councillors. I acknowledge and understand the arguments that the committee has heard for having councillors on the Scottish police authority, but I caution you and encourage you to bear in mind the distinction between the two functions.

It is important that the Scottish police authority has a clear task to undertake, which is to hold the police to account. That involves having the right skills and expertise around the table, independent of the chief constable, and it involves issues such as vetting and security clearance, so that the authority can get into the really important issues of Scottish policing in a way that is not possible in a forum such as this committee, almost by definition.

My report on the Scottish Police Services Authority commented on tensions in the composition of the SPSA’s board. We said that some key people on the board, such as chief constables and police conveners, sometimes came up against a tension or conflict of roles because of the offices that they held. Elected members on police boards or authorities have a duty to their councils and their constituents but, at the same time, they have a fundamental duty to support the board. That can lead to difficulties.
I will give one or two examples of scenarios that could arise—it is useful to do in our minds a stress test, as the private sector says, of what could happen. Let us say that local authority A challenges the Scottish police authority about the allocation of resources to its area. If a councillor from that area is a member of the authority, which way do they jump? Are they there to speak out on behalf of the local authority to which they were elected, or are they there to make the case for the police authority?

If a councillor from council B made representations to the police authority about the allocation of resources, but councillor A was a member of the authority, councillor A would have the inside straight in such a discussion. What role would councillor A play?

Another area in which a stress test is useful is civil unrest and policing of demonstrations, which I am sure has been mentioned in the committee’s discussions with others. If council C is concerned—rightly or wrongly—about police engagement in policing a demonstration or civil unrest, and a councillor from that council is on the police authority, what is that councillor’s role on the authority? Is it to represent their constituents and their local council? What happens if the unrest occurs in the area of council D, which is not represented on the authority? All sorts of tensions could be created, which need to be worked through. I am not sure whether all of us have thought clearly enough about that.

I return to the point that we must make a clear distinction between the governance arrangements, which the bill provides for well; in that respect, I think that the glass is more than half full.

The Convener: I am glad.

Robert Black: We must make a distinction between those arrangements and the separate set of arrangements for democratic scrutiny, which must involve members of the Parliament and councils, through the various mechanisms that we have begun to talk about today.

The Convener: Section 40 says that the SPA must lay its annual report before the Parliament, so it is open to any Justice Committee to call anyone to speak to that report. In the first parliamentary session, our predecessor committees often took evidence from Her Majesty’s chief inspector of prisons after he had laid an annual report, and they raised issues about particular prisons or the general rise in the prison population. That mechanism exists, but I caution that, as Mr Black knows, committees are under continual pressure, although they must make their own time to some extent.

As you were talking about having a councillor on the SPA, I was mindful of planning committees, on which members have a quasi-judicial role, which means that they either absent themselves when a planning issue arises in which they have an interest, or take no part in representing their constituents on the issue. Committee members might already be aware of examples of when it is difficult to have representatives on quasi-judicial, independent committees. Do you want to comment on that, Mr Laing?

Andrew Laing: I do not want to perpetuate the half-empty or half-full glass analogy, but as a member of the inspectorate I would be interested in what was in the glass and whether it was clean.

The Convener: Yes, indeed: the forensics and the questions of where and why. We are with you.

Graeme Pearson: And who pays for it.

Andrew Laing: Those are perhaps the points that Mr Pearson was driving at. I agree with Mr Pearson and have said throughout the programme of reform that the key is good governance. We have not necessarily had bad governance in the past, but it has not been as strong as it could be. As we move towards a national system, good governance will be essential.

It is interesting that that was the very question that the 1962 commission tried to resolve. We see in England and Wales a significant divergence in that the governance system has been put in place locally, whereas in Scotland we are moving more towards a national system. The biggest distinction is that in the Scottish police authority we are looking at a professionalised body and at competence, capacity and capability, whereas in England and Wales they are looking at a localised system. I think that we will see marked differences over the period.

There are two important aspects to that, the first of which is about democracy. I believe that there is scope in the bill for the democratic will and need of the people, reflecting the views of communities and citizens, to set priorities and to ask for and get reports on how policing performs against those. The key to governance is whether the chief constable will be properly held to account, whether the priorities that have been set will be achieved and whether that will be done in an effective and efficient way. We are probably talking largely about the same kind of thing across the board. The board must exercise significant strength in holding the chief constable to account.

On a slightly separate, spin-off note, we talked about all that the public appointment process brings and whether it is the right mechanism. One of the issues centres on the timescales that we have and is about how quickly we can pull everything together. We have asked how easy it will be to pull together the PIRC in the time...
available. The same question must be asked about the police force itself.

At the moment, the timescale for the appointment of the chief constable, the chair and the support office for the chair is back-ended and loaded towards the latter part of this year. That is about putting the primary postholders in place. If that happens towards the latter quarter of this year, the support teams—the deputies, assistant chiefs, chief executives and so on—will come into place within only a few weeks of the force going live. I know that that is not a matter for the bill, but it is a significant area of concern that needs close attention paid to it.

The Convener: Thank you. That is now on the record.

Five more members want to ask questions. I am mindful of the time—I will not say that that is the end of the questions, but time is running on—so I ask for short questions and short answers. That request is not for people who are coming in for the first time, but for those who are re-entering the scene. Lewis Macdonald is next, then David McLetchie. Alison McInnes has been in before and I believe that John Finnie has been in before, then there is Rod Campbell. Those who are coming in for a second bite should ask shorter questions, but I am not putting a constraint—except for letting you know of my hunger—on those who are coming in for the first time.

Lewis Macdonald: Thank you, convener. I will take that into account. My question is for the Auditor General. We heard earlier this morning that in Northern Ireland the police board of 19 members was adequate and appropriate for carrying out the role of a national body for the PSNI and for operating important thematic committees such as those on human rights, professional standards and human resources. Clearly, those are important governance issues. Does the Auditor General have a view as to what size of board will be necessary in Scotland, given that the SPA, too, will presumably rely heavily on thematic committees? What number of board members will be necessary in order to deliver effective committees as well as an effective national authority?

13:00

Robert Black: This is an area in which I can be of assistance to the committee, because we produced a report, “The role of boards”, some time ago. It is a complicated issue. We looked at boards in a number of public sector bodies and found that they varied enormously in size and that it was difficult to specify an ideal number. It is important to balance the skills and expertise needed for a board to fulfil its governance function with ensuring that it has enough people to carry out the workload.

Interestingly, one of the statistics that we dropped into the report was that the average number of members on a FTSE 100 company board is about 11, which resonates with the bill. I am comfortable with that order of magnitude, but it will only be possible—I am sorry to sound like a stuck record—if we are clear that it is a board of governance, not a board of representation. If it becomes a board of representation, it will inevitably become much larger and, consequently, operate at two speeds at once. At the first speed it will focus on the governance role, while at the second speed it will focus on the role of holding to account on behalf of communities, which is really difficult.

A number of years ago—I am sure that members will recall this—the SQA went through an extremely difficult period. We did not do an audit of that, but one of the problems that struck me from observing it was that, when the SQA was originally constituted, it tended to be a large representative board with lots of interests on it and, frankly—this was not the fault of anyone on the board—it lost the ability to do the tight governance role, to measure risk management and to hold the executives to account. Of course, we know what the consequences were. I think that the bill has it about right on the board of governance.

Finally, I find it interesting to talk to boards around Scotland. A significant public body—I would prefer not to name it, because this is based on a private conversation—has done away with its committees, because it believes that all the big issues should involve all the board members, who think that their knowledge and understanding of the business will improve by not operating committee silos. They find that that works extremely well and they form ad hoc groups for particular purposes. I am not saying that that is a model, but it demonstrates that it is important not to over-legislate and to allow the new system to evolve and develop.

Lewis Macdonald: I have a quick question for Mr Laing about his comments on reorganisation. You said that you will cease to look at the current eight forces and look instead at the 32 council areas for KPIs and accountability, but that you are concerned that there is a danger that that could generate a lot of bureaucratic burden for local commanders. Could that burden be reduced by placing some of the accountability and KPIs at a regional level? That is the level at which decisions will be taken if the ACPOS work on structure and operational practice, which was explained to us last week, is borne out.
Andrew Laing: That raises two issues. On the debate on regionalisation, a bit of me strongly says that once a chief constable has been given day-to-day responsibility for the force, they should have the flexibility to manage. Whether that becomes functional, or regional at certain levels, is a matter for which they should be held to account.

My comments about bureaucracy may have caused confusion. My concern about the 32 local authority areas is that, if we have 32 police committees in addition to 32 community planning partnerships, the local commander will be sunk administratively. The reason why HMIC is going down the road of developing performance information based on 32 local authority areas is that the relationship, as set out in the bill, is at the local authority level, and that allows comparisons to be drawn.

The technology that we hope to invoke and the programme of inspection that we hope to bring in will not add on a huge layer of bureaucracy; in fact, over the past year, chief constables have commented on HMIC’s light-touch but very focused approach and we hope to promote that in future. It is vital that we provide those building blocks for cross-comparison with local elected members and, if there are 32 committees, to be able to combine them in two, three or six regions and get the relevant information. I am concerned about the bureaucracy that will be brought not by HMIC’s approach, but by additional committees at a local level.

David McLetchie: I will ask Mr Laing a couple of questions about the inspectorate. Paragraph 4.9 of HMIC’s submission suggests that the inspectorate be given the status of “a body corporate”. What is the inspectorate’s current status and what would such a transition mean?

Andrew Laing: We have recently spent a lot of time trying to clarify that suggestion. Perhaps I can begin my response with a bit of pragmatism: although my post in the HMIC is an independent position appointed under royal warrant, it is not always perceived that way. Because I sit in St Andrew’s house, I am often seen as being part of the civil service and as being very close to the minister; conversely, as an ex-police officer, I am seen as being very close to the chief constables. We must ensure that, with a single Scottish service and a single Scottish police authority, and given the issue of ministerial direction that we have raised, HMIC is seen to be and is perceived as being wholly independent.

The move to corporate body status is relatively simple. As far as other legislation is concerned, my position and the body’s position would stay the same, but I would be able to employ people. At the moment, I can take people only on secondment, which will present difficulties if, after the creation of the single Scottish force, I need to draw officers from that force and tell them to inspect their chief constable. Having corporate body status will allow me to employ people and to create a separate corporate entity. That would be an overt statement of independence and will be really important as we move forward. At the moment, we are not even a non-departmental public body; we are simply a body that has no definition other than that it is set out in a list with 15 or 16 other agencies.

David McLetchie: I am always puzzled by the different categories of public body; I have never quite understood why one group falls into one category and not another. I suspect that there are historical aspects that have never been fully rationalised, although I wonder whether, given the present context, we should be carrying out such rationalisation.

HMIC wants to be a body corporate. Can we be clear whether, under the proposal, the SPA and the PIRC will be bodies corporate?

Professor McNeill: We are a non-departmental public body. I think that I operate what is described as a corporation sole—in other words, the body operates in so far as the commissioner exists.

The Convener: A corporation what?

Professor McNeill: A corporation sole, spelled S-O-L-E.

The Convener: Not S-O-U-L, then.

David McLetchie: So you are not a poor soul.

Is there any logic to these different statuses? I understand why we need independent bodies and why, for example, the PIRC, the inspectorate and the SPA should be independent, but why are they independent in different ways and to different degrees?

Andrew Laing: Having done some work on this, I can perhaps venture an explanation. There are different levels of tie-in to the Government and the Administration. I have just checked HMIC’s official status; it is “another national body”, which means that I am not directly accountable to the Parliament or the Administration. In fact, my appointment—and the appointment of HMIC itself—is a non-ministerial appointment of the Scottish Administration; in other words, I have a link back to the Scotland Office that provides a level of independence.

David McLetchie: Mr Black, can you enlighten us?

Andrew Laing: My answer might not have helped much, but that is the position.

David McLetchie: No, it was interesting to learn that there is a reserved element in your status.
The Convener: That has cheered David McLetchie up. The union is not lost.

Robert Black: At the risk of prolonging the session, convener, I will express a degree of sympathy with the sentiment that Mr McLetchie is expressing. In our report, “The role of boards”, we categorised public bodies into: colleges of further education; non-departmental public bodies, of which there are 29; NHS bodies, of which there are 23; executive agencies, of which there are 11; non-ministerial departments, of which there are three; and a public corporation—Scottish Water. When we were doing the work we had difficulty identifying quite how some bodies are defined in the way that they are, particularly in the NDPB category.

The point that is worth making is that it would be helpful to the committee to keep the focus on the accountability line.

The Convener: I want to leave the issue of why we have all those animals—we can leave it for David McLetchie’s bedtime reading.

Robert Black: For the purposes of the committee’s current consideration, the nature of the accountability that is attached to the Scottish police authority, HMIC and the chief constable is important. Who appoints the accountable officer is also important, whether it is the Parliament or the Scottish ministers.

The Convener: I am getting light-headed.

Professor McNeill: There is a direct consequence attached to my role as police complaints commissioner, which will continue into the role of the police investigations and review commissioner. Given that everything is vested in that individual, it is essential that they have legal protection against, for example, threats or actions of defamation. In the past three years, at least three complainants have sought to raise defamation actions against me. Unlike the other public ombudsmen, I have no protection against defamation, and, as far as I can see, there is no provision in the bill to afford such protection to the police investigations and review commissioner. A key element of the oversight is that the commissioner be afforded such protection.

David McLetchie: Mr Laing, in your submission you said that the bill does not provide for HMIC involvement in the appointment of senior officers—chiefs, deputies and assistant chiefs—but you think that you should continue to provide an advisory service in a fully independent body. Is a fully independent body that is charged with inspecting a police force somewhat compromised if it has played a part in the appointment of the senior management of the force? Is your independence best preserved by having nothing to do with the appointment of the senior officers, so that you can in no way be compromised in relation to the provision of advice on the merits or suitability of candidates?

Andrew Laing: HMIC’s role is one in which we must tread a pretty difficult line from time to time. HMIC is the independent professional adviser to ministers, boards and chief constables on a variety of matters, yet it is charged with inspection and with ensuring effectiveness and efficiency. There is undoubtedly a difficulty in treading that line.

As we move to a single force in Scotland and a Scottish police authority that might have no professional police experience on it, I question where such independent professional advice on policing will come from. In my current position it is important that I offer independent advice, to balance the commentary from a number of stakeholders. Such advice will be vital to the Scottish police authority in future. The reality is that the vast majority of professional information passed to the SPA will come from the single force, so I think that there is a role for HMIC in that regard.

On my quest to retain my role in appointments, which has come about by history or impute, the role is, again, advisory. It is simply to sit in on the selection process, ensure that procedures have been followed, and provide those who will make the decisions with a commentary on the level of evidence provided—whether it is professionally competent, for example. I am not sure where else we would get that from.

13:15

Robert Black: One of the last substantive jobs that I did as chief executive of Tayside Regional Council was to help the authority to appoint a new chief constable, and the expert advice that HMIC provided was absolutely invaluable. I want to support the previous comment by saying that it was not HMIC’s role at that time to recommend a candidate, but its involvement was absolutely invaluable in providing assurance about the appointability of the candidates among whom the police authority was making a choice.

The Convener: I really am going to stop after the next two questions, otherwise we will be here until teatime—if that is not an old-fashioned word.

John Finnie: What are the panel’s views on the proposal in the bill to alter the composition of the police appeals tribunal? I should declare an interest: I was on the tribunal for a very short period, but did not complete any cases.

The tribunal is currently made up of four people. It is chaired by someone appointed by the Lord President of the Court of Session, and also includes a retired chief officer, someone from the...
The Convener: That is on the record, but it is for me to regulate proceedings, John.

John Finnie: Yes, of course.

The Convener: The room has to be vacated at 20 to 2 to allow another committee to sit and we still have business to get through. I am conscious that you have raised an important issue, but there is nothing to prevent the witnesses from providing us with additional written evidence on the important question that you have asked.

I am ruling that we will move on. I ask Rod Campbell for a short question, because we have several other items on the agenda and, whether we do them or not, I have to dispose of them in the time that we have before we have to vacate the room. I apologise to you, John, but that is the position. Rod, will you ask your question quickly, please?

Roderick Campbell: I will be very brief. It is a short question for Mr Laing. I have seen your comments on forensic services in your written submission, but are you aware of anything that has been detrimental to the interests of criminal justice in the forensics regime that has existed since 2007?

Andrew Laing: I will be as brief as I can. The segregation of forensic services from the force is an important issue. It is appropriate that services that concentrate on identifying individuals, marks, crime scenes and so on, and which hold responsibility for the maintenance of databases should be segregated from the force, but I hold a strong view that the flexibility that is needed to direct scenes-of-crime officers in the collation of marks should sit with the force and the chief constable.

The reality is that crime trends develop quickly in different parts of Scotland, and the chief constable needs the flexibility to direct his or her resources towards tackling that. If that means that, for a period of time, every car that is broken into in Glasgow should have a scenes-of-crime officer attending to it, the chief constable should have the opportunity to allow that. In the system that is being proposed, under which scenes-of-crime officers will sit within forensic science services, we get into a debate over the memorandum of understanding and who pays for services, and that flexibility is reduced.

The two points are, first, that the analysis of scenes-of-crime marks and evidence should sit separately from policing but, secondly, that the ability to collate them should sit within policing to provide the flexibility to respond to public need.
Roderick Campbell: The proposal in the bill is slightly different from the current position. Are you aware of any instances in which the situation that has prevailed since 2007 has been detrimental to criminal justice?

Andrew Laing: In relation to the description that I have just given, I am aware of discussions about budget constraints in the SPSA, which led to a quick conclusion that the number of scenes-of-crime officers would have to be reduced. That led to some difficult conversations between ACPOS and the SPSA, but it happened over a prolonged period. It is that sort of inflexibility and lack of control that cause me concern.

The Convener: Thank you for your evidence. I know that John Finnie would like you to follow up on the question that he asked. If you wish to provide any other supplementary evidence, including comments on questions that we did not ask but ought to have asked, please write to the clerk and your comments will be supplied to the committee and included in its consideration. Thank you.
Police and Fire Reform (Scotland) Bill: Stage 1

The Convener (Christine Grahame): Good morning and welcome to the ninth meeting of the Justice Committee in 2012. I ask everyone to switch off mobile phones and other electronic devices completely as they interfere with the broadcasting system even when switched to silent. No apologies for absence have been received and once again I welcome Lewis Macdonald to the meeting.

The first and only item on the agenda is our third evidence-taking session at stage 1 of the Police and Fire Reform (Scotland) Bill. I welcome our first panel of witnesses: Councillor Richard Durham, who is representing the Highlands and Islands fire board and the Scottish fire conveners forum; Steven Torrie, head of the Scottish fire and rescue advisory unit; Brian Sweeney, who is chief officer with Strathclyde Fire and Rescue and is representing the Chief Fire Officers Association Scotland; and Richard Haigh, who is Scottish regional secretary for the Association of Principal Fire Officers Scotland. Thank you for your written submissions.

As usual, we will go straight to questions. If the witnesses wish to answer a question, they should let me know and I will call them — the light on the microphone will come on to show that it is live. If they have a supplementary answer, they should indicate and, as with committee members, I will bring them in.

Graeme Pearson will begin the questioning.

Graeme Pearson (South Scotland) (Lab): When asked about preparations for the legislation’s implementation, the police service expressed major concern about timescales and the ability to deliver in the time available. By way of opening up the discussion, will the witnesses say something about the time that is available, problems that might be arising with the plans for implementation and any other issues that they want to bring to the committee’s attention?

Brian Sweeney (Chief Fire Officers Association Scotland): The Chief Fire Officers Association is broadly content with the timetable, although events in one or two strands are perhaps not as aligned with the legislation as we might, in ideal circumstances, have chosen.

First, we think that running the legislation in advance of learning the outcomes of the pathfinder projects for local blue-light committees might give rise to tensions. Secondly, a review of community planning partnerships and single outcome agreements is under way. Given that Parliament is — correctly — considering the context of police and fire services in CPPs and will consider the outcomes of the pathfinder projects over the next 12 months, the association believes the legislation to be somewhat ahead of those material considerations.

Out with that, we are broadly content with the timetable. Not everything needs to change before April 2013, but the legislative base, the insurance liabilities and the service’s purpose and function need to be clear. We will focus on those aspects in our evidence this morning.

Richard Haigh (Association of Principal Fire Officers Scotland): The Association of Principal Fire Officers Scotland has been critical of the pace of development of the outline business case. Although there was an opportunity for all stakeholders to engage with the process, we felt that it was limited and we are concerned that the bill is moving forward on the basis of the outcomes of that work and the latest outline business case. We believe that the timescale is challenging and we question the ability to deliver an efficient and effective fire and rescue service on 1 April 2013.

That said, APFO will contribute as much as it can to meeting that timescale. It is important that a chief fire officer is appointed at the earliest possible date, because clear leadership and direction are needed to support moves towards the commencement date.

Steven Torrie (Scottish Fire and Rescue Advisory Unit): To reinforce a comment that Mr Sweeney made, I make it clear that no one who views reform of the fire and rescue service as a large technical piece of work expects it to be completed by 1 April 2013; it will be an on-going process. A good partnership has developed between Scottish Government officials and fire and rescue service leads on reform to clarify exactly what needs to be done by next year’s cut-off point and what can be put off and developed in due course.

Graeme Pearson: Richard Haigh mentioned the outline business case. In the normal process, one would expect a gateway review to check the detail of the outline business case and, quite properly, look at budget arrangements. You said that, largely, you will be able to deliver the mechanics of what the bill requires. Are you happy
that the financial arrangements will be in tune with those deliverables?

**Brian Sweeney:** There are some questions, which colleagues from the Chief Fire Officers Association provided to the Finance Committee—I do not want to rehearse those. The association broadly has no disagreement with the quantum of savings that the Government is setting out to achieve over the next three years. In the Government’s outline business case, the quantum of savings is somewhere between £21 million and £31 million.

At the consultation stage, the association opted for the regional model, within which we identified savings of some £23 million. If we take the mid-point of the optimism bias—around £25 million in the Government’s figures and £23 million in the CFOA figures—the difference is around £2 million. There is a difference of opinion, in principle or in practice, on the quantum of the savings. The difficulty will come in year one, when the difference between costs and savings will amount to some £8 million. That is clearly a concern for us.

However, CFOA’s key concern is that we do not believe that the functions of the new service are sufficiently clear.

**The Convener:** Will you develop that point?

**Brian Sweeney:** The bill sets out the purpose of the fire and rescue service. The provisions on the fire part of the service are nice and clear, but the provisions on the rescue part, in my opinion and that of the Chief Fire Officers Association, are unclear in a number of material ways.

Fire and rescue services have been criticised through the years in relation to inland water rescue. A recent fatal accident inquiry criticised my service for not rescuing four fishermen on Loch Awe. The Government then commissioned an inquiry, led by Paddy Tomkins, Her Majesty’s former inspector of constabulary, under which he made a number of recommendations, including that duties should be given to the fire and rescue service in relation to co-ordinating the registration of assets. No effect is given to that in the bill.

We have also been criticised in relation to line rescue. I will not enter into further discussion on those criticisms, but it is not clear whether the fire and rescue service is responsible for line rescue. On inland water rescue, the bill is silent. On line rescue—

**The Convener:** What is line rescue?

**Brian Sweeney:** An example of line rescue is a situation where someone is trapped in a collapsed building, a mineshaft or something similar.

The bill is silent on line rescue and water rescue. It gives us duties to prevent fires, but not road traffic collisions. If the purpose of the bill is to clarify the role of the fire and rescue service, we believe that more work needs to be done on it.

**The Convener:** Thank you. It is helpful to have that on the record. We will now have questions from Jenny Marra, to be followed by Alison McInnes and John Finnie.

**Jenny Marra (North East Scotland) (Lab):** My question follows on quite well from what Mr Sweeney said, as it is about the prevention agenda. I notice that the Chief Fire Officers Association states in its written submission that it is unfortunate that more attention is not being paid to the prevention agenda. I have been impressed with the performance of Tayside Fire and Rescue, which was recently rated top in Audit Scotland’s report for its success in the area of prevention. Will you elaborate on the prevention agenda in the bill and say where you think that it should be stronger?

**Brian Sweeney:** I will try to be as brief as I can as I am conscious of the limits of time. The question strikes at the heart of the issue. On the prevention agenda, we are broadly satisfied with the arrangements for preventing fire and educating people about its consequences, but we do not believe that the legislation gives enough weight to the prevention of road traffic collisions, the development of young people—the young firefighters programme in Tayside is an excellent example—or water safety. It does not give enough weight to safety in contexts other than fire. It would be helpful if the committee could point out those issues with the framing of the legislation and the functions.

The fire provisions in the bill are okay, but the rescue provisions are not okay. The bill gives us no statutory functions to educate teenagers who get their driving licence and go on to the roads, no functions on water safety, and nothing to encourage the service to work with children and young people in the fantastic way that we do to save lives. The prevention agenda needs more work, particularly in the rescue context.

**Jenny Marra:** Is there a cost implication if the prevention agenda is to be as robust as you, the committee and the public would like it to be?

**Brian Sweeney:** The cost implications are broadly negligible. The staff are in post. The programmes are delivered, in the main, by station staff, who may be full time or part time. The programmes need resourcing, energy, partnership and power. This is only the second time that the legislation has been changed in 50 years. If
something is not mandated and the bill does not give effect to it, it will become someone else’s problem—it will become a road safety initiative or a police-only initiative. The legislation needs to be clear about the purpose and functions of a 21st century fire and rescue service. That is what we are calling for.

Jenny Marra: Are you saying that your service is best placed to deliver the most effective road safety and prevention programmes?

Brian Sweeney: No, that is not quite what I am saying. I am saying that we are one of a number of agencies that need to be mandated, almost in a neutral, third-party sense, to work with young people at secondary 5 and 6 in Scottish schools—which all services do. Unlike, perhaps, our colleagues in the police, we take a much more neutral stance. We come at the issue from the point of view that it is about young people’s safety, their lives, and peer pressure. There are some fantastic examples from Fife to Tayside to Grampian, where the fire and rescue service’s involvement is critical, but that work is part of a broader partnership. We do not want to be, and we are not, the sole agency with such responsibility.

The Convener: The Cabinet Secretary for Justice’s office will be noting your written and oral evidence, and I am sure that he will take that issue on board.

Richard Haigh: I will pick up on two points to reinforce what Brian Sweeney has said. First, to the association, the functions that the bill sets out do not harness the potential contribution of the fire and rescue service in its wider community safety role, which is work that we are already very much involved in right across Scotland.

Secondly, and probably as important, the bill does not meet the public’s expectations. In 2005, when we changed from fire brigades to fire and rescue services, the public developed certain expectations. The functions that are set out in the bill do not meet those expectations.

Alison McInnes (North East Scotland) (LD): I, too, am interested in exploring the concerns that have been expressed that the bill does not fully capture the functions that you carry out. Jenny Marra successfully explored the issue of prevention. To go back to the rescue part of the service, have you estimated the resources that would be required if the bill was to make it clear that that was part of your remit?

Brian Sweeney: Rather than go through all the funding issues, if the committee were so minded and it would be helpful, I would be more than happy to provide a short paper that sets out the functions that we believe are missing and the associated costs. That might help you in your deliberations.

The Convener: That would be helpful. Did you respond to that question when you went before the Finance Committee?

Brian Sweeney: I was not at the Finance Committee; it was the deputy chief who was there. However, having read the Official Report of the proceedings, I do not believe that the issue was specifically raised.

The Convener: If you are not in a position to provide that information to Alison McInnes today, we would be most obliged to have it in writing.

09:45

Alison McInnes: The point is important. You make a cogent case for putting such functions in the bill, but we need to understand the implications of that.

Will you elaborate on the Chief Fire Officers Association’s concern about the legality of cross-border operational activity?

Brian Sweeney: The concern relates to our border with our colleagues in England and I clarify that it applies to only two services: Lothian and Borders Fire and Rescue Service and Dumfries and Galloway Fire and Rescue Service. There are issues of insurance and insurance liability when firefighters travel from the area in which they are insured and liable for operating to another country, but I believe that that is being considered in relation to technical components of the bill.

Lothian and Borders Fire and Rescue Service raised the issue of its cross-border movement. It asked whether the indemnification and insurance of firefighters are still valid when they operate as firefighters in England and whether the principles of Scots law or English civil law apply.

The question is technical and I would be happy to provide further information on it. We are broadly content that it is being addressed in the technical context of the bill.

The Convener: The system must function just now. I have a border constituency and I know that people nip backwards and forwards. What is the position now?

Brian Sweeney: The issue relates just to technical liability, indemnification and insurance.

The Convener: Surely the position must be resolved at the moment.

Brian Sweeney: I am unaware whether that is the current position. In Strathclyde, I do not have a border with England.
The Convener: We will require that information, but I pretty well think that the issue will have been resolved by now. I do not think for one minute that, when English firefighters come over here, indemnification problems arise. Clarification would be helpful.

John Finnie (Highlands and Islands) (SNP): Good morning, panel. My questions are to Mr Torrie. Some submissions suggest that an opportunity has been missed for the bill to pick up on a number of issues. The review of open water and flood rescue in Scotland that Mr Tomkins undertook recommended that a register of water rescue assets should be held. Does that have broader application? Coastguard services have been retracted. Does an opportunity relate to that? If so, how would that fit with the framework document and the integrated risk management planning system?

Steven Torrie: I—

John Finnie: And, sorry—

The Convener: Wait a minute, John. I am happy to let you ask several questions, but it helps witnesses if you ask one question at a time, after which you can add another question.

John Finnie: I have a comment rather than a question, which is that all that I have described leads to the suggestion of the service’s designation as the primary rescue service.

Steven Torrie: I will try to deal with that. On water rescue, the Fire (Additional Function) (Scotland) Order 2005, which derives from the Fire (Scotland) Act 2005, asks the existing fire and rescue services to provide facilities to deal with serious flooding. As part of that, the Scottish Government has provided funding over the past few years for boats and other water rescue equipment such as personal protective equipment. There is a range of functions across Scotland at the moment.

Mr Sweeney was absolutely correct to say that Paddy Tomkins have not been fully implemented. Some of Mr Tomkins’s recommendations about fire and rescue services taking on a broader co-ordination role have not been carried through to their natural conclusion. The opportunity exists to clarify that through legislation or, beyond legislation, in the fire and rescue framework.

I will make a broader observation about fire and rescue services. I understand and agree pretty much across the piece with what Mr Sweeney and Mr Haigh said about specialist rescue functions because, when it boils down to it, the fire and rescue service is often the only service that can adapt to and provide a rescue in unusual and unpredictable circumstances. Something could be usefully said about that.

I caveat that with another observation that is part of our current conversations in the service about specialist rescue, which is that, if you try to be too clever and precise about defining functions, you could end up tying the service up in knots with different arguments. For example, when is a serious flooding incident a serious flooding incident and not a rescue from rapidly moving water, such as a river? I could give you countless examples; that is just one.

Is that a reasonable answer to your question?

John Finnie: Yes, it is.

Would it help if the bill designated the service as being the primary rescue service? I agree that it would probably never be possible to tie down all potential situations.

Steven Torrie: It would be helpful if the bill broadly recognised the fire and rescue service as the rescue organisation for Scotland, as long as we do not get caught up in too much detail at the level of the law.

Brian Sweeney: I agree with the principle that it does not matter whether we are the primary rescue service; as a rescue service, we should be involved in co-ordinating and engaging with partners to plan, prepare and deliver whatever the rescue is. It would be most helpful if that were clear in the bill.

I want to pick up on the observation about the coastguard that the honourable member made.

The Convener: We are not “honourable members” here.

Brian Sweeney: I am sorry, convener.

The Convener: Some of us may be, but we do not boast.

Brian Sweeney: In my eyes, you are all honourable.

The point that John Finnie made in relation to the coastguard is most apposite: coastguard services are being withdrawn from around the coastline of Scotland. In addition to the review of coastguard services, there has been a review by the Maritime and Coastguard Agency and withdrawal of the maritime firefighting response that was provided by Lothian and Borders Fire and Rescue Service, Strathclyde Fire and Rescue and Highlands and Islands Fire and Rescue Service. Again, we see no mention of that in the purpose and function of the new service, but Scotland as a nation is served non-stop by ferries to the Western Isles—both the Inner Hebrides and Outer Hebrides—the Orkneys and the Shetlands. We believe that there must be capability to deploy
firefighters, should there be a fire on one of those vessels, but that capability is being lost; United Kingdom funding for it ends in a couple of weeks, on 1 April. That is another purpose or function of the service that should not be lost.

Lewis Macdonald (North East Scotland) (Lab): I had intended to raise the point about marine firefighting. I want to generalise on some of the other rescue functions that the panel has described. If the bill were to reflect—as has been suggested—a formal responsibility for rescue and prevention, what would be the implications in legislative terms? In other words, is what is being suggested merely the addition of a couple of lines of formal description, or would it require significant change in resourcing the bill’s provisions or in its timetable?

Brian Sweeney: That would require a fairly simple amendment. The arrangements are already being effected practically, so the bill would merely formalise arrangements that already exist in respect of all the functions. It would be a technical legislative amendment to reflect what already happens in real life.

Lewis Macdonald: Is that also Mr Torrie’s view? Clearly, you have advised ministers.

Steven Torrie: That is absolutely my view.

Lewis Macdonald: That is very helpful.

Starting with Councillor Durham, I want to hear about accountability. Some submissions have raised issues such as the relationships between a national service and local authorities, and between a national service and regional responsibilities. Would panel members like to comment on that—in particular, on the composition and size of the central board or authority?

The Convener: Councillor Durham—that is your cue.

Councillor Richard Durham (Scottish Fire Conveners Forum): Thank you, convener. The Scottish fire conveners forum has always had some concern about that. When reform was first discussed with CFOA and the forum about two years ago, there was a clear view within the forum that reform had to come, although the general view of the forum was that the service should remain within local government rather than be centralised. Now that the principle of a single service has been established and is being implemented by the bill, the forum has come on board. Everybody has come on board and is going forward willingly into the new framework.

However, I am concerned, based on my experience as convener for the past five years, about the proposed size of the board. I am aware of the various sub-committees within my area’s fire board, and I know that people get sick and are unable to attend. The forum’s view is that between seven and 11 members—I believe that the thrust is for 11—is still tight for a board of such significance. I believe that the Convention of Scottish Local Authorities has suggested that the number of board members should be 15. The conveners forum would be more comfortable with that number.

The other issue—

I should probably stop at that point, as I do not want to prejudice questions.

The Convener: It is so tempting when somebody says, “The other issue...” and then stops. Why not just say it, please? If there is another issue that you want to raise, the committee would like to hear it.

Councillor Durham: There seems to be a gap in the bill. There is a clear route whereby the Scottish fire and rescue service will produce a plan and, having agreed that plan with Parliament and Scottish ministers, will then produce local plans. However, given the level of savings that will have to be found in the years ahead, there are almost certainly going to be tensions between local aspirations for service provision and what the national plan might say. There is a clear route in the bill whereby the service will engage with the 32 local authorities and, when agreement is reached, the local plan will be published. However—I have been in this scenario recently—change of local service provision can be hugely emotive, and it is crucial, so I foresee scenarios in which there is intransigence in the local authority and the SFRS. If that happens, there must be resolution. It cannot be left hanging, otherwise the reform will be seen from the local perspective as being just centralisation of the power within the service, which would be a great loss.

I could make suggestions as to what that resolution might be.

The Convener: What are they?

10:00

Councillor Durham: There are two democratically elected sides: a Parliament and Government on the one hand, and local councillors and a local authority on the other. To me, the resolution must be found between those two elected bodies. I cannot in my mind get past the fact that, ultimately, either the Parliament or the ministers will have to engage in resolving disputes. From experience over the past five years, I say that disputes are inevitable.

The Convener: I want to keep to this topic because it is a fresh one for us, so we will stay on the number of people on the fire board and
disputes between national and local plans. I will take supplementaries on those issues.

**Lewis Macdonald:** Councillor Durham suggests that there might be different ways of dealing with the issue. During evidence on the police service, we heard the suggestion that a link between the national and local levels might be achieved by having a number of local representatives—people with local government or other local connections—involved in the national authority. Is that applicable to the fire service or do different circumstances mean that that would not work?

**Councillor Durham:** Such representation is very important, particularly in the transition board of SFRS. You have to take existing expertise into the new set up.

I have lost my train of thought.

**The Convener:** I know the feeling. A few of us on the committee are the same. The members concerned will not admit to it, but I know who they are.

**Councillor Durham:** The problem is that when local authority representatives—local councillors—come on to the board, they have to leave behind their local issues, because once they join the board they will be responsible for the whole service across Scotland.

**The Convener:** It has been put to us that the role would be about holding to account rather than being representational. You are making the same point. It is necessary to leave the local hats on the hat rack outside the door.

**Steven Torrie:** I will make a brief comment to add to Councillor Durham’s argument. The concern that he articulates is something that I have heard from day one, when reform was first discussed: if you create a large national organisation, you become remote from local communities and decisions are taken remotely. I will offer a couple of thoughts on that. The fire and rescue service is fundamentally a local service. Its only purpose is to operate at local level; that is all that it does. The fire and rescue services currently engage well at local level. In my past life, I have attended local community meetings here in Edinburgh to try to persuade people that it would be a good idea to shut their local fire station and move it up the road a bit. If you want an example of local accountability and local engagement, you should come along to one of those challenging events.

**The Convener:** MSPs also have such meetings.

**Steven Torrie:** I do not recommend it.

**The Convener:** I will not comment on behalf of MSPs.

_Steven Torrie:_ Whatever the shape and form of the management of the service, it exists only at local level and will always be accountable at local level. Mr Sweeney is responsible for an organisation that provides services to 49 per cent of Scotland’s population but is designed to work at local level. Everything is about the design of the new service and ensuring that things happen at the local level.

**The Convener:** Has Lewis Macdonald finished on this point?

**Lewis Macdonald:** Mr Sweeney perhaps wants to respond to the initial question. I am interested to hear his view.

**Brian Sweeney:** We are broadly content on the membership of the national board. The suggestion is that its composition will give councillors, local government and COSLA their voices on the board. Our submission points to the need for business, commerce, insurers and the fire industry also to have their voices on the board. In the context of the board, it is not so much about quantity but about quality; the bill needs to take into account the quality of the board membership.

We believe that tensions will emerge between the national and the local. It makes no difference whether the service is a national one that is delivered locally or a local one that has a national framework. Accountability can be dual, but responsibility must be solo. If there is responsibility locally for development of a local plan that might, let us say, close a fire station, that might clash with the national board’s ambition. The sensible work that is being done through the pathfinder projects, the blue-light committees and the review of community planning partnerships needs to focus on the tensions that might emerge between national and local Government and how we will resolve them.

Obviously, it is for the bill to specify this, but one suggestion is that there might be a natural ombudsman role for Her Majesty’s chief inspector of fire and rescue authorities. I have not rehearsed or discussed this with Mr Torrie, so I apologise for putting him on the spot somewhat. Perhaps we could have someone who is wholly independent to adjudicate in cases in which a local plan disagreed with the national strategy; surely the independent inspectorate would be the suitable home for that type of consideration.

**The Convener:** There you are, Mr Torrie. I will let you think about that.

I will take supplementary questions, if they keep to the numbers or the tensions between the local and the national. I think that David McLetchie wants to ask about that.
David McLetchie (Lothian) (Con): I want to ask about local accountability and local plans.

The Convener: Fine. We will then have questions from John Finnie and Jenny Marra on the same train.

David McLetchie: The bill envisages that local plans will be devised and will fit into the overall national plan. At present, with our eight fire and rescue services, do we have eight local plans or 32, or do we have none?

Brian Sweeney: There are eight local plans, which are referred to as integrated risk management plans. Some of the eight existing fire and rescue services subdivide their plans into individual plans for their constituent authorities, but others do not. There are definitely eight plans, although there might be more, because some services break down their plans for their constituent authorities. Of course, two of our eight authorities are unitary ones—Fife and Dumfries and Galloway.

David McLetchie: What, in that case, is the logic of the proposal to have 32 local plans? Will we end up with a situation in which one plan is duplicated, a new cover is stuck on it and we say that it is the plan for Clackmannanshire rather than for Falkirk? Is it the reality that there will not be 32 separate plans, but a number of regional plans, broadly corresponding to the present fire board areas and, within that, there will be further plans with different covers on them just to appease local sensibilities?

The Convener: Mr Torrie, do you want “to appease local sensibilities”?

Steven Torrie: I will try my best, convener. In addition to the integrated risk management plans from the eight fire and rescue services, there are 32 single outcome agreements and 32 community planning partnerships and community safety partnerships. All that detailed work at local level goes on at present in the 32 authority areas.

Councillor Durham: We must remember that Scotland is a varied place. Delivering fire and rescue services in a town in the central belt is different from delivering them on far-off islands in Shetland or Orkney, so plans vary. Fire and rescue services have worked under the current system since some time between 1993 and 1996—I cannot remember exactly when the relevant statutory instruments were put in place. One of the culture changes that will happen relates to funding for the services, which has been done in a historical manner. From a local government perspective, it has been done in a somewhat unusual way, whereby central Government has maintained the capital funding and then headed it out, but the revenue funding has come through the constituent local authorities.

To some extent, that pattern of funding over the past 15 years has dictated community expectation throughout the eight different fire and rescue areas.

There is a huge opportunity in the coming of a single service, because resources will be pooled. However, expectations in various parts of Scotland will probably have to change. I have a standard example that I use. In the Highlands and Islands, Fort William has a retained fire station, but 30 miles away, Oban—a town of similar size, Oban, but which is in a different fire and rescue service area—has a whole-time station. I mention that simply as an illustration that, over time there has been evolution in fire services throughout Scotland. In reality, and in difficult financial times, there will be pressure on the new SFRS to balance out how it provides services. There are tensions on the road ahead for everybody.

David McLetchie: I understand that—

The Convener: Before you come in, Mr McLetchie, I think that Mr Sweeney wants to say something.

Brian Sweeney: Thank you, convener. I just wanted to pick up on the point. The opportunity that a national service will have to consider Scotland irrespective of boundaries should not be lost; there is a fantastic opportunity to examine the issues that Councillor Durham raises. Where a certain service has been bound both administratively and financially by its borders and boundaries, the fact that they will be removed will offer a tremendous opportunity.

The problem will come when decisions are to be made. To give a brief example, in Strathclyde, we closed some fire stations two years ago. It was a sensitive issue. The stations were in Parkhead, which is in the city of Glasgow, and in Cambuslang, which is in South Lanarkshire. That was done under the aegis of the board, where corporate responsibility was brought to bear, and although individual local members, including members of the Scottish Parliament, might not have been happy with the principle, there was collective ownership.

The Chief Fire Officers Association’s fear is that the national board could take such a decision, but it would then face two blue-light committees that might or might not share the same view. What will we do in those circumstances? How can we sensibly ameliorate such concerns?

David McLetchie: Thank you.

I move on to the related topics of local accountability and the relationship between local senior officers and local groups. From the evidence, it strikes me that people are most concerned about the creation of duplication in
bureaucracy at local level. I hope that I am not putting words in anyone’s mouth, but it seems to me that the idea of a freestanding local fire consultative committee—or whatever title it would be given—is not being met with great favour. There seems to be a view that the existing mechanisms, through the community planning partnerships, are all that is required, and that there is no need for duplication with a parallel set of committees that focus only on fire and rescue services. Is that a fair summation of your evidence and your view?

Brian Sweeney: I very much concur with that. It is an important point. There is little that a police service or a fire service does in isolation. In fire and rescue, we routinely work with health, housing and social work services, social services, the education authorities and others to advance our agenda. “Scotland Together: A study examining fire deaths and injuries in Scotland”, which was provided to Parliament late in 2009, gives effect to consideration of those points. Merely by creating 32 blue-light committees, we would create a silo within which police and fire and rescue services would operate, whereas the reality is that they operate in a common environment with health, housing, social work and other colleagues. I therefore concur whole-heartedly with the point.

David McLetchie: Councillor Durham, would you like to give a view on that?

10:15

Councillor Durham: Perhaps not surprisingly, you would not get quite the same view from local government. As the Government led on the issue, it took the view that local councillors were not all engaged in the process of governance and accountability, and that the joint boards were perhaps not the best way to govern.

The local government view is that fire services will become national, by virtue of which they will be centralised to a large extent. There is concern within the local government community about what the local role will be. The minister has said in various announcements that the bill will enhance the role of local councillors and give them more say in the process, but the view on the ground contains a degree of scepticism on that point. The bill is not clear on what the role of democratically elected local councillors will be.

David McLetchie: Is the problem partly that community planning partnerships are full of professionals and do not have enough local councillors on them, beyond the heads of the council administrations concerned?

Councillor Durham: That is a fair comment.

David McLetchie: So, the problems with accountability stem from the fact that the vehicle that is meant to create co-ordination does not have enough elected representatives on it to represent the people in the community. If we are going to have an integrated accountability mechanism, we should look at who is included. I see that Councillor Durham and Brian Sweeney are both nodding; I am glad that we have some agreement on that. I will put that in my report. [Laughter.] I am sure that there will not be a dissenting report.

I just want to ask Councillor Durham what the convener of Fife police, fire and safety committee was so exercised about that he did not put his name to your submission, as is stated in big, bold capital letters at the end. Is there a substantial issue of principle in that regard, or is it an issue of lesser significance?

Councillor Durham: There is more of a historical framework to it. As I said at the outset, the fire conveners forum started debating reform together with CFOA quite a while before the major decision came from the Government and Parliament.

From the outset, the convener of the Fife committee took the view that the Government’s position is right. The remaining seven conveners fought for fire and rescue and police services to remain as local government services rather than becoming centralised services. That was the origin: the Fife convener has consistently gone against that view and has rather disassociated himself from the rest of us.

David McLetchie: I am sure that that is a fair representation of his views. Your group is saying that it has now accepted—if not enthusiastically—that we will have a single service, and that we are now considering the bill in the context of how the service will work.

Councillor Durham: It is fair to say, now that the principle has been established, that everybody in our group wants to do their best to make the single service a success for everybody in Scotland, from the northern tip of Unst to Dumfries and Galloway and Campbeltown.

The Convener: That is a diplomatic answer.

Rod Campbell has been waiting for a long time. Rod, is your question on a completely separate issue or on much the same stuff?

Roderick Campbell (North East Fife) (SNP): To be perfectly honest, most of my points have been covered by what has been said so far. Just for my benefit, if for no one else’s, will the panel clarify what the local plan is expected to contain, particularly if there is an overlap with community planning? What do you expect to see in local
plans, whether the number of services be eight, 32 or one?

Steven Torrie: I will be very brief, because I am sure that my colleagues will want to add some thoughts. Earlier, Mr Sweeney mentioned something called an integrated risk management plan, which is a clunky title for an important piece of behaviour for fire and rescue services. What it means is that the fire and rescue service needs to understand the risks in its local community and design its services around them, along with putting a great deal of emphasis on prevention work. The fire and rescue service would much rather prevent fires and accidents than deal with the consequences. Integration means that we can apply all that collectively.

The local plan needs to describe risk as the fire and rescue service sees it and describe the kind of response that the fire and rescue service will give in terms of protection, prevention and operation.

Brian Sweeney: What I would say is broadly similar. The integrated risk management plan has three facets. We seek to prevent incidents from occurring, whether that is a road traffic collision, someone drowning or someone having an accidental fire in the home. Prevention is clearly a multi-agency function; it cannot be and is not a sole function of the fire and rescue service. There might be health workers and social workers in the home, and there might be lots of duplication of data about vulnerable people who are at risk but, when the fire and rescue service arrives, we find out that we did not know about that. In a community planning partnership in Scotland in 2012, that cannot be allowed to continue. The fire and rescue service working on prevention in a community planning partnership context is absolutely unavoidable; it must happen.

Protection also involves multi-agency engagement. The only facet that is left is the response element. How many fire stations do we have? Should they be full time or part time? How quickly does the service arrive? How many officers are there? How well trained are the staff?

The first two facets are absolutely multi-agency issues.

Councillor Durham: I concur with the professional advice that the committee has been given, but I have something to say with my layman’s hat on. The most important thing to the general public is that, when someone’s house is burning and they dial 999, they get a fire engine as quickly as possible. Driving risk down has become a fundamental part of fire and rescue services in the past few years, and it has been hugely successful—risk has been driven down. However, there is a danger in simply saying that because, for example, the likelihood is that a life will be saved once every 3,000 years in a remote community, there is no need for the response element. That will not be the view of that community.

I totally take on board the point about reducing resources and the point that in today’s world resources must be prioritised, but statistics can take us too far. That is an issue and we in Highland have come across it recently in looking at how to use our resources. I have learned quite recently that it is ultimately very difficult and politically unacceptable to a great extent to close stations, but stations will probably have to be closed. That is a hugely sensitive issue that the service will face, and I can see intransigence between local interests and the wider national interest.

The Convener: MSPs are well aware of what will happen if there is an attempt to close fire stations, schools or post offices—there is a list of things. Obviously, councillors, MSPs and members of Parliament represent their constituents. There will, understandably, be a great deal of community resistance.

Members should ask short questions, as the time that the next witness has for giving evidence before he must leave is tight. Members are in a big queue, but let us move things along.

John Finnie: Councillor Durham, until you made the comment that you have just made, I was not going to mention the following issue, but I will be gentle—I think that you know what I am going to touch on. I take it that you do not think that everything in the existing arrangements is sound. Such a position is certainly not borne out by the Audit Scotland review of the role of boards. The northern joint police board’s submission says:

“The Board seeks continuity in the performance of police and fire and rescue services”
in the Highlands. I take it that you hope to enhance performance. People want a fire appliance to arrive, but do you concede that they want adequately equipped and trained people to arrive with that vehicle?

Councillor Durham: Yes.

John Finnie: I have a question for the panel about an issue that came up in relation to the Police Service of Northern Ireland and the tension that can exist between resources. We heard from the assistant chief constable of that organisation that it has a tactical tasking service, so that if additional resources are requested locally, they are bid for centrally. Does Mr Torrie envisage such a system working in the national fire service?

Steven Torrie: Less so, I think. The functional arrangements for operational cover in the fire and rescue service are pretty different from the police
arrangements. Fundamentally, they are based on local fire stations, and attendance times, for example, have been worked out over long periods. When large incidents occur, there will be support from a broader area. The current services have mutual assistance agreements so that they can pass resources between them but, as a general principle, a local resource will attend operational incidents.

**John Finnie:** Can I touch on the issue—

**The Convener:** Does Mr Sweeney want to come in on that point before John Finnie asks another question?

**Brian Sweeney:** I agree with HMI Torrie. Such activity would not routinely occur in fire and rescue services, but there will be peak or spate conditions in the eight services on bonfire night or if flooding or storms and high winds occur, and all the services will prioritise the order in which they respond to incidents. For example, it would not be unusual in Strathclyde to have 50 or 60 incidents stacked in a queue on bonfire night and for officers to prioritise on that basis. The same goes for flooding.

**John Finnie:** I will touch on the cross-border issue. Do the mutual aid arrangements apply across the border? It is clear that Lothian and Borders wants to be a good neighbour to Northumbria and that Dumfries and Galloway wants to be a good neighbour to Cumbria. What reassurance can you give about terms and conditions, the pension aspect and liability?

**Steven Torrie:** I cannot give the committee any reassurance on any of those things, but my understanding is the same as Mr Sweeney's. The Scottish Government and the UK Government are looking at the issue as a technical matter.

**The Convener:** We will be able to clarify that. Some arrangement must be in place.

**Steven Torrie:** Both our existing border services have mutual assistance arrangements with our neighbours in Cumbria and Northumberland.

10:30

**Jenny Marra:** John Finnie touched on the question that I will ask. Councillor Durham, do you think that local accountability currently works well? I suggest that a number of issues have come together and the situation has finally come to a head.

**Councillor Durham:** Indeed.

**The Convener:** In fairness to Councillor Durham, he is here talking on behalf of all the boards.

**Councillor Durham:** This is probably not the right place.

**Jenny Marra:** So the issue is historical problems rather than local scrutiny and holding the service to account.

**Councillor Durham:** I suggest that a number of issues have come together and the situation has finally come to a head.

**The Convener:** In fairness to Councillor Durham, he is here talking on behalf of all the boards.

**Councillor Durham:** Indeed.

**The Convener:** It is rather difficult for him to talk about the specifics of the Highlands and it would also be unfair to the other fire conveners. As a convener myself, I am always fair to other conveners.

**Colin Keir (Edinburgh Western) (SNP):** My question is close to what Jenny Marra was going on about and is for Mr Haigh. In the submission by the Association of Principal Fire Officers Scotland, the comments under point 4 about the principle of councillors taking part in decision making and the scrutiny of performance seem to be both supportive and non-supportive of the idea, so I would like to hear your expanded view. Given the difficulties that you point out, how do you see that working?

**The Convener:** Colin, you should declare an interest. You are still a councillor.

**Colin Keir:** I apologise.

**The Convener:** I am only teasing.

**Richard Haigh:** Your point is at the heart of the matter. Engaging more councillors in the framework sounds very good in theory, and the association would support that, but how will it operate in practice? How will more councillors across the 32 councils be engaged on fire issues? I do not have an answer, but I would be keen to see the idea worked through, and you will be aware that a number of pathfinder projects are being developed to put it into practice. The
difficulty, perhaps, will be that each pathfinder project will have the resources of the relevant fire and rescue service behind it to support and drive it and help its delivery, whereas with a single service the support, drive and direction will be more remote. There are therefore questions about whether the pathfinders will truly reflect how things will operate in a single service.

**Brian Sweeney:** I will make a brief observation about the functioning of joint boards—I cannot speak for unitary authorities because I have never worked in one. In a joint board context, the arrangements have some difficulties because of the third-hand nature of elected member involvement. Members are elected to their council and have council responsibilities in social work, licensing or education, for example, but they are also members of a fire or police committee, so the engagement of some of them can be third hand and at arm’s length. That does not place blame on any existing elected members but reflects the reality of politics and the level of engagement and busyness of elected members.

Audit Scotland’s reports show that, across Scotland, especially where there are joint board arrangements, some elected members are clearly fully engaged with, and on top of, the strategy and policies of the service, while others are less so. That is a product of the arrangements rather than a commentary on individual councillors.

**Colin Keir:** Given the comments that we have just heard, do you think that the present arrangements with the boards are satisfactory?

**Richard Haigh:** No. I do not believe that the arrangements are satisfactory at the moment.

I will go back to a previous question on the size and composition of the new board. For APFO it is not about numbers, size and shape but about the skill set, the experience and the expertise that are brought to the board. If we bear in mind that consideration and the current board arrangement, significant development is required of board members—of councillors—to enable them to fulfil their role effectively. That is not a derogatory comment about councillors; it is about getting to understand the nature and practice of a fire and rescue service to enable them to scrutinise and support the effective delivery of front-line services.

**Alison McInnes:** It has been a pretty upbeat panel, which has talked about “a huge opportunity” and so on. Others might think that it is a serious risk to local provision. Much has been made of the fact that local plans already exist and will continue to exist. The difference is that local plans are resourced locally now. The proposals mean that local plans will be drawn up locally and resourced nationally—or not, depending on the small board of 11 people. Does the panel think that financial and human resources can be properly allocated by such a small national board?

**Councillor Durham:** I see no reason why not. Richard Haigh commented that it is about the quality of the person who sits on the board. I will qualify that to an extent in that, although I agree with him, it is terribly important that the people who sit on the board have an understanding of matters of fire and rescue.

I think the world of the Scottish fire and rescue service now, under the existing system, and I am quite sure that I will think the world of it under a single service. Those in the service are fantastic men and women of this country who do a wonderful job.

Whatever number of people sit on the board, the concern is that they understand what the Scottish fire and rescue service is and does. It will be a challenge to achieve that in the first board.

**The Convener:** Will you address the funding issue? Should it be local, central or whatever?

**Brian Sweeney:** We are in an extended period of austerity, which affects resourcing in the fire and rescue service, like every other service. Between the professional voice—the Chief Fire Officers Association—and the Government’s outline business case, the saving looks like being a quantum of about £25 million. That is against the baseline budget of £388 million.

There is a certain reality around the figures that we are arriving at, which need to be considered in one important context. Either we reorganise the service in Scotland to remove duplication and examine the back office to save £25 million or we make between 600 and 700 operational front-line firefighters redundant. That is already happening in certain parts of Scotland, such as Fife, where firefighters have been challenged by redundancy and transferred to other authorities.

When it comes down to tough choices, the choice is between reorganising the back office and removing the duplication or losing front-line resources. I am for the former.

**Alison McInnes:** So you see the pattern of, for example, retained fire service stations being very similar to what we have at the moment. You see all the savings being achieved through back-office services.

**Brian Sweeney:** I would see some fairly significant changes coming through in the new single fire and rescue service, but I would be very surprised if the existing footprint of full-time and part-time stations changed or there was any large movement in the number of stations. I do not think that stations across Scotland will close now or in the next five years.
The Convener: I will move on to Graeme Pearson, then David McLetchie and Jenny Marra. I hope that these will be the last few questions. I do not want to curtail members—I know that we like to ask questions—but we have overrun again.

Graeme Pearson: A lot has been said about the conflict and rub between national accountability and local responsibilities. Last week, we heard persuasive evidence from the Auditor General about the involvement of democratic accountability in the governance process. I note that the Fire Brigades Union refers specifically to the need for the Scottish Parliament to be involved in such processes. Indeed, it suggests a number of roles for Parliament to play and identifies a committee to fulfil them.

No one on the panel has mentioned the role of Parliament in resolving the issues of the single fire service and the challenges that we have discussed over the past hour or so. We will speak to the union later this morning, but do members of the panel think that Parliament should play an additional role? Are you happy that the bill properly records what you want from the Parliament?

The Convener: Is there no response?

Brian Sweeney: I was waiting before answering in case any of my colleagues had a strong view. I have read the FBU’s submission, which makes a valid point on the issue. Perhaps fellow witnesses were in danger of commenting on the existing arrangements and the factual aspects of the bill, rather than seizing the opportunity to examine another level of scrutiny and engagement.

The point is well made by the union. Parliament has a role to play. The single fire and rescue service is, after all, being discussed by a committee of the Parliament and its officers will be appointed by ministers. Parliament should retain an interest in the matter. Neither I nor any other chief fire officer would have any objection to any regular scrutiny by a standing committee, this committee or any other parliamentary committee in order to make sure that the service delivers exactly what it says it will.

We will not get a second chance to deliver a single service. The more value that can be added at this stage, and the more scrutiny that the Parliament can give to the arrangements, the better. I whole-heartedly support the FBU’s proposal.

The Convener: It is, of course, open to any committee of the Parliament, within its remit, to conduct an inquiry and hold witnesses to account. It might be the Local Government and Regeneration Committee or this committee that will hold people to account for the delivery of the fire and rescue service in Scotland.

Graeme Pearson: My question was more about the process of governance than conducting an occasional review.

The Convener: That would happen as well. There are too few members to serve on and do justice to all the Parliament’s committees. My comment was meant merely as an observation.

David McLetchie: The FBU’s submission states:

“The fire service has a range of industrial relations practices that reflect the individual circumstances within the current 8 FRS.”

I will ask the union about that, but I would also like a management view. To what extent is the range of industrial relations practices likely to be standardised when we have a single fire service? Do some of them need to be standardised, or should they be preserved in the aspic of the eight current fire and rescue services?

10:45

Brian Sweeney: I am happy to open the responses. Industrial relations across Scotland are stable. During the past 10 years, there has been a process of modernisation and reform, with stations closing and shift arrangements changing, and I commend the FBU’s approach. As a result of consultation and negotiation with management, we have reached a stable industrial relations position where most authorities throughout Scotland work directly in partnership with all the unions, not just the FBU, in a mature, stable environment.

We are unclear at present about what the negotiating and consultation arrangements will be, particularly on pay, terms and conditions and the pensions of not just firefighters but our 1,000 support staff.

The question is very apposite. More flesh needs to be put on the bones of consultation, negotiation, pay and conditions of service and pensions before we get to the end of the process.

David McLetchie: Would anyone else like to comment?

The Convener: No one else has indicated that they would like to speak—I am sorry; Councillor Durham has a comment to make.

Councillor Durham: I would support the Parliament having any such role as proposed. If that could be worked into the bill, it would be welcome, certainly from the perspective of the existing fire conveners. It would give confidence. There is always a concern about the centralisation of power. It would be good for the bill to give the Parliament a role.

When I became a convener, I went back and read the previous legislation, which was written a
long time ago. Once the bill is enacted, it will probably be in place for a very long time. All the people who are currently involved will be long gone, so any effective role that could be found for the Parliament would be a good thing.

The Convener: Thank you very much.

Jenny Marra has waived her supplementary, so there are no further questions on the table. If, on reflection, members of the panel have any additional information that they wish to provide, I invite them to submit it in writing.

I suspend the meeting for eight minutes.

10:47

Meeting suspended.

10:55

On resuming—

The Convener: I welcome our second panel. Sir Hugh Orde is president of the Association of Chief Police Officers. He is accompanied by Oliver Cattermole, who is ACPO’s director of communications. Good morning—yes, it is still morning. It feels as if it is the afternoon.

We will move straight to questions from members.

Humza Yousaf (Glasgow) (SNP): Good morning, Sir Hugh. The discussions that we have had about a single police force always tend to come down to the importance of local policing. You will identify with that. The idea of a single police force is always played off against the idea of local policing. From your experience, is it possible that a single police force could enhance local policing and, indeed, levels of accountability?

Sir Hugh Orde (Association of Chief Police Officers): The short answer is yes. The size and scale of the operation are not such that, by definition, the bigger the organisation gets, the less commitment there is to local policing. During my time in Northern Ireland between 2002 and 2009—it was seven years to the day—we had a substantial report to implement. The whole focus of the Patten report was on a local style of policing that was based on a human rights training agenda. It was about allowing my officers to belong to the Gaelic Athletic Association and to play its sports. That was delivered by the association by 2005 or 2006.

The Convener: You had 174 recommendations to implement.

Sir Hugh Orde: Yes. Looking back, I think that the Patten report was an incredibly sensible report. It was sensible because it was not rocket science—it was a very practical report. It put forward a model of policing that could be implemented around the world, albeit that there were some bespoke issues.

It goes back to commitment. We had delivered pretty much everything in the report that we could deliver by the time I left. There were two recommendations whose implementation was outside our control. One was to build a police college which, sadly, is only now being built; it should have been built long before now. The other was about allowing my officers to belong to the Gaelic Athletic Association and to play its sports. That was delivered by the association by 2005 or 2006.

Humza Yousaf: In your experience, whether from your time in Northern Ireland or from your work in England and Wales, what is the best model when it comes to reconciling the tensions that may exist between local and national priorities? The fact that such tensions exist was borne out when we looked at the creation of a single fire and rescue service but, in the police context, what is the best model for reconciling the differences that will inevitably emerge?

Sir Hugh Orde: There will always be tensions. The reality is that we have a decreasing resource. It seems to me that one of the strongest arguments for building a single force is that it involves removing overheads and focusing on the front line. Although the police in England and Wales are not going down that line—the present UK Government and, indeed, the previous UK Government decided that they were not persuaded of the need to reorganise the basic policing model of 44 forces, including the Police Service of Northern Ireland—I am seeing huge
efforts being made on collaboration and cross-boundary working to drive out efficiencies, whether from back-office functions or operational units, to maintain front-line service delivery. That challenge is not faced if there is just one force, but it is necessary to work out the balance in the policing model between local and national.

In the 21st century, the biggest threats to the country come from cybercrime, organised crime, international crime and terrorism. It is not possible to address those at a local level, but it is necessary to have the confidence of communities to keep them safe at local level. Every chief officer whom I have the privilege to represent recognises that, without that confidence, it will not be possible to deliver at the national level. One is a function of the other. Indeed, there are case studies that show that critical information from communities that has been gleaned through policing at local level has been fed up through what is quite a tight chain—even in our case, where we have 44 forces; you will have one organisation, plus security services—and serious terrorist offences have been prevented. Chief officers will not give that up.

11:00

Nevertheless, robust debate is needed and a robust accountability model that makes the police chief realise that they are being held to account and truly challenged on where their people are. In Northern Ireland, I had a policing board of 19 people, which was two more than my colleagues in England and Wales had. Ten of those board members were not directly elected but were nominated by the major parties in keeping with the d’Hondt principle, whereby the number of board members from each party depended on its success in the local elections. At the beginning, Sinn Féin was not engaged with policing at all, so Sinn Féin was not represented on the board. Those 10 members were balanced by nine independent members who were appointed by the Secretary of State for Northern Ireland.

The policing board was, without question, independent and it had legitimacy, which was a vital factor. It could also, in law, hold me to account in public. We used to have 10 or 11 public meetings a year at which my senior management team and I would be held to account in front of television cameras—broadcast live if there was an exciting set of questions, not live if there was not. I would also be available afterwards for interview by the media. It was a very transparent process, which was critical to the success of what we had to deliver in Northern Ireland.

Humza Yousaf: Previous panels have discussed the need for accountability and transparency and the idea of holding public meetings.

Following on from our discussion of accountability, do you have any reservations about the proposed size of the Scottish police authority and its make-up as suggested by the bill?

Sir Hugh Orde: It is not for me to form a view on your plan, but I will describe what I think worked.

When I took over in Northern Ireland, there was a far larger police service there—much closer in size to the police service in Scotland—than there is now. When I left, I had 7,500 sworn officers; when I started, I had more than 10,000 plus support staff, even though we covered only 5,500 square miles, not the substantial territory that the Scottish police service is responsible for looking after. At the time, Northern Ireland had a population of between 1.6 million and 1.7 million. My sense is that people who did not live in Belfast, which is seen as the hub, felt that they had a clearly identifiable police leader to whom they could relate in their area. They also had a structure of accountability at a local level in district policing partnerships, whereby the local police leader, who might have been only a chief inspector or chief superintendent, would report every month to the local board, which was a mixture of elected and non-elected members with a full-time manager employed by the police board at the centre, so there was connectivity. At the centre, frankly, I could not have delivered in Northern Ireland, given its history, without a board whose legitimacy was rooted in a set of democratic principles and which had a number of members who could be related to because they were MLAs or others from political parties in the province. That was critical.

The board had numerous sub-committees that were very effective. Reflecting on the fact that I am due to appear before Lord Leveson’s inquiry next week or the week after, I recall that we even had a sub-committee that would hold the PSNI’s equivalent of Oliver Cattermole to account two or three times a year on the PSNI media strategy. The process was forensic and detailed, but the board was a big organisation with about 60 members of staff and quite a substantial budget. Critically, it sat independently in separate buildings. It also had quite a lot of grip under the legislation, and I could be ordered to attend board meetings—“required” was the slightly more polite word that was used. The board never had to use that power, though. If the chairman said, “Will you please attend?” of course I went. I had to answer questions and had limited grounds on which to refuse to do so. I could have appealed to the secretary of state on national security grounds, but I never did so.
The need for transparency is the main point. The more open and straightforward you are in your accountability structure, the more credibility you will have with the communities. There was great interest in policing in Ireland, although there is perhaps less in England and Wales. I suspect that there is a substantial interest in policing here.

John Finnie: I declare an interest in my membership of Amnesty International, which has provided the committee with evidence. It is that evidence, along with evidence that we have received from the Scottish Human Rights Commission, that I would like to ask about.

Good morning, Sir Hugh. Accepting that the situation in Northern Ireland then was totally different from the situation now, can you comment on the significance of human rights to the progress that has been made by the PSNI? In particular, I am thinking about the inclusion of human rights in the oath that is sworn by officers.

Sir Hugh Orde: The first thing that I did was take the oath. It is very important. Lord Patten was trying to deliver a police service for all the communities. He wanted it to be seen not as a force serving one side or the other but as an inclusive police service. It had to be set up using a set of clearly recognisable principles. He, quite rightly, chose the human rights agenda. That is not a soft, flaky notion; it is a recognition of the basic rights of all citizens and it is about how we manage it when policing impacts on and, on occasion, collides with those rights.

The human rights agenda was embedded in every training course. I was inspected on our compliance with that agenda by independent people. Again, that goes back to the point about transparency. As an aside, I should say that all this was reassuringly expensive and we did have money. The people who held me to account were independent advisers to the policing board, not to me. The first was Keir Starmer, who is now the Director of Public Prosecutions, and the second was Jane Gordon, who is an eminent barrister and human rights expert. The principle was not just window dressing; it was embedded in everything that we did.

I have an example. Sadly, I had a fully armed service. One of the recommendations was that we had to review every six months, although we never managed to reduce substantially the level of armament that our officers carried. When officers retrained, as they all had to do twice a year at a minimum, the first input was not about how to shoot at a target but about article 2 of the European convention on human rights.

The human rights agenda was embedded in our system, and public order and everything else were policed against that agenda, which was hugely important.

David McLetchie: The experience of embedding human rights in processes has been explained in the submissions that we have received. To what extent should those practices be imported into police forces in Scotland or, indeed, in England and Wales? In many ways, what was done in Northern Ireland is promoted as an exemplar for other forces and is not seen as unique to Northern Ireland’s circumstances. Do you believe that to be the case? Should those practices be imported into police forces in the rest of the UK, or are there unique aspects in Northern Ireland that mean that those practices are not suitable for importation?

Sir Hugh Orde: One of the unique aspects was the starting point, which was a substantial change in name and then the implementation of a substantial independent report. In a way, my job was quite straightforward in that I had a roadmap. All the clever thinking had been done, but we had to make it happen, and implementation is always challenging.

The human rights agenda is more implicit than explicit in the rest of the country. In my judgment, we in the UK operate against a background of human rights. We have the European code of police ethics; it is not just a British thing. Forces are becoming ever more aware of their obligations under human rights legislation. One has only to look at the debates about public order after the recent disturbances and previous demonstrations, and the new approach to demonstrations in the UK, to see how seriously it is being taken. It is difficult and challenging, but it is a good base on which to deliver effective policing based on what I—hopefully without sounding sentimental—call the Peelian principles, which go back to 1829, have stood the test of time and are still good for the next century.

David McLetchie: So we should import them then.

Sir Hugh Orde: They are there already, but they are not as explicit.

David McLetchie: That is the question for us. Should such practices be explicit rather than implicit?

Sir Hugh Orde: Far be it from me to dictate what you should be doing. As I said at the beginning, the Patten reform programme is a good blueprint for policing if one distils out some of the specifics, such as 50:50 recruiting, which was bespoke for Northern Ireland. It is a very good model for policing.

I am not persuaded that there is a huge gap between Lord Patten’s vision for policing and what
we have here already, but we made some things more explicit. To an extent, that was to do with transparency and ensuring that the public, who knew their rights very well, were clear about where we were going and what our plan was. The process was very open.

The police board and the district policing partnerships were critical but, in my judgment, the informal relationships were as important as the formal ones, and I include the third sector in that. I think that I met Amnesty International, as well as the pressure groups, the single-issue groups and others with an interest in the whole history. I set a benchmark that I would speak to anyone who wanted to make a difference to policing. That was quite a good bedrock and it allowed me to speak to many people from many organisations, some of which had been quite difficult.

Graeme Pearson: I want to cover two areas. One follows on from our discussion with the earlier panel on how to resolve the tension between national interest and local demand. You were in the public gallery earlier, so you will have heard the views that were expressed about where conflict and friction can occur between the local delivery of service and national strategic aims. From your experience in Northern Ireland, and perhaps in your role in ACPO, how would you best resolve those issues? Given that we are at the planning stage for a Scottish police service, what lessons can we learn and how can we avoid some of the pitfalls?

Sir Hugh Orde: Thank you for the easy question, Graeme.

I have a number of points on that. When I took over in Northern Ireland, as one would expect, we had a fairly substantial central structure for firearms, intelligence, major crime investigation and anti-terrorism operations. It was a large and well-resourced service so, in a way, the huge challenge did not come until later in my time, when budgets started to reduce and we had to think about and do all the things that other forces had been doing, such as the necessary but unpopular closing of police stations and the amalgamation of small units into slightly larger ones. We went from 26 or whatever policing districts to a smaller number. The four regions in Belfast were reduced to two.

We implemented all the best practice to minimise the impact and maintain front-line service delivery. We ensured that the local resource was controlled by an empowered local district commander. Whether it was a chief inspector or chief superintendent, they were given the resource and the permission to deliver bespoke policing in their territory. Although Northern Ireland is nothing like as big as Scotland, like Scotland it has some very different areas. Belfast is a big conurbation, but much of Northern Ireland is made up of small rural and agricultural hamlets and communities, all of which need policing. The district commanders had permission to deliver local policing in keeping with the local policing plans, which were drawn up by the district policing partnerships.

We also had a central plan, which was owned by the policing board. Because the policing board had the authority, there was a sort of connectivity between the two aspects, so the arrangement never created a huge tension. Unsurprisingly, the local communities wanted exactly what the national board wanted, which was to reduce crimes that impacted on communities, such as burglary, car crime and antisocial behaviour. Therefore, tensions never arose.

The process of deciding how much of the resource went where was more difficult. However, as I said, the approach was based on the principle that, if you lose communities, you lose the rest of it. Therefore, I did not want to denude my neighbourhood policing teams. For example, we set a rule that no officer could move to a specialist post—in a TSG, for example—within the first three years of their service. Officers were required to stay in their communities for the first three years as a minimum before they could move on and specialise.

The Convener: Sorry, but what is a TSG?

Sir Hugh Orde: Sorry—it is a territorial support group.

The Convener: I am not sure that I am any wiser after that.

Sir Hugh Orde: It involves the sort of officers who are trained in public order that Scotland kindly sent down to help to deal with the English riots not that long ago. In Northern Ireland, they are full-time officers who operate in units, whereas many such officers here are not full-time. That is a specialist post. By definition, those officers routinely deal with conflict. We said that we were not prepared to have an officer in that role, or in other specialist roles such as intelligence, with less than three years' service. Officers had to stay at the front end and learn their trade, for want of a better description, before they moved on.

At the end of the day, that is a decision that the chief has to make, but the important part of that message is that they must then be held to account for it. We were routinely challenged, quite properly, at the central board. For example, we were rightly challenged if we wanted to close police stations, because that is a highly emotive issue. The challenge was not just on the deployment of officers but on the deployment of equipment, too. The issue of tasers caused particularly difficult tensions around operational independence and the role of the policing board,
but we managed that without a meltdown of the structure, although it took us 18 months. Those difficult issues can be handled, but there must be a completely independent structure to hold the chief to account for where they put their people.

**Graeme Pearson:** You mentioned that board meetings were televised. Do you feel that the rehearsal of those arguments in public was healthy?

**11:15**

**Sir Hugh Orde:** There is no question about that. Frankly, I do not think that any chief constable thinks that operational independence means that you can do what you want and you simply pay lip service to the police authority. In my experience—and, indeed, in my current role, in which I speak to them all the time—chief constables take the police authorities’ role very seriously. The public aspect is critically important and entirely proper, because it goes to the heart not only of transparency but of the relationship between the police and the press. It should be an obligation on chief constables to speak to the press about what they are doing because it is another form of accountability. Whether they were held in public at each month’s main board meeting or held in the sub-committees, those conversations without question shaped and changed what we did without interfering with the role of the board or the independent chief.

**Graeme Pearson:** The move to a single Scottish police force will mean that many of the previous organisations and connections will go. What might that mean for the national UK response with regard to information and communications technology, organised crime and other such issues?

**Sir Hugh Orde:** I do not think that those connections should or indeed need to go as a result of reorganisation. Without consent, any model of collective policing that involves—crikey—65 million people and 140,000 or 150,000 police officers just will not work. Of course, things can go wrong. For example, in the recent riots, in which my role was not only to keep the Prime Minister informed of what was going on through the Cabinet Office briefing room but to co-ordinate the movement of officers around the country, there came a point where I had a conversation with the president of the Association of Chief Police Officers in Scotland, as a result of which you kindly sent us critical support at a critical time. The situation was tight, but the whole national infrastructure held. I am mindful of the Olympics and, indeed, the G8, when several thousand officers travelled south to north to support policing in Scotland. That kind of collective effort has to survive; it cannot fail.

On an equally important issue, the incident at Glasgow airport very clearly shows that people involved in terrorism do not respect any boundaries that we try to draw on maps. Those connections must be maintained and I am very keen to do anything I can to ensure that they are. We have an extremely good relationship with ACPOS; its president comes to my meetings and I go to its meetings as often as I can. We certainly have connectivity at an operational level.

**Graeme Pearson:** But you will appreciate that, with the move to a single police force, ACPOS—if there are sufficient numbers to maintain something like ACPOS—and the committees within that structure will change. Should we make it a priority in Scotland to ensure that whatever mechanism exists connects properly with the UK environment?

**Sir Hugh Orde:** Again, I do not know what will happen to ACPOS post-event. Although with its 300 or so members, including senior support colleagues, ACPO is far bigger, it, too, is shrinking. Although the law requires each force to have a chief constable and a deputy chief constable, an assistant chief constable might be shared between two forces. Interestingly, however, ACPO and the Police Superintendents Association of England and Wales together account for only about 1.5 per cent of the whole policing organisation, so perhaps we need to think differently about who leads these things. Chief superintendents and superintendents are highly able people who I am sure could take on some of that work for the collective good, but we simply must not allow this effort to fail.

**The Convener:** John, do you have a supplementary?

**John Finnie:** I had, but Sir Hugh covered the point in his final comment. It is all about positions rather than ranks.

**The Convener:** I think that we have already decided that rank is not relevant. I have to say that I am still chewing that over.

**Roderick Campbell:** With regard to the debate about having a sterile corridor between the police and forensic services, what in your view should the chain of command be in that respect?

**Sir Hugh Orde:** I note that the plan is for an independent structure. I am not a forensics expert, but I can say that, when I was in the PSNI, I had officers involved in forensic recovery to ensure that there was no confusion about who was doing what. Such work is not beyond the wit of front-line officers; indeed, because of resource issues, we spent considerable effort on training new officers in it at training school. It can be expensive if you do not allow people to make professional judgments about the likelihood of recovery and about what they should be recovering. It would be
easy to have a Rolls-Royce model. In a world in which, in my judgment, we are sadly becoming increasingly risk averse and less encouraging of people to take more risk, I can envisage situations in which an expert could require a lot to be done, which would cost the service a lot of money. I have read about and understand the service’s concerns, and I encourage you to listen to them. Could what is proposed work? Yes, of course it could. A great thing about the police is that they will make anything work, but I am not sure whether the numbers add up for a completely independent service.

Lewis Macdonald: I am interested in your overview of policing across the United Kingdom. A body that we have not touched on, and which is perhaps an exception to the traditional local authority base of policing, is the Metropolitan Police. My question is similar to Graeme Pearson’s questions about learning lessons. From the ACPO perspective, are there lessons to be learned for Scotland from how the Metropolitan Police balances ministerial command with local accountability?

Sir Hugh Orde: That is a nice way of reminding me that I came second in the competition for commissioner. Thank you. It is not for me to comment on London, and I am sure that the commissioner would be delighted to attend the committee.

I did 26 years in the Met—under a different system—and because of my current role I occasionally speak to the deputy mayor of London about the Met’s contribution to accountability and legitimacy. If the Met does not contribute to the national agenda, we are in trouble. The commissioner is extremely supportive of the agenda. The Met is living proof that neighbourhood-style policing can be delivered for a very large population, but what Bernard Hogan-Howe does not have is the huge geography that you have here. I am not persuaded that geography is a killer on this, but it might be a limiting factor, because in some remote areas coverage is very low. I remember the chief of Northern Constabulary pointing out to me that he had to fly to get to some of his parishioners. There is a visibility issue, but size and scale are not issues for local policing.

The advantage that the Met has is that, in the majority of cases, the commissioner has enough resource to consume his own issues. Public order is an exception, and the Met is probably now more a recipient of aid in that area than a contributor, because of how public order demonstrations have moved on. There is no question but that it is more efficient if there is one force, because the individual in charge has a far larger army—for want of a better description—to deploy and can generally manage without looking for additional aid. The big challenge that I had in the public order situation was that I had to deal with 44 chiefs rather than a smaller number. That debate is not live in the United Kingdom, but the ACPO view would be that it should be. With lines of command, there should be simplicity and a clear leader.

In Ireland, I made the decision early on that the chief constable has to be a visible leader—and not just the chief constable but their whole command team. I was lucky after the first year, which was challenging, to have a command team that stayed with me pretty much for the other six. I learned that it was important to have a consistent approach and to empower local commanders to be highly visible and accessible in their local communities. London’s borough system is similar to that. Each borough has a chief superintendent who is the figurehead for local policing.

Regarding the national structure, the Met is hugely important in the world of anti-terrorism, and ACPO’s terrorism and allied matters committee is routinely chaired by the assistant commissioner for specialist operations. The Met has a national function regarding multi-site terrorist attacks and, in certain situations, the national co-ordinator will have overall command across other jurisdictions. That is an example of our putting structures in place because we do not have a national or a regional service. I am sure that Bernard Hogan-Howe would be delighted to come up and help out.

Lewis Macdonald: Do you see any difference between London and the rest of England and Wales?

Sir Hugh Orde: It is simply scale.

Lewis Macdonald: Could you say something specifically on consent and community engagement with the police service?

Sir Hugh Orde: All services are committed to that, but certainly the Met, under all the commissioners whom I can remember, was very much organised around neighbourhood teams led by a sergeant, with a mixed team of police community support officers. Indeed, routinely, whenever those numbers come under threat, there are questions in the House of Commons—not only does Bernard Hogan-Howe have a mayor and a deputy mayor looking at what he is doing, it is not unusual for London MPs to raise issues in the House of Commons about such things as the resourcing of community teams in south London.

The Convener: The situation would be the same with MSPs in the Scottish Parliament, I think.

Jenny Marra: Have you found that there is an optimum ratio between police officers and
backroom staff that maximises the effectiveness and the financial efficiency of policing?

Sir Hugh Orde: The short answer is no. In England and Wales, we are seeing an absolute commitment from chiefs to drive money out of anything that is not operations. However, in the complex legal world in which we all operate—I am not an expert on your legal system, but I suspect that the issues that I am about to talk about are similar—it is impossible to run a police service without a substantial back-office capacity. You can do certain things to minimise that, and we can see things going on, such as outsourcing work to civilians rather than having directly employed staff. A lot of effort is being put into finding ways to deliver the back-office functions. However, you have to step back and look at the national picture. Some forces in England—one or two in particular—have more than 50 per cent unsworn staff. If every force has that level of unsworn staff, when we get the next instance of serious disorder, we could be struggling to be able to inform the Prime Minister that we have enough sworn officers to meet our commitments.

Issues to do with serious crime, such as disclosure, are hugely resource intensive, and much of that work requires someone with the skills of an officer—either an officer or a recently retired officer—to deliver it.

My answer is probably unsatisfactory, because, although we have continually tried to drive money out of that part of the business by bringing smaller units together and creating efficiency savings by having bigger units delivering to a wider audience, there will come a point when police services in the UK say that they cannot get any more out of the back office. Again, it is something that a police authority should constantly challenge chief officers on, and it is something that chief officers are undoubtedly challenging themselves on.

Your advantage is that you will have one force to drive the measures through. The challenge that we have is that collaboration is, by definition, suboptimal. It requires police authorities to agree on where they are focusing and chief officers to agree on what they are focusing on. That creates a situation in which there are all sorts of different collaborations across the UK, which cannot be the most efficient way of operating.

The Convener: We have no further questions, but you might want to speak about issues that you feel we have not touched on.

Sir Hugh Orde: You took me slightly by surprise by moving straight to the questions, but I think that you asked about all the issues that I wanted to raise.

If there were a point that I would stress from my experience of the world that I inherited in Ireland, it would be the critical importance of a legitimate oversight body that had the confidence of a majority of communities—which was not the case at the beginning—and could hold me to account in a transparent and open way, coupled with an absolute determination to communicate in a far wider way and to talk about what we were trying to deliver in a way that gave confidence to the communities that were preparing to move towards us rather than away from us. Of course, that is different from the situation in Scotland.

The continual concern for the seven years that I was there was neighbourhood policing. I do not think that you can do enough to reassure communities that every chief officer is committed to the neighbourhood structure as the building blocks of the service, and is prepared to be held to account for any move away from that or any unnecessary centralisation. On the empowerment agenda, we found that, if we gave our district commanders the ability to fly, they flew. We gave them permission to deliver bespoke policing, which meant that, in parts of Northern Ireland where the threat was high, neighbourhood police officers were—sadly—heavily armed while, in other parts, they were lightly armoured and did not even wear body armour in the routine work of their days. That was because I wanted not a standard response that was right for the cops but one that was right for the people in the communities. That was hugely important.

11:30

I came from London, which is geographically small, which meant that we could move officers around quite quickly. However, I found that the larger geographical spread of Northern Ireland was not an inhibitor to a neighbourhood policing model, and neither is having a single force. Both elements can go together hand in hand.

Given the threats that we are facing, I can understand why you are going in the direction in which you are going. I am trying to deliver against 21st century threats with a modern model of policing that was created in 1962, before colour television and the internet.

As Graeme Pearson pointed out, the special relationship—that seems to be quite a current phrase, these days—between ACPOS and ACPO is a good one, and it is important in terms of day-to-day delivery.

The Convener: I think that Graeme Pearson was trying to indicate that he wanted to ask a supplementary question, despite my ruling. He is not getting to ask it, as that would give him a very special relationship with me, which he is not going to have, and the rest of the committee members might also pitch in with questions.
Meeting suspended.

On resuming—

The Convener: I welcome our third and final panel of witnesses: John Duffy, Scottish secretary of the Fire Brigades Union, and Sarah Duncan, regional organiser and secretary of the Scottish fire committee within Unison.

The Fire Officers Association was due to give evidence as part of this panel, but regrettably its representative is now unable to attend. That is a pity.

I thank the witnesses for their written submissions. As they were here for the previous session, they know that I go straight to questions. David McLetchie will go first, followed by Humza Yousaf.

David McLetchie:

Good morning. I flagged up this issue with the first witness panel. The FBU's submission mentions a range of industrial relations practices that reflect individual circumstances within the current eight fire and rescue services. Can you give me some examples of that variety?

John Duffy (Fire Brigades Union): Without going into specific details, the current arrangements rely heavily on relationships. There are eight different chief officers and eight different deputies and assistants. We have an internal structure that matches that: we have eight brigade branches throughout Scotland, and brigade secretaries and chairs who interact on a daily basis.

With regard to our terms and conditions of service, our pay and holidays and the basic framework of our discipline and grievance procedures are set at a UK level, but there is a range of local variation. How that has developed over the years very much comes down to those individual relationships. There is an industrial relations protocol that represents an attempt by the national joint council for local authority fire and rescue services—the UK-wide body—to improve industrial relations, but even that has been implemented to varying degrees across the country.

Today is unusual for me, because I have not before sat down for such a protracted period and listened to the chief officers agreeing with the Fire Brigades Union.

The Convener: You should try to be happy about it.

John Duffy: Absolutely. I am hopeful that it is an indication of where we are going, rather than where we have been.

We are making the point that the reform process as it stands is quite unusual, because we do not have an employer. We are still employed by the eight fire and rescue services and will continue to be so until 1 April 2013. However, in order to implement something cohesive on that start date, we need to discuss a number of issues in detail with what would be our employer, even though we do not have one. We have put in place four workstreams that cover the development work of the new service. The Fire Brigades Union is heavily involved in that, and we are working closely with our management colleagues.

In the past three or four months, we have made considerable progress on not only the detail of what will be in the service in future, but how we conduct our business. If that developing relationship is an indication of what we might see in the new service, the Fire Brigades Union is quite optimistic. We have developed an encouraging working relationship, and we hope that it will continue and get better. We put that in our submission as we do not particularly want to emphasise the past—we want to look to the future.

David McLetchie: Would Ms Duncan like to comment on that as far as her members are concerned?

Sarah Duncan (Unison): We have the same issues about being employed by eight separate employers. The divergence in local practices and policies will inevitably cause a bit of tension when we become one service. People are fearful that their terms and conditions might be downgraded and that their good local policies might be changed to take them down to the level of slightly less adequate policies elsewhere.

Industrial relations between Unison and the employers have always been good. The situation is a bit more tense right now because of the focus on front-office versus back-office staff, which makes a lot of our members feel marginalised. They are as essential to the smooth running of the fire service as the firefighters are—our colleagues in the FBU recognise that.

The constant attention from yourselves and the media about cutting back-office costs makes back-office staff feel, in some cases, that they are not valued as much. With financial imperatives driving the reform and some doubt over the amount of savings that can be achieved, our members look at some of the predictions for savings and think, "They're not going to cut firefighters' jobs; they're going to cut all our jobs instead." That makes them feel a lot more insecure.
David McLetchie: Among your respective members, will there be pressure for standardisation at national level from groups who are currently employed in one board area and who believe that the locally negotiated terms in another area are superior? Will they expect you to get them up to the same level?

Sarah Duncan: Yes, of course. That is human nature. If people see someone who does the same job as them in a different location being paid more to do it, they will want to be paid at that level. I understand that all the boards have done job evaluation schemes to ensure that jobs are correctly graded internally to minimise problems with equal pay and so on.

Once we have moved to a single employer, if there are widely diverging terms and conditions for finance officers, secretaries or clerks and, for example, somebody who is based in Aberdeen and who is technically doing the same job as somebody who is based in Motherwell gets different rates and different overtime allowances, we will be back in the situation that we found ourselves in in local authorities with big equal pay problems.

David McLetchie: Does the financial model work on the basis of a levelling up, a levelling down, or settling somewhere in the middle?

Sarah Duncan: In terms of staff morale and motivation, which will obviously take a dip with all the uncertainty that is caused by merging services, it would not be sensible for people to talk about levelling down terms and conditions. Staff are already concerned about the future of their jobs. If they think that there is any threat to their earning power when, like everyone else in the public sector, they have suffered pay freezes and are suffering from the increased cost of living, you will find it very difficult to motivate staff to go into the new single service with the right attitude and make it work from day one.

David McLetchie: I am sure that that is the case.

11:45

John Duffy: A factor that must be taken into account for uniformed staff is that a lot of the duplication that is the focus of attention is at the upper end of the organisation. Our membership covers all uniformed staff. Our members work on the whole-time system and the retained-duty system. Some members work in the control rooms and our membership goes through the rank structure from a new firefighter walking through the door on their first day right the way up. A number of our members who are in quite senior posts are concerned that those posts will not exist. We are keen to ensure that, when the music stops and somebody takes the chair away, the individuals are protected. We raised with the Finance Committee that how the shape of the structure is manoeuvred into the future has perhaps not been factored in.

Chief Officer Sweeney picked up on the point that in some areas of the country we are short of firefighters and short of people on fire engines. We may well end up with a situation in the future in which, although there are currently people in elevated posts, we have too many of those posts. The question is how to reshape the structure over time without disadvantaging those individuals who happened to occupy such posts before they went.

David McLetchie: My understanding of your original description is that it is a two-tier system at present. The UK level sets national pay terms and conditions, and the localised level is represented by the present eight-force structure. I presume that we will move to a three-tier system consisting of a UK level, a Scottish level and certain localised elements that you will seek to preserve.

John Duffy: It would be fair to say that the basic pay and conditions will remain at a UK level, as set by the national joint council. National conditions will be standardised across Scotland, but that may result in anomalies, some of which it may be to the advantage of the organisation to keep. For example, local arrangements are made if someone has to travel from their home station to an away station. One journey in particular—between Aberdeen and Elgin—involves a great deal of travel and there are local payments to cover that. It would make absolute sense to maintain such provisions as a local feature within a Scottish environment.

The Convener: The submissions are rightly detailed—we are talking about people's livelihoods. Have you provided evidence to the Finance Committee?

John Duffy: We have given some evidence to the Finance Committee, but it was not as detailed as this.

The Convener: I do not want to duplicate what other committees are doing.

Humza Yousaf: I was interested in the first panel's discussion of functions and how the bill could provide an opportunity to redefine them. How do you get the balance right between enshrining vital functions and not being too prescriptive?

John Duffy: My colleagues on the first panel made a valid point that the current Fire (Scotland) Act 2005 does not reflect the much wider role that the fire service actually plays. With all due respect to those who drafted the 2005 act, they probably did not foresee that, when they changed the name
from fire brigade to fire and rescue, the public would not read the small print, which was that the rescue was from road traffic accidents. It is now the public’s perception that if they get into difficulty and need to be rescued, the fire service will rescue them.

To be clear, our members have shown a great deal of adaptability and commitment over the past few years by taking on the provisions of the additional function order. They have taken on a wide range of skills for urban search and rescue, technical rescue, mass decontamination—they deal with chemical, nuclear and biological incidents—water rescue and line rescue, although rope rescue is probably a more accurate description of what we do.

Our taking on water rescue resulted from the additional function order, which specified that the fire service was to rescue people who were in danger of “serious flooding”. However, it did not specify what it meant by the words “serious” or “flooding”. That issue was raised in a parliamentary debate in which the then Minister for Community Safety, Fergus Ewing, specified that it meant areas of water that would usually be classified as dry land.

That raised an issue in Perth. I do not know whether you know Perth particularly well, but part of its flood defences flood football pitches that are usually classified as dry land, so the responsibility to rescue someone there falls to the fire service. The nearby bank, however, is not an area that is usually classified as dry land, so, in theory, the responsibility of the service ends there. If somebody is trapped in water in what was the river, the additional function provisions do not apply. That is complete and utter madness. We have always advocated that, if people are trained to deal with flooding from moving water, they should be able to use their skills anywhere.

There are two good examples when it comes to water rescue: the Clyde through Glasgow and the Tay through Perth. None of the provisions is statutory, and one of our fears is that, with a shrinking budget, a new board will withdraw into its shell and fulfil only its statutory functions. Water rescue is therefore vulnerable. It is a huge asset to communities, and we should be doing far more of it; we should not withdraw from it. However, it is a fact that a line in the legislation gives difficulty.

In our submission, we advocate that the legislation should not try to gaze into a crystal ball and decide what the service will do in the future; rather, it should include the broad principle that we should “Save Life ... Protect Property” and “Render Humanitarian Services”. The other supporting documents, such as the fire service framework, can go into more detail. To pick up on a point that my colleagues made earlier, that detail should be encapsulated in the integrated risk management planning that the service must do.

Humza Yousaf: Thank you for that detailed answer.

You have touched on shrinking budgets and functions being under threat if they are not included in statute. I assume that firemen and firewomen do their jobs in such a commendable manner that if somebody was in danger at the banks of a river, they would go in and help them, even if that function was not prescribed. I do not assume that any of your functions have been hindered thus far, although they may not be in statute—or perhaps they have been and the question is open. We have had shrinking budgets over the past few years. Do you have examples of that having happened?

John Duffy: Chief Officer Sweeney touched on an incident that related to Strathclyde. I will not go into its details, but the sheriff was the first person who made the link between a mineshaft and a building. Prior to that, the additional function order mentioned things such as urban search and rescue, which would be considered as a result of a structure that had collapsed. All the training was based on that.

I will put the ultimate question back to the committee: somebody needs to tell the fire service what they want it to do, as we are doing things piecemeal at the moment. With shrinking budgets—again, this has been referred to this morning—firefighters were moved out of Fife’s borders in the previous financial year and into other authorities to avoid redundancies. So many people with line rescue capabilities were taken that Fife has effectively lost its line rescue resource.

If we look at things strategically across Scotland, which a single service will be able to do, we can decide how many people need to be trained, so eight services will not all try to be jacks of all trades. A strategic view can be taken across the country, and resources and specialisms that come with training costs can be shared out.

There are examples that you ask about because of the shrinking budget, but ultimately it comes down to having a clear definition of what you want the service to do.

The Convener: We have received that clear message from a previous panel.

Lewis Macdonald: I think that both John Duffy and Sarah Duncan have commented on discussions with those who have been involved in designing the bill and progressing it over the past few months. What indications have you had thus far about the jobs that will be removed with the likely changes? How many firefighters and
members of Unison do you expect to be removed to achieve the savings as part of the amalgamation? What indications about that have you received thus far?

Sarah Duncan: Unison has not been given any numbers for jobs at risk. I understand that we had a meeting with people last week to raise some concerns about the bill, particularly about the position of staff who are currently employed by local authorities to provide services to the fire boards. Their position is pretty unclear. They might well carry out some of their duties for the local authorities and some for the fire and police boards. Are they going to be transferred or not?

The Convener: What people did you meet? Is it a secret?

Sarah Duncan: No; there was a meeting with someone from the project team to talk about workstreams and the implications for human resources departments.

Discussions are at an early stage. Obviously, we are keen to hear what numbers are being kept in mind. At the moment, it is just speculation based on the savings that were detailed in the outline business case, which has been roundly criticised. There is a lot of scepticism about the figures that were used in that outline business case, particularly about the provision of £4 million for redundancy when that is compared with the huge sum that has been put aside for redundancy in the police service. Given the current state of the jobs market, there is great scepticism about whether people would be prepared to put themselves up for voluntary severance and give up their jobs.

Lewis Macdonald: I suppose that, with around 1,000 non-firefighter staff, you will be able to estimate what some of those figures might mean for the number of posts. Could you share the numbers with us?

Sarah Duncan: No; I do not think that we have done a hard calculation or a head count of the number that would be affected, because there has been no apportionment between the non-uniformed staff and the uniformed staff. If a trade union says that it thinks that 500 or 600 jobs are at risk, that will inflame our members’ opinions. We do not want to do that because we want to make the integration work. It is not in anyone’s interests for us to whip up fears where they should not exist.

John Duffy: Unlike our colleagues in the police service, we do not hear politicians talking about protecting the number of firefighters in every one of their speeches. We would like to hear that even just once; that would be nice.

The Convener: You were looking straight at me when you said that.

John Duffy: We welcome the fact that the Government has put into its proposals a commitment to protecting the front line but—this has already been said—the outline business case has been roundly turned on by everyone. Some of the numbers that are in it simply do not allow for the protection of the front line and financial savings; it will have to be one or the other.

At the moment, we and the service are doing a great deal of work to try to design the new service. It would probably be better if it worked that way around. We need to design the service and see what comes out from it.

One of the areas that is of particular interest is incident command. Our senior officer members, as well as having their day job, which might be in one of the departments that is now seen as replication or duplication, respond to operational incidents. The incident command structure is vital to the outcome of incidents and, particularly from our perspective, to firefighter safety. We need a certain level of incident command to safely conduct operations that are, by their very nature, dangerous.

Another area that we hear about frequently is our control centres. We represent members in the eight control centres, and we keep being told that that is the wrong number. Again, it might be a better idea to figure out the right number before we start to have that conversation.

12:00

The savings to be made through the proposals for control centres are minimal in comparison with the capital outlay that will be needed to make the changes. For example, if the radio system needs to be reprogrammed, that will have a £1 million-plus price tag. Changes to control room staffing have a potential cost implication for the service, and at a time when we are trying to protect money it seems pointless to spend capital money in order to save a considerably smaller amount of revenue money.

All of that fits with the idea that, once we know what the role of the new service will be, it will be easier to determine how many people we need and where we need them.

Lewis Macdonald: That all makes a lot of sense. It makes sense to start with the design of the service and then to work through the consequences for the people who work in it. Is the timetable that has been set adequate to allow that to be done properly and in a way that produces savings without an arbitrary cut in the number of posts that reduces the efficiency of the service?
**John Duffy:** The response to that question would be, “At what point do you want the savings?” Undoubtedly, there are savings to be made from restructuring. I would argue that the fire service has never stopped changing and modernising. Taking 1 April 2013 as a snapshot, some things will be in place that will make it look and feel like a single service, but a great deal of work will still be going on in the background to move to a single organisation. As I mentioned, we will, no doubt, have people in the wrong place. There is currently no facility within our pension scheme for early retirement, we have an undertaking from the Scottish Government that there will be no compulsory redundancies and there is a very limited pot of money for voluntary redundancies. I am not sure how that can be manoeuvred quickly. If you are looking for a longer-term saving, there are savings to be made from reshaping the service so that there is more capacity at the front end and less capacity at the upper end. The question is when you want the savings to be delivered.

**Roderick Campbell:** Your written submission makes it clear that you see a scrutiny role for the Scottish Parliament, but you do not say an awful lot about the size of the board, its membership or what input of local experience it should have. Perhaps you can clarify for us your views on the board.

**John Duffy:** Another of my lines that was stolen by the first panel of witnesses was that the board should be about quality, not quantity. Experience not just of the fire service but of scrutiny is vital, and the board must contain people who know the questions to ask. The board will need some members with fire service experience—they will know where the answers are hidden—but it will also need members with experience of scrutinising accounts and the like. That is the balance to be struck, and we would be resistant to seeing the board as a care home for elderly chief officers, for example. A broad range of experience will be required on the board to ensure proper scrutiny.

One of the difficulties that the service has got itself into currently is that it exists within a closed circle. The current joint boards or unitary authorities appoint a chief officer as their personal adviser and—I mean no disrespect to the officers, the boards or the councillors—once they have received that advice, it is all but impossible for them not to take it because they have employed that person as a professional adviser. They then get the same person to develop a policy, to implement the policy, to run the policy, to measure the policy and to report back on how well the policy has done. Guess what—everything is always rosy in the garden. We have seen that veneer come off in the Highlands and Islands recently, and that situation is far from unique. The current scrutiny arrangements are far from ideal.

We are looking for a process that means that, as well as getting vital professional advice, the board has an opportunity to get other views. As representatives of the uniformed side of the organisation, we think that we have a role to play in terms of that board.

The relationship with the local authorities has been raised this morning. We think that it is right that scrutiny starts at the basics of the service, which is at the fire-station and ward levels. In the proposals, the fire service has a clear route through its structure up to the board, but there is a less clear route for the ward councillor with regard to where they would take issues. Some of that will come out through the pathfinder work, which will consider whether there should be a local board, a council sub-committee, a joint board for the fire and police services or whatever.

It is vital that the fire and rescue board is able to link up with the chief inspector of the advisory unit, representatives from COSLA, the professionals who deliver the service and so on to ensure that the scrutiny is all encompassing.

**Roderick Campbell:** What do you envisage being in the local plan?

**John Duffy:** At the moment, each service has an integrated risk management plan. Some of the services create a local plan that is based on an individual station and sets out what that station will do in order to meet the overall plan. We see that happening on a different scale. Instead of there being service plans, there will be a national Scottish plan, and each station will continue to develop its individual work, because that varies from station to station. The work does not necessarily vary from service to service or from one local authority area to another, but two neighbouring stations could have quite different risks. Planning must be based at station level. As stations are grouped in local authority areas, however, it is right that the planning that is done at station level is pulled together so that the councillors can see what the stations in their area are trying to deliver.

There should be a national vision of where we are all going, combined with practical, station-based plans that set out what the stations will deliver and that are clustered together to form a local plan for the local authority.

**Sarah Duncan:** As well as all the recommendations from the FBU about the need to obtain the widest possible spectrum of advice and professional input, it is important that the board reflects the geographical diversity of Scotland. Unison has concerns that the board is too small to ensure that there is proper representation from all
parts of the country. We think that 11 is too few, and I think that we are suggesting that there be up to 20 people on the board, which would still be manageable and would ensure that every area is represented. The majority of people on the board should be democratically accountable. We think that the principle of local democratic accountability should not be lost when you move to a national service. Ensuring that ward councillors have a power of scrutiny in relation to their local station meets that principle, but we think that that approach needs to feed upwards and become a fundamental principle of the composition of the board as well.

The Convener: We need to think about whether we are looking at representation or the scrutiny of a national fire and rescue plan. We have raised that issue with the police board as well. Having so many local members on the board creates difficulties because, for a start, they do not all agree with one another. I do not know how you pick a local member who will represent the thoughts of their council.

Lewis Macdonald: When we discussed the matter with some of those interested in policing accountability, they pointed out that policing services might well be delivered on a regional basis and therefore there might be a mechanism for regional representation on a national board. Could that apply to fire services? If half the members of a national board were to be locally accountable, how would that accountability be achieved?

Sarah Duncan: Currently, when local accountability from local authorities is needed on national bodies, it is done through COSLA. The councillors, through COSLA, have their fights, and then represent the body. COSLA representatives are on the ministerial advisory group, so why create a new mechanism when there is already a system in place?

The Convener: Are all councils members of COSLA?

Sarah Duncan: I think that they all are now.

The Convener: There was a while there when they were not. It comes and goes.

Sarah Duncan: Yes.

John Duffy: We are less concerned about geographical representation than about governance. Ultimately, the Parliament has a role to play—that has been referred to. In my time as a senior office bearer in the Fire Brigades Union, I have been involved in preparing documents for a number of parliamentary debates, and there is a clear interest in the Parliament in what the fire and rescue service does. You are democratically accountable to the people of Scotland, and this is about the ability of the Parliament to scrutinise the legislation, the framework document that will drive the strategic plan, and the strategic plan itself.

It is vital that at some point the board, the chief and others sit here in front of a committee—not necessarily this one, although the Justice Committee would be the best place for it—and tell you directly what they planned to do, what they have done, what they have not achieved, and how they will plug the gap in the next year. That is how we see the democratic basis of the board being considered.

The Convener: Yes, you state that in your written submission.

Graeme Pearson: We have covered many of the items that I wanted to question you on. You have just talked about democratic governance, and on page 5 of your submission you present options for the Parliament's involvement. I do not seek to put words into your mouth, but you mentioned a “veneer” of scrutiny. Are you frightened that the bill replicates such a veneer and hence you want the Parliament involved, or is there another reason for wanting that involvement? I would be grateful to hear from both members of the panel.

12:15

John Duffy: You have hit the nail on the head. We do not want to import our current scrutiny levels and systems. Audit Scotland is clearly in vogue, but in its 2007 report it considered what the previous fire boards had done and came up with two key points: the lack of understanding of the service, and the fact that there was an overreliance on the word of the chief officer. To address the lack of understanding, all the boards were given training, by the chief officer, so dealing with one problem has exacerbated the other.

The Convener: Even we can see that there is something ironic about that.

John Duffy: Absolutely. A councillor's understanding of what they are expected to scrutinise the chief on has been derived from information given to them by that chief. That fails straight away.

I know that the convener did not want us to get into the Highlands and Islands situation but, throughout a five-year period, the Fire Brigades Union told the board there that a problem was going to arise. All the stations had been upgraded, but the training department had not, so there was nobody to train the people who were expected to do the job. That was a disaster waiting to happen. It took a lot of effort, influence and pressure, including from some of our MSPs, to get reports published that had been held in secret. They
should not have been secret, because the board is a public organisation.

We cannot have that in future. We are absolutely clear that we have no fear of a board that is made up of people who spend their time scrutinising the service, not going to other, seemingly more important, committees—the ones that get you re-elected, such as the education, housing and planning ones. We want proper scrutiny. We have no fear of a single board, but it must be looking over its shoulder and coming to the Parliament to answer questions.

Colin Keir: I am interested in Mr Duffy’s comments in his written submission about firefighting at sea and the cuts in the coastguard service. Will you expand on the possible resource implications? What resources already exist in the fire service, what might you require and what might happen in the longer term if there are further stresses to the coastguard service budget?

John Duffy: In the fire station in Lerwick, there is a room allocated to firefighting at sea, with all the equipment hanging up. However, after 1 April, it will be quite sad because there will be nobody to use it, as there will be no funding. Funding for that came from the Maritime and Coastguard Agency, which ultimately means the Department for Transport in Westminster. That funding has been cut so, in effect, there is now no budget. The element for the fire service was about £140,000—it was not a huge budget.

Once again, we come back to the question of what we want the service to do. Does the Scottish Parliament want the service to deliver that particular service? That is part of the issue about whether we protect the front line or the structures. The reason why we are here discussing the bill is that the Scottish fire conveners’ proposal to have four years of cuts and then to merge the bits that were left was rejected in favour of merging the service to protect the front line. That was the right choice and it was the choice of most of the mainstream parties in the election. We were delighted that the manifestos had an emphasis on protecting the front line.

The service that the member mentions is part of the front line. It is not a bolt-on. The issue is part of the question that was asked earlier about functions. We have the functions of dealing with fires, preventing fires and dealing with road traffic accidents, and then a series of bits that bolt on seemingly at random. We must decide what the role will be and then protect that. A key issue in that is about protecting infrastructure. We already have infrastructure in place. If we let it go, we could end up in a couple of years with something like the Waverley route or tram project, in which we try to put back infrastructure that our forefathers ditched.

The Convener: Sorry, but you mentioned the Waverley route. It is going fine, believe you me.

John Duffy: Yes, but my point is that, if we had not lost the infrastructure in the first place, we would not need to put it back now.

The Convener: I am with you there, absolutely. You are my friend. On you go.

John Duffy: The decisions on the coastguard were made elsewhere, but the Parliament must consider how to replace that service. Can we replace it if we let the infrastructure go? Could the fire and rescue service assist with that and take on the function as part of the wider rescue remit?

Colin Keir: This might sound mildly party political, but if we take forward your recommendations to enhance the sea rescue service, another place may decide that it is a good opportunity to cut completely the coastguard service, as it is known at present. We would end up with a longer-term funding problem, simply because another place deems it to be appropriate to cut the funding completely as we set the service up.

John Duffy: I will try to avoid party politics—

The Convener: Heaven forfend that the Parliament should do that.

John Duffy: We would need to consider the fact that there is a referendum coming up and whether that would change our entire approach to any of those things.

We already have people who are trained and equipped to deliver that service, and they will be hanging up their jackets on 1 April. Does the Parliament want that to happen, or is it prepared to put in some of the funding to maintain that service? That is a straight choice, but it leads us on to a whole other gambit: you must tell us what you want us to do.

The Convener: We will leave it at that.

Jenny Marra: That is perhaps the answer to my question about functionality, but I also want to touch on the command and control elements. Since I joined the Justice Committee, I have learned more about and been very impressed by the gold command structure and how big incidents are dealt with. I also understand that between half and two thirds of non-uniformed staff will go through natural wastage, and about a third of the command and control staff will leave.

Do you both think that there is sufficient provision in the bill to maintain a properly efficient command and control structure at local level? When there is a big incident, the public rightly expect that there will be sufficient expertise in the service. Does the bill provide for that?
You heard me ask about prevention earlier. Does the bill make sufficient provision for the fire prevention elements that your members are so good at?

John Duffy: The short answer is no and no. Some of the figures for command and control are contained in the outline business case; I think that is where the figure of a third of members in control rooms comes from. However, that does not take account of the fact that, in order to do that, you would need to make substantial capital changes to the disposition of control rooms at present.

There is a perception that, because the firelink radio system allows a control operator in any one of the control rooms to speak to any fire engine anywhere in the country, the operator can mobilise engines across the board. That is not the case, and to make changes to allow that to happen as part of the firelink set-up would come with a significant contractual cost.

That said, if the new service decides to move away from the current eight control rooms in their current locations, there are two things that you need to think about: how many people you would need in order to staff the replacement control room, and what you would do with those who are not going to move. The service would not be located in the same place, so you would need to redeploy those people and give them another job. The savings from control rooms that appear in the outline business case are not going to happen.

With regard to prevention, when we initially approached the functions we were considering that, for every intervention function the fire service has, it should have a corresponding preventative function. We could therefore end up with an act that has a great long list of things that the fire service is supposed to do, and then people such as me—who are trained to pick holes in lists—will tell you all the things that you have not listed that we are not going to do.

The Convener: We could always put in the phrase “inter alia”.

John Duffy: Well, you could.

That is why it has been suggested that we do not go down that route and instead have a broad-based function, part of which, however, would be that every intervention would have a corresponding prevention. Our members are really good at water rescue—you know, the jumping-in-the-rivers bit—but it might be worth while spending some time and effort talking to people about not getting into that difficulty in the first place. That applies to a whole range of operational incidents.

Sarah Duncan: We, too, think that command and control cannot be maintained at the current level if support staff are cut by a half to two thirds. As I said, they are as essential to the service's smooth running as the uniformed staff. For example, they maintain the stations and the vehicles, procure supplies and equipment for people and ensure that the staff are paid. You can get rid of half the staff, but it will not mean that half their tasks will disappear with them; they will still need to be done, and that will simply increase the workload and pressure on remaining staff. As we have seen in the national health service and local government, if you cut too far, too fast and too deeply during the transition period when back-office functions are being reorganised, efficiency declines all round. We should be learning lessons from other service redesigns and how services have been integrated and shared in other parts of the public sector to ensure that we do not make the same mistakes when we create the single fire service.

John Finnie: I thank the witnesses for their responses, in particular the FBU for its positive suggestions for the future.

I want to ask about employment relations. Mr Duffy mentioned the Highlands and Islands, and I must put on record that the difficulties experienced in that region are not down to the FBU, which has been and continues to be very constructive in that respect both locally and nationally. I found Chief Officer Sweeney's comments on this issue to be very compelling; indeed, he seemed to be outlining some kind of employment relations nirvana. I hope that when he leaves here he will keep that spirit up and encourage his colleagues to do the same, because what he described is certainly not my understanding of how things always work. If that is the new way, that is good.

In its submission, the FBU mentions the “new and active social partnership approach” that the Scottish Government is encouraging but, in the next paragraph, it says that “the deletion of Chapter 9” of the 2005 act will be bad for its members. Mr Duffy, will you tell us what that is and what the implications will be for your support staff colleagues?

John Duffy: Chapter 9 of the 2005 act sets out the Scottish ministers’ ability to establish a national negotiating body in Scotland. If you had more than one service and you were to bring your terms and conditions negotiations to Scotland, you would need to have something in place to ensure consistency across the country. We are aware of the argument made by the bill's drafters that if there are no multiple services you do not need a negotiating body; one employer will negotiate with the employees. As we represent the uniformed
employees, we are obviously interested in that relationship.

We are concerned that if the new employers were to create a new body to negotiate local—by which I mean Scottish—terms on a basis other than the current one, in which the FBU negotiates for the uniformed staff, we might end up with no negotiations at all and industrial relations strife. Our suggestion that, in the case of the fire service, the minister should have oversight of any negotiating mechanism that is put in place to determine Scottish conditions, to ensure that it meets the stated aims in the consultation and transitional framework document of basing future industrial relations “on shared recognition” blah blah blah, is trying to avoid such a situation. We want to ensure that whatever is suggested by the new employer reflects the aspirations of the Scottish Government and will meet with the approval of the minister.

12:30

Sarah Duncan: There is a precedent in NHS Scotland whereby the partnership arrangements are in statute. That industrial relations model has been widely praised and has been in very successful operation for 11 years. It seems to Unison that we have an important opportunity, when we are setting up the new organisation, to make absolutely clear the basis on which industrial relations will proceed. Being more prescriptive in the bill would help that. It would build on the partnership working that is already taking place in the service.

John Finnie: Do you both think that the bill should specifically mention agreed facilities for union officials?

Sarah Duncan: Yes.

John Duffy: Yes.

John Finnie: Never ask a question when you do not know the answer.

Let us move on to a couple of other points. Mr Duffy, in relation to the power to enter premises, your written submission talks about how public trust should be reflected in employment rights. Can you explain that further, please?

John Duffy: There is currently a very high level of trust between firefighters and the public. Firefighters carry a warrant card and have a range of powers of entry and, at an operational incident or in support of an operational incident, they can enter a property without a warrant. We do not believe that that level of trust between the public and firefighters is reflected in the current discipline regulations that we go under.

Previously, we had a system that was probably more akin to a court martial but it required a high level of burden of proof. Currently, we have what is basically the Advisory, Conciliation and Arbitration Service minimum code of practice, and we do not think that that is sufficient for employees who are put in a position of trust by members of the public. For example, if a firefighter is at a fire incident in somebody’s home and that person says, “I had a Rolex watch sitting there and it has disappeared,” the burden of proof is only the balance of probability. We suggest that that needs to be enhanced. The discipline code that is currently in vogue within the fire service is insufficient and needs to be renegotiated.

John Finnie: My next question is, again, for both of you. There is a suggestion in the FBU submission regarding the final appeal over discipline and grievance. Can you comment on that, please? Is that an issue for Unison as well?

Sarah Duncan: It is less of an issue for us because our members do not find themselves in the kind of situations that John Duffy has described—positions of trust in the homes of members of the public and in businesses. We expect that there would be a final right of appeal for our members to the board, which is their ultimate employer. That is the standard that is applied elsewhere in the public sector.

John Duffy: We currently have a range whereby staff in some services have a right of appeal to their employer and staff in other services do not—in effect, they are dismissed by an officer and their appeal goes to an officer. We think that it is a basic right for someone to have an appeal to their employer, which is why we included that in our submission. We think that the ultimate appeal should go to the board.

John Finnie: My final question is about the ongoing discussions with the fire service about the various workstreams to bring about a single service. Do you both believe that you are sufficiently engaged in that process with management—if I can use that term—or is there room for improvement?

Sarah Duncan: I have only recently taken up these responsibilities and my personal experience is that the engagement is good, although it is at an early stage. As we move towards day one, next April, things will get more tense, but I hope that the good working relationships that the unions have had over several years will be maintained.

John Duffy: It is appropriate to congratulate our senior lead officers within reform on the approach that they have taken as they have engaged consistently with us over the past few months.

The FBU is now actively involved not only in the four workstreams, but in all the work that is being
done under those workstreams. That is extremely encouraging and we are very optimistic, which is why we are pushing for that approach to form the basis of industrial relations in the new service.

**The Convener:** I have a point of clarification. Mr Duffy, you talked about the burden of proof and then you went on to the standard of proof. You gave the example of the theft of a Rolex. You said that the standard of proof was the balance of probability, not beyond reasonable doubt, which is the standard in criminal law. However, the burden of proof is a different issue. Who is the burden of proof on? Is it on the firefighter or the householder? I am not quite sure what point you were making.

**John Duffy:** It used to be the case that an internal discipline case was, in effect, a court martial. There was a high level of order to the process and it was very clear. For example, someone would be told that they would be charged with a specific breach of conduct and it was very clear. For example, someone would be told that they would be charged with a specific breach of conduct—I think that there were 13 breaches that it was possible to be charged with. Now, under the ACAS code of practice, someone can go into the room thinking that they have been accused of one thing, but it changes halfway through. We are not calling for the bill to be prescriptive, but we are looking for protections to be built in.

**The Convener:** I just wanted to give you the chance to clarify your point.

I have a final question about operational matters. It sounds parochial, given that I have a Borders constituency, but it relates to the whole of the south of Scotland and the border with England. At the moment, what would happen if there was an incident such as a large fire in Berwick? Would Lothian and Borders Fire Brigade get over there from Hawick or wherever? Will what happens now change if there is a single fire and rescue service?

**John Duffy:** Interestingly, despite all the discussions that we have had about borders and lines on maps, when someone dials 999, those boundaries just disappear. There is no restriction to prevent crews from crossing between fire authority areas or from going to and from England. There are certain fire stations in the Borders where the fire engine will come out of the doors in Scotland and will take a route through England to get to an incident in Scotland.

**The Convener:** That is right.

**John Duffy:** Boundaries make no difference at the moment, and we do not see them making a difference in the future.

**The Convener:** It will be reassuring for people who might think that there could be a big stramash about the issue to hear that, operationally, you do not think that the situation will change.

I thank the witnesses very much for their evidence.

Graeme Pearson has indicated that he would like us to ask the Scottish Parliament information centre for an additional briefing on the bill. Will you elaborate? We will see what the committee has to say.

**Graeme Pearson:** I hope that committee members agree that, on the basis of the last two evidence sessions—particularly the evidence that we got last week from the Auditor General for Scotland and the worries over accountability and governance that we heard about today—there might be some value in SPICe producing an options paper on how democratic oversight of governance might be delivered in the future.

**The Convener:** We are all nodding in agreement. That is fine.

**Graeme Pearson:** Can I supplement the question that I was going to ask Sir Hugh Orde? Would you allow a letter to be sent to Sir Hugh asking him whether he feels that, in the future, there will still be a need for a strategic command course delivered from Bramshill and whether he sees any value in it being part of the selection criteria in a future Scottish police service? I am just suggesting that we ask for his view.

**The Convener:** I do not need to write to him to ask that because it is on the record. We can simply point out to him that he can respond, if he wants to, in additional evidence, which anyone can provide at any time.

**Graeme Pearson:** Thank you.

**The Convener:** Well done, Graeme. I must admit that you find ways of getting things under my radar.

**Graeme Pearson:** Without a warrant.

**The Convener:** Yes.

Is this another supplementary, John?

**John Finnie:** An elephant never forgets; neither does Graeme Pearson.

One of the benefits of evidence sessions is the opportunity that they provide to cross-examine witnesses. It would be valuable to get Sir Hugh Orde’s view on the requirement, which has long been seen in some quarters as a thorn in the side of the Scottish police service. I wonder whether there is a need to balance that by asking the staff associations in Scotland about it, too.

**The Convener:** No, I am not going to enter into a discussion about, “Let’s ask this and let’s ask that.”

**John Finnie:** It is the same question.
The Convener: The evidence is on the record, so if the staff associations want to comment on it, they can. I will not write to them. I am sure that they will look at the record as they consider their evidence. Anyone who wants to comment on any evidence from any witness to this committee can do so through supplementary evidence.

Our next meeting will be on Tuesday 20 March. We will continue to gather evidence on the Police and Fire Reform (Scotland) Bill, and will consider the draft Evidence in Civil Partnership and Divorce Actions (Scotland) Order 2012, which is an affirmative instrument. We will also consider—I know that members are really looking forward to this, so gird your loins—an issues paper, namely part 2 of the Criminal Cases (Punishment and Review) (Scotland) Bill. The meeting will start at 9.45 am, just to keep members on their toes.
Police and Fire Reform (Scotland) Bill: Stage 1

09:57

The Convener: Agenda item 5 is our final evidence-taking session on the Police and Fire Reform (Scotland) Bill at stage 1 before we hear from the cabinet secretary. I am sure that members are all sorry to hear that.

I welcome to the meeting an array of councillors: Councillor Ian Blake, convener of Dumfries and Galloway police, fire and rescue committee; Councillor George Kay, convener of Fife police, fire and safety committee; Councillor Martin Greig, convener of the Grampian joint police board; Councillor Iain Whyte, convener of Lothian and Borders police board; Councillor Ian Ross, vice-convener of the Northern joint police board; and Councillor Stephen Curran, convener of Strathclyde police authority. I thank the witnesses for their very full written submissions.

We will move straight to questions. If a committee member does not direct a question to a particular witness, anyone who wishes to answer it should indicate as much to me and their microphone light will come on automatically. If anyone else wishes to come in, they should indicate as much; I will make a note and come back to them.

Colin Keir is first up. Perhaps he is wearing his councillor hat.

Colin Keir (Edinburgh Western) (SNP): Yes. I declare that I am a member of the City of Edinburgh Council.

The Convener: I am so sorry, Colin—I should say that Martin’s surname is actually Greig, not Grieg. I was thinking of the composer.

David McLetchie: The culture committee beckons, convener. [Laughter.]

The Convener: Indeed. Now, people, we are all going to settle down—me included.

Colin Keir: We have started off well this morning, convener.

Good morning, gentlemen. Various submissions that we have received have commented on the fact that, at the moment, the chief constable produces a report that is then discussed by the board. As a result, you effectively hold the chief constable to account. How effective is such an arrangement in this day and age?

Councillor Iain Whyte (Lothian and Borders Police Board): I will begin, but I am sure that others will want to chip in. As I understand it, the process that you have described varies slightly in different ways between different boards. In Lothian and Borders, for example, we have beefed up support to the board by ensuring that it can seek independent advice and research when looking at reports. We are also aware of the Scottish policing performance framework, which provides information across the different board areas that we can use for background comparison.

10:00

My board has taken steps to look at performance and scrutiny in different ways. We have tried to compare our area with areas in England of a similar size and with similar population demographics, in order to get good comparisons. We do not look at just what the chief constable tells us; we look outwith that and scrutinise appropriately, based on a mixture of things.

Councillor Ian Ross (Northern Joint Police Board): Another gauge is best-value reviews, which have been carried out by Audit Scotland and Her Majesty’s inspector on quite a number of the boards in the past three years. A lot of weight was laid on the challenge to chief constables, the contribution to strategic vision and the way in which board members engaged. Northern joint police board came across well in that process.

Councillor George Kay (Fife Police, Fire and Safety Committee): Yesterday I contributed to our best-value audit—we were the last in line—so I must be fairly consistent with my responses. The best scrutineer—as far as boards are concerned—is the unitary authority.

As I said yesterday, the whole process is not particularly good and not done well. That is mainly because the resources that are available to the chief constable are substantial but the resources that are available to our board are negligible—in fact, they are non-existent. We do not have a budget. We must rely on the chief constable to bring us exactly what we should get, in the way we should get it, so that we can question robustly. The new Scottish police authority must take that on board. In 2008, the Justice Committee pointed out that that should be done. The SPA must have robust criteria to hold the new police service to account. That must be reflected at a local level, throughout the 32 local authorities.

Colin Keir: In the accountability process there are situations where security clearance of particular members of a police board is set at a low level. Previous evidence has suggested that there is very little of the required accountability in police boards, because of the security level. Can I have your comments on that?

Councillor Martin Greig (Grampian Joint Police Board): Grampian Police and Grampian
joint police board did very well out of the BV2 audit. The board was commended for robustly and vigorously holding the chief constable to account, while representing the views of the three local authority areas across the north-east. No problems around vetting have come up.

I note that a main impetus for police reform seems to be a move to increase the level of councillor involvement in police scrutiny and decisions. That activity will obviously be on a new scale when more councillors are involved. I emphasise that the effect of holding the chief constable to account has brought good results to the north-east, as we are one of the lowest-funded forces but have one of the best records of performance in fighting crime. We effectively and efficiently make the best use of resources, and it is good that the auditors have commended us for that.

Councillor Ian Blake (Dumfries and Galloway Police, Fire and Rescue Committee): Good morning. Like John Finnie, I declare an interest as a holder of a police pension.

In relation to the first point, we do not solely rely on reports from the chief constable: in specific instances we call for reports, and there is a good level of scrutiny as far as that is concerned.

Security vetting has been increased in recent years. The involvement of Her Majesty’s inspectorate of constabulary for Scotland, especially on counterterrorism matters, has led to an increase in the security vetting of members. Work with the National Policing Improvement Agency has also improved the level for certain members of the authority. I do not see that issue being an insurmountable problem.

The Convener: You mentioned in passing calling for reports. Do you have a specific example?

Councillor Blake: We had a difficulty with the ports unit at Stranraer when the Scottish Government reduced its police staffing levels. The authority recognised that there was an issue and called for specific reports that looked at the matter along with the UK Border Agency.

Councillor Whyte: I will sum up the position. Although people may have some concerns about the fact that boards largely get their reports from the chief constable, I assure you that my board calls for reports. I can think of three or four issues from the past few meetings, including concerns relating to police station front counters and some additional work that was carried out on the potential reforms to combine the Lothian and Borders Police mounted section with the Strathclyde Police mounted section and best-value issues. More important were the reports on issues such as the use of regulation A19 of the Police Pensions Regulations 1987 to retire police officers after 30 years and voluntary redundancy schemes. The board is proactive on a whole host of matters.

A number of our members have been vetted and I attend the force’s security committee from time to time to bring oversight to that. There is not a problem with vetting: it is a matter of getting it in place. The key aspect for me in relation to Mr Keir’s question is that I do not see the situation as being any different from that in any local authority committee where the information comes from local authority officers, or that in a health board or other government institution where the information comes from within the organisation. That information is scrutinised using auditors and external and research help, but the information must initially come from within the organisation.

Councillor Ross: My understanding is that our convener and vice-convener have had additional vetting. I do not know at what level, but the issue was raised with us.

Over the past year or more we have called for reports on call handling, domestic violence, police involvement in diversionary measures, absence management—although that was for one of our working groups—and regulation A19 and its application.

Councillor Kay: I take on board what my colleagues have said, and in Fife we are proactive in bringing forward things that we want to hear about from the chief constable and the police service. Nevertheless, at the end of the day, we have to rely on the chief constable and the police service to give us factually correct information. We cannot start to query that.

I do not think that any of us are vetted at a particular level. I know that Mr Pearson has an in-depth knowledge of the Scottish Crime and Drug Enforcement Agency. I sit on the Scottish Police Services Authority board but my vetting for that board is not sufficient to allow me to comment on the SCDEA—only the chief constables who sit on that board can do that. There is a limitation to what we can do.

Colin Keir: Councillors Whyte and Ross made the point that some people on police boards are vetted. Does the fact that only a limited number of people are vetted to a particular level show the inadequacies of the police board system in relation to full accountability?

Councillor Greig: It is important to bear it in mind that we are democratically elected representatives. We are not professionals; we are there in a lay position to represent the public. We are not, and should not try to be, professionals, because we are there to represent the average citizen on the street.
Grampian Police has responsibility for oil and gas policing and royalty protection on royal Deeside. The area has an international airport. We deal with all kinds of terrorism and with serious organised crime gangs that come from England and abroad. All those issues are high risk, and we deal with them effectively through a positive partnership between the force and the board. It is clear that, in the past eight years, we have achieved very good results with a very low budget. That needs to be borne in mind.

The boards have built up a great deal of expertise and the clerking function has built up the professional aspect. I am not yet clear about how that will transfer to the new local policing committees. It is important for the committee to think about that, too.

Councillor Stephen Curran (Strathclyde Police Authority): Mr Keir has asked an important question. I do not think that "inadequate" is a fair word to use to describe the current situation. There is a balance to be struck in relation to operational needs. Councillor Greig mentioned counterterrorism and serious and organised crime, on which it would be inappropriate for us to know as much as the chief constable and the senior officers know. The balance involves what is publicly accessible, what we can discuss in the police board setting and who is vetted.

Strathclyde police authority has a dedicated staffing function that is distinct from that of the 12 councils in Strathclyde. The authority’s chief executive is vetted to deal with security issues and senior police authority members who chair meetings might be vetted, but we sometimes want to have a public discussion, which means that we cannot have a wider discussion about the most crucial issues of operational need for the police. I understand the point, but vetting is not an insurmountable issue.

Alison McInnes (North East Scotland) (LD): I am interested in the panel’s views on the bill’s proposals for national governance. We have heard contrasting views from previous panels about whether the proposed number of members of the Scottish police authority—between seven and 11—is anywhere near adequate. We have also heard different views on whether elected local authority members should be represented on that board. I would be interested to hear a range of views from the panel.

Councillor Whyte: I start by echoing our written submission. We were looking at having a larger board size than seven to 11 members, which is based on our experience. My board—Lothian and Borders police board—has 18 members, which works reasonably well. If that was slimmed down, running committees and so on would become difficult. A board of seven to 11 members would be rather tight; we recommend having more members.

The Local Government and Regeneration Committee has looked at the issue in detail and has suggested to you a larger number—at least 15 or 16 members. A figure of between 15 and 18 is probably reasonable.

It would be really helpful to involve people with local government experience and to have the link back to communities, particularly when the idea is to have local policing committees, which are to represent local views on policing and hold the local commander to account. The problem is that not enough of a link is made in the bill and not enough detail is in the proposals to make clear how the arrangements will work. To safeguard such a link, one basic point that the committee might look at is ensuring that at least some members of the new authority bring local government experience to the table.

The Convener: Do you have a proportion in mind? Would such people form a majority or a minority?

Councillor Whyte: We did not come to a view on that. Other witnesses might have their own views.

10:15

Councillor Kay: The number of members of the board is interesting but not a killer. My own submission is that it should have 13 members. I am prepared to live with 11 as I do not think that that figure represents an insurmountable problem.

We have to get professional input on the board to scrutinise the police service. By professional input I mean professionals from various areas of life, including professionals from local government. I do not mean necessarily paid officials but professionals such as those represented on the panel—people who have experience of local government. Their input is essential. They do not have to be in the majority, because when people go into the boardroom they have to leave their hat behind—whether it is their political hat, their geographical hat or whatever—and become a member of that board. I hope that the professionalism that people display is what is important rather than whether they represent Auchtermuchty or wherever. It is essential that that professionalism is a feature at all levels.

Councillor Curran: The important point is what the police service is for. The main thrust of what the police do in Scotland is community-based local policing, so it is fundamental that people who have a democratic mandate, legitimacy and accountability at local level are on the national
it is also important to have people who are not elected but are on the board because of their expertise. However, they may become specialist and may home in on something almost as a hobby-horse. We are compelled to have a wider interest because of our elected mandate. It has been acknowledged in some of the committee’s discussion on the bill that non-members of the authority might take part, so there is almost an open admission that the number of members specified for the authority is too low.

Councillor Blake: On the proposed number of members on the authority being between seven and 11, our own police authority has 11 members, so we work with that system now. Given the geographic spread of Dumfries and Galloway, travelling is difficult at times. Resilience is therefore an issue, as it can be difficult to get enough members to have a meaningful board meeting. Our view as a local authority was that probably anything up to 15 members would be appropriate. Although we as conveners did not come to a decision about whether there should be a majority of conveners on the police authority, my own local authority supports the suggestion that there should be a majority of local authority members.

Councillor Greig: The number of members that is being proposed is much too small. There is a very significant democratic deficit in the new set-up, because policing is a local government function. We rely on community policing to operate according to the principle of policing by consent. That means that decisions on budgets and performance relating to police forces need to be made locally.

Naturally, therefore, we in the north-east have very considerable concerns about losing that democratic oversight of our local police force, because over the years we have fought very hard to stand up for policing in the north-east. In 2004 we won a very good deal from the Scottish Government, which has brought almost £7 million extra to north-east policing, thanks to the very hard work of successive police boards and politicians in the north-east. Recognising that £1.5 million extra that should have come to us went to Lothian and Borders—

Councillor Greig: The point is that we fight for our local areas. The value of the local boards is that we have somebody to bang the drum for policing in our areas. There will be no access to a remote quango of seven to 14 people, so people will no longer be able to influence police resources or police performance issues.

The Convener: I have a feeling that you have undermined the case for having councillors on the SPA—there would be a scrap about whether money should go to the north or to Dumfries and Galloway. I would be batting for Dumfries and Galloway—I used to live in Minnigaff, so I know what Councillor Blake is talking about.

Colin Keir: We just heard a very impassioned speech for the north-east, yet, as was pointed out earlier, for the main board people go in and leave their geographical allegiances at the door. That is part of the problem: how do we square that circle?

The Convener: Yes, that was my point. We will let you mull over that, Councillor Greig.

David McLetchie: I was just going to ask a follow-up, actually.

The Convener: I think Alison was going to pursue it. Can we let her do that, as she opened this up? I will put you on my list, David.

Alison McInnes: I want to pick up on something that was said about the resolution of local plans, the interface between the national board and the proposed local arrangements and how silent the bill is on some of those points. If panel members could elaborate on what they would like to see to improve the situation, that would be helpful.

The Convener: We will come back to that one. David, do you want to go back to the question of representation on the SPA that was opened up?

David McLetchie: I just wanted to ask a question that might be appropriately directed in the first instance to Councillor Whyte, although other members of the panel might have a view. Members will recall that last year there was considerable controversy about forensic services and the proposals to close police labs in different parts of Scotland. I think, Councillor Whyte, that that directly affected Lothian and Borders because of the Howden Hall lab. You were also a member of the SPFA, so in a sense one might say that the sort of conflict of interest highlighted in the previous question might have arisen. That might be the case for some others on the panel, too. Will you describe how you managed to leave your hat at the door and come to a national view that might not necessarily have been favoured by your colleagues on the Lothian and Borders police board?

The Convener: Focus on conflicts on interest, please. Forensic services are a good example.

Councillor Whyte: Two of us—me and Councillor Kay—are members of the board of the SPSA. By virtue of the way in which we are
appointed to that board, we are required to work corporately and to take the interests of the SPSA and its efficiency into account rather than anything else that we bring with us. Although we bring knowledge and experience of policing governance from elsewhere, we are required to take the interests of the SPSA into account. When we considered such matters, I was required to consider them in the interests of efficiency across Scotland, but not necessarily in the way that I would have done so with colleagues had we been lobbying the case for having a lab in the city of Edinburgh available for direct use by police officers from Lothian and Borders.

David McLetchie: Will you remind me of the composition of the SPSA and the balance between councillors and non-councillors?

Councillor Whyte: There are two councillors who are conveners—myself and Councillor Kay—two chief constables and five independent board members, including the convener. We are all appointed by the Cabinet Secretary for Justice but four of us are stakeholders of the Association of Chief Police Officers in Scotland and the Scottish police authorities conveners forum.

David McLetchie: Sorry. Councillor Kay, did you want to say anything?

Councillor Kay: I do not think that I ever had any conflict of interest. Fife does not have a forensic lab, nor does it need one.

The Convener: That made it easy for you, then. That does not help you.

Councillor Kay: We have the facilities in Edinburgh, Dundee, Aberdeen and Glasgow at our disposal, depending on where exactly the case happens. I would echo what Iain Whyte said: it is essential that the board of the SPSA—and that of the SPA, as we go forward—takes into account what is best for Scotland, what is best for forensic services in Scotland and, finally, what is best for police services in Scotland, rather than maintaining the geographical entity just because it happens to be in Edinburgh.

The Convener: Councillor Curran, you wanted to come in on this point about conflicts of interest.

Councillor Curran: Councillors deal with conflicts of interest every week in the bodies and boards that they sit on. For example, my police authority board in Strathclyde has 12 councillors on it but, collectively, we are Strathclyde police authority, covering half of Scotland, rather than individual councillors. That is an important point: when you are in that meeting, you have the wider perspective. We could bring that to the national board in a way that independent members with a particular interest or hobby-horse perhaps could not.

The Convener: I will move on to Alison McInnes, who wanted to ask a different question.

Alison McInnes: Just to finish the debate, Councillor Greig has been accused of undermining the case for elected members on the national board—

The Convener: I alluded to that.

Alison McInnes: To be fair to Councillor Greig, he might want to come back on that. I think that he was making the case for how effective the existing police boards have been rather than arguing about the proposed new national board.

The Convener: He has not indicated, but he can chip in if he feels that he must defend his corner.

Councillor Greig: I wanted to come in with a comment on the SPSA that relates to the point that has just been made. A centralised body such as the SPSA or the SPA needs a clear understanding of its policies on crime fighting. We already have in place excellent policies and an excellent business model in the north-east.

The danger with a centralised model such as the SPSA is that it focuses attention on areas of high-volume crime and particular areas that are perceived to involve high-profile crime-fighting issues such as sectarianism and knife crime. Such issues do not concern us hugely in the north-east.

Unless the policies target the various patterns of crime across Scotland, that model will not work. The SPSA has proven that to be the case, because one of its first decisions was to close the forensics laboratory in Aberdeen. It is clear that in the past eight years—with crime falling, detection rates improving and good performance in various other areas in the north-east—the forensics lab has played a vital part in keeping crime down. It is the absence of crime that is the measure of successful crime fighting and policing, not whether all your resources have been pushed towards the intractable problems. That indicates failure rather than success, and you need to look at successful models such as the ones that we have used in the north-east.

The Convener: You have certainly punched for the north-east today, I will tell you that.

Councillor Kay: I take completely the opposite view from Martin Greig. [Laughter.]

The Convener: At last the truth is out.

Councillor Kay: We are all taking political stances of one sort or t’other, but if you asked the professionals about the particular instance that Councillor Greig mentioned, they would say that the north-east of Scotland would not be hit one wee bit if there was not a lab there. The area would still get the same service that it gets from
Dundee, day after day, week after week and month after month.

**The Convener:** I will move on from what seems to be developing into a feud. Alison McInnes has another question.

**Alison McInnes:** I have another question about the interface between the national board and local arrangements and the local authority committees under the proposals in the bill. The bill does not go into great detail about how any difficulties—for example, between the national policing plan and whatever was in the local plan—would be resolved. Have panel members had a chance to think about that?

**Councillor Ross:** The important thing is that it is not just about numbers in a room. There is a real focus on the number of people who might be able to participate, which can be important, but the crucial thing is the substance and influence that those people have. There is no clarity on that as yet.

The wider links are important, and there are issues about how any conflict will be resolved. All those areas need further clarity. Some of the pathfinder work that is currently taking place will be significant and there are opportunities too, particularly with regard to how we forge better links with community planning partnerships.

Some partners—particularly the NHS—will willingly come to the table, and there are things that we can get from that. However, some other partners, such as the Scottish Ambulance Service, are somewhat unwilling to come to the table at present, and we need to find ways to resolve that situation. The SPA has the robustness, the size and the professional expertise to be able to engage with the local policing committees or whatever structures come from that model.

**The Convener:** I will take Councillor Whyte, followed by Councillor Greig and then Councillor Kay. Do you want me to move you apart from each other yet, or have you made it up?

**Councillor Whyte:** Do I need to sit between them?

**The Convener:** You can sit in the middle if necessary.

10:30

**Councillor Whyte:** Alison McInnes is right that the bill does not say anything about structures. I was asked the same question at the Local Government and Regeneration Committee. The panel that I was on at that meeting had a lot of policing professionals and some outside people, but I do not think that any of us said that we should have fixed dispute resolution procedures. The problem with those is that we would get into dispute resolution very quickly. However, we do have to have political and other mechanisms to resolve things.

On best practice, in Lothian and Borders we have five constituent authorities, each of which sets out a local policing plan with the local commander. The local council and the community planning partnership come together to do that. So, we already have a model that is quite similar to local policing, but it must fit within the overall Lothian and Borders plan that is developed by the board and the chief constable and through public consultation.

For me, what is lacking is how the new Scottish police authority intends to get the information on which to set a national plan. Aspects of that are local consultation and working with local scrutiny committees and people, and consulting the public. There is also stuff around the professional policing side. At the moment, there is a Scotland-wide policing plan, which is built up from the local level with input from a unit in ACPOS. The Scottish policing plan then goes out for consultation before being agreed. There would have to be something like that and some way of consulting local authorities to ensure that the elements that they required were in a new national plan.

Local authority areas must also continue to be allowed to be different in some ways. There are considerable differences within Lothian and Borders in that regard. For instance, the Borders is a very sparsely populated geographical area, but the city of Edinburgh is rather different, as it is the capital city. Roads policing and traffic accidents are a much higher priority in the Borders and are written into the local policing plan in a way in which they are not in other areas of Lothian and Borders. That kind of local flexibility must remain.

**Councillor Greig:** The local aspect is an important issue. We currently have three divisions in the north-east and the new set-up would create almost three chief constable areas from the three divisions. I believe that there is a significant risk ahead of us because divisional commanders will be responsible through the command-and-control structure to their chief constable but will also in some way be accountable to their local authorities, so they could be pulled in two directions. That is a real concern, particularly when all the key decisions will be made by the chief constable and the new Scottish police authority.

Each of the three divisions that we currently have receive a relatively equal share of the precept. According to the grant-aided expenditure figures and the number of people in each of the three areas, they each get about the same level per head for policing. The new set-up will have to have some kind of resource tracking system to...
ensure that each of the divisions gets a fair share of the funding. There is a danger that there will be a separate specialised unit that will bring police specialists into an area from some centralised resource. Currently, we have them spread across the north-east—geographical distance is an important factor—because by having them present we are able to deal with crime much more quickly and effectively.

Tracking police resources will be crucial in the new set-up and will be difficult; tracking the deployment of resources to tackle crime and improve performance will be extremely difficult, too.

Councillor Kay: Fife’s being a unitary authority means that I sometimes have difficulty understanding the problems that boards have, because Fife does not really have such problems. As the pathfinder group goes forward, I hope that it will model the system that Ian Blake and I have in our unitary authorities and consider how we deal with problems between the chief constable and the chief executive—that is difficult—

The Convener: That was recorded. There was no point in whispering it.

Councillor Kay: I look forward to boards and local authorities looking to the Fife model, as part and parcel of the pathfinder group.

We are considering what will happen when we get to the gigantic problem, which we will face, and who will resolve it, but we should do much more than that; we should put our efforts into avoiding the problems, by introducing deterrents.

The issue that still needs to be addressed in the bill is communications between the SPA and the 26 or 28 local authorities—whatever the number. That is crucial. There must be robust, two-way communication, because the scrutiny groups in local authorities must have the same zing that we expect the SPA to have. In my submission, I suggested a fostering approach, along the lines of what happens in the Metropolitan Police, where a member of the Met board looks after a number of local authorities. Something like that would be important to ensure that communications are robust.

Councillor Blake: I will briefly go back to something that George Kay said—today must be a day for going against George—

Councillor Kay: That happens every day.

Councillor Blake: George Kay said that we are all here to relay our political stances. I am not here to relay any political stance; I am here with a mandate from my board, which is cross party, to put forward its views.

On the question about the potential for conflict between the national board and local committees, an element of devolved local budgeting flexibility might aid the situation, by giving us the opportunity to hold the local police commander to account, tackle local policing issues and work towards meeting our single outcome agreements. Such an approach would allay concerns about conflict.

Councillor Curran: Councillor Blake has made an important point. People in Scotland want to know what the police in their area do. They also want to know how much resource the local police have, but if the money is controlled at national level, where is the scrutiny of the 32 councils’ local policing arrangements?

If local policing arrangements are important, why does the bill say so little about the issue? The current approach means that a council’s policing arrangements could be very different from its neighbouring councils’ arrangements. There is an imbalance in relation to who is setting the priorities at local level and how that is dealt with at national level. If the budget is nationally controlled, it is difficult to get buy-in at local level and true accountability.

The Convener: I have a list of members who want to ask questions; I will take you in order, because people have been waiting a long time [Interruption.] I see that Rod Campbell wants to be in the list. You are too polite; you must be more brusque with me.

Graeme Pearson (South Scotland) (Lab): Let us be brusque, in that case. I want to cover three areas: budgets and staff numbers, national accountability and the democratic deficit, and local arrangements.

We are moving towards change in April next year. It is important for police boards to understand their current resources and budget allocations. Do you want the current approach to be maintained next year, as the single entity progresses, or should there be some form of national allocation on the creation of the single police service? How will that work?

Councillor Curran: The question relates to what the budget is actually spent on. Some 88 per cent goes on officers and staff. We know that savings have to be made in terms of reform this year, never mind next year. There is a different balance in different areas—there are eight different balances across the country. For example, Strathclyde Police has 2,000 staff to 8,000 police officers and Lothian and Borders Police has 1,500 staff to 2,500 officers. That means that, if it is the staff that bear the brunt of the reform through voluntary redundancy, Lothian and Borders Police will take a much bigger hit, pro rata, than other parts of Scotland.
To almost fudge the answer to your question, I would say that we need a bit of both. We need clarity on the bigger national picture and we also need somebody to say what the best balance and the best use of resources would be. We are allowed to make decisions as eight distinct entities, but no one is saying what the national force would have that would enable it to provide the best policing and the best support function with a reduced budget.

**Councillor Whyte:** This is precisely where the strictures that the Government has placed on police authorities and on the reform programme are causing a problem: the number of police officers has been specified and there are to be no compulsory redundancies. As you heard from Councillor Curran, around 85 per cent to 90 per cent of the forces’ budgets goes on staffing costs, which leaves us very few options. Furthermore, many of us have already made efficiency savings. Over the lifetime of our board, we have made efficiency savings of £20 million on a budget that is now about £170 million, which is a considerable saving. We have already considered all the hard choices. It is difficult to see how we will go about producing the savings, without being given some leeway.

Things are not equitable at the moment—this is where I might disagree with Councillor Greig, although he might have the same issues as me. The grant-aided expenditure release of resources to police authorities has not changed since 2004, which is a considerable time, but populations have changed a lot in that time. Because of that, Lothian and Borders Police is, in effect, underfunded. From day one, the new chief constable will face a problem in setting out the arrangements, and they will probably become worse. The worst thing that could happen is for all 32 local authorities to use their police committees to argue that they need more resource, because that would get us into a zero-sum game of arguing against each other.

**Councillor Greig:** It will be important to be able to monitor resources in the way that has been done before. People will want to know what is happening to their assets—not just the officers and staff, but the buildings. The police reform programme promises great savings, but those figures have not been related to local impact. It is getting close to the time when people need to know how those savings will affect us in our local police forces.

Grampian Police has made huge efficiency savings. In response to the police board’s call for more police officers, the chief constable created about 45 new police officer posts. That was a local autonomous decision. However, in the future, if we make local efficiencies, that money will go into a central pot and might be deployed elsewhere, which means that we might lose the incentive to make efficiencies as well as the benefits that come from making them.

**Councillor Kay:** What we do in relation to the budget will depend very much on the progress we will make in the next 10 to 12 months. If, in that period, we make an early appointment of the chief constable and the chair and membership of the SPA, the situation would have a completely different flavour from the one that it would have if we made the appointments at the end of the year. If we make them at the end of the year, the chief constable and the board will be able to consider only what we need from 1 April 2013. However, if the appointments are made earlier, there will be an opportunity to look at the budgets. If the appointments happen later, it might be wise to leave the budget exactly as if it were going to the local authorities, with the same sums of money. In that case, we should not change anything in the budgets—we should do only what is required for 1 April 2013. As I said, the issue depends on exactly when the key positions are filled and operational, and whether that happens in time to make the decisions.

10:45

**Graeme Pearson:** At an earlier meeting, the Auditor General raised the notion of democratic governance at national level. He talked about how the relationships between the minister, the convener, the board and the chief constable will operate. From your experience of the SPSA and how it has been governed in the past few years, are there any lessons that we should bear in mind? Is there a role for Parliament or for any other organisation in calling the new single police force to account?

**Councillor Whyte:** For me, the big thing that is missing is how local communities will hold the new police service to account. Although we will have local committees, we do not know how much power they will have. At present, the boards set the budget for the chief constable and monitor that on behalf of local communities, and we hold the chief constable to account for their performance. One important thing that we do is dip sample complaints. We also appoint diversity lay advisers and lay custody visitors. There is a host of checks and balances at local level. The service is made to account locally for the ethos of policing in each neighbourhood. I do not understand how we will get those democratic checks and balances in the new system.
The current tripartite system is often criticised because it is not exactly clear where accountability lies. That is true in a sense, but the system also has strengths in that we get things done by agreement. Pressure is put on the chief constable when things are wrong and there is pressure to fix things; the minister and the Government will apply pressure if they think that local authorities are not resolving an issue. The new structure seems to me to be very hierarchical. There is talk of Parliament having a role, but I am not sure where it will fit. If the SPA’s role is to bring governance and accountability, what is the role of Parliament in overseeing that? It does not really fit. The appointments will be made at the behest of the minister, so surely the minister will have the governance role. The question how that will be monitored is perhaps for the Parliament.

**The Convener:** Part of the role of parliamentary committees is to hold ministers to account in a cross-party way. It is a backstop. I do not suggest that that is the way we will go on this issue, but we do that already, I hope.

**Councillor Whyte:** Would you stop ministers interfering in operational matters? I do not know. Who would judge that?

**The Convener:** I do not answer questions here. I just ask them.

**Councillor Whyte:** I put it as a hypothetical question for the committee to consider.

**The Convener:** I do not want to interfere with the flow of question and answers, but I am conscious of the time. The witnesses are giving us interesting information, but I ask them and the questioners for shorter questions and answers, because we have a big agenda to get through. I apologise to the members who are at the end of the queue.

**Graeme Pearson:** I presume that all the local checks and balances that Councillor Whyte rehearsed could be maintained under the new arrangement, overseen by the local committees.

**Councillor Whyte:** That is possible, but the key thing at present is the power to appoint the chief constable and the power to get rid of them if they do something wrong. There is also the power to set the budget and elements of the budget. Those are the meaningful bits, but they are being taken away from the local level and local authorities.

**Councillor Greig:** The issue is really that we should find out what we can learn from the SPSA. There is a clear lesson to learn about transparency. I make a heartfelt plea for the SPA to meet in public and to publish its minutes, agendas and all of its business. The current tripartite arrangement is not a very neat-looking solution, but it works very well. What is at risk in the future is policing by consent as a local government function, so transparency will help to give some kind of reassurance and safeguard to communities.

**Humza Yousaf (Glasgow) (SNP):** On Councillor Greig’s point and regarding local divergence, could I get one word on how many times a year each of the local authorities that are represented here meet their chief constable in open public forums?

**Councillor Curran:** Every meeting is held in public. Only specific items that perhaps have commercial confidentiality—

**Humza Yousaf:** How many times a year is that?

**Councillor Curran:** The board meets roughly every six weeks, and there are open committees. We also try to move around Strathclyde and not meet only in Glasgow, which is obviously the most central point for people. However, it is important to be seen to be out and about and to try to engage more fully with communities, as came through in the best-value reports. That would be difficult for a national authority to do without buy-in from local councils at policing-arrangement level.

**Councillor Ross:** All Northern joint police board’s meetings are in public, are publicly webcast and are archived, so there is full access to our meetings.

**The Convener:** Rather than go round everybody individually, can you just confirm that all your meetings with chief constables are in public?

**Councillor Greig:** Yes.

**Councillor Whyte:** Yes.

**The Convener:** How often do the meetings happen? How often do you call the chief constable to account?

**Councillor Ross:** We probably meet five or six times a year.

**Councillor Whyte:** The meetings are six times a year in every local authority.

**Councillor Greig:** I think Grampian joint police board meetings take place between eight and 10 times a year, and we circulate around the three local authorities. We also have, I think, four complaints and four best-value committee meetings. However, those are often augmented and there are many other committees as well.

**Councillor Kay:** I agree with Martin Greig that it is not just about the eight times a year that we meet formally. The Fife committee has 20-odd meetings in which we appear in public together and answer questions.

**Councillor Blake:** In Dumfries and Galloway, we have board meetings monthly that alternate
between police and fire. In effect, there could be between six and 12 meetings a year.

Humza Yousaf: Thank you for those answers. I understand the point about localities, which we are focusing on at the moment. The quality of the meetings is as important as the quantity, in some respects. The Police Service of Northern Ireland said to us a few weeks ago that it holds about 10 meetings a year—which seems to be about what you guys do—that are open and accountable and to which the public can come. They hold the meetings in different parts of Northern Ireland.

One witness said that you need quality over quantity. I know that there are differences of opinion among the witnesses but—apart from local elected members—who has to be on the SPA board?

The Convener: I thought that we had dealt pretty well with that issue, Humza. There is no consensus about the balance between councillors and experts, but there is consensus that there must be both experts and councillors on the SPA.

Humza Yousaf: I suppose the question is this: who are the experts?

The Convener: Do the witnesses have specific suggestions?

Councillor Kay: On elected members, the English police authorities have a 50:50 split or a 49:51 split, depending on the authority. I was in Vancouver recently, where I went to see the police authority, which is split in the same sort of way. Those authorities appoint people who have experience in finance, human relations, strategy and so on. All the professional expertise that is needed to run a Government or local authority will be reflected in the police boards in some manner, shape or form.

Councillor Whyte: I agree with Councillor Kay’s point about professionals. The only other suggestion that I would throw in for the current reform is that there be someone with change management experience.

Humza Yousaf: You mean “transition” management. [Laughter.]

The Convener: I am being enticed to ask why you have never wanted MSPs on the SPA, but I do not think that I should ask.

Councillor Kay: MSPs are barred.

Councillor Greig: It is about the separation of powers.

The Convener: Indeed.

Humza Yousaf: It is clear from the answers to my question that there is divergence in local approaches. Some meetings are webcast, all are open, some take place six times a year, and some take place 10 times a year. You work with local circumstances, and you no doubt do that very well.

The fact that there is not enough definition in the bill of local accountability measures has been mentioned a lot. Would it be better to leave local boards and local authorities with flexibility than to have set structures that might be too inflexible?

Councillor Curran: That is why the approach in the bill has been taken. The Government wants more councillors to be involved in local accountability, but there is no guarantee that that will happen. That is the risk. In some places, the pathfinders have the same number of councillors. There is a risk that the bill’s saying nothing about that means that it is worth less.

Councillor Ross: It is important that there is not a large and ineffective talking shop; there needs to be something with substance and influence. The real test will be whether it has those—reassurance on that is needed. Clarity in the bill might give such reassurance.

Councillor Greig: The concern is that the SPA and the chief constable will make the key decisions about resources and deployment of officers, so local committees will have a passive-reactive role in scrutinising what has happened rather than a role in driving forward the priorities for local policing in their areas.

The Convener: I cannot see any of you gentlemen being passive and reactive for one moment. You seem to be quite robust.

Councillor Greig: That is our job.

Councillor Whyte: Mr Yousaf is right to ask about local matters. There is the suggestion that local committees should mirror community planning partnerships. Conveners who represent wider areas are asked to visit local community planning partnerships throughout the board areas. I have been around them; they are not democratic, but are full of chief executives of organisations.

Councillor Curran: Absolutely.

Councillor Whyte: There is a big democratic deficit at local level. We do not want to be prescriptive about how local committees are brought together, but I make the plea that they be truly representative and democratic.

Humza Yousaf: Perhaps we have touched on the point that I am about to make; the convener can tell me not to pursue it further. Is the difficulty that we must have either all 32 authorities or none represented? People will gun for their areas. As much as people like to take off their geographical hats, it seems that it is difficult for them to do it, as has been somewhat exemplified.
The Convener: Do not open up that issue again; they have all become friends again. Councillor Kay and Councillor Greig are happy again, so do not stir things up.

Rod Campbell and Lewis Macdonald have been very patient. Jenny Marra and John Finnie may also ask questions, but I want to bring the discussion to an end after that.

Roderick Campbell: Good morning. From your experience, where is the boundary between operational independence and proper scrutiny and accountability? Has that caused you difficulties in practice?

Councillor Curran: The simple answer is that everything costs money and we can ask questions about everything, because we are responsible for the budget and we are the employers. We employ everybody who delivers the service. It is therefore difficult for operational excuses to be put forward if we want to ask questions.

Councillor Kay: I might take a slightly different view from the view that Stephen Curran takes. A question is raised in my submission. We have to define at an early stage what is and is not operational. Regardless of how nice we might think a certain toilet paper is, it is quite feasible that the chief constable might decide that its purchase is an operational matter, so we would no longer have responsibility for it. It is essential that we sit down early and define “operational”. I am sure that there will be a grey area in the middle, but there should be a discussion, because it is important that the SPA or a local board does not get stymied.

Councillor Greig: Operational independence is crucial. I want to flag up a concern about the new reformed structure, which is intended to increase the number of councillors who are involved in decisions about policing. I am concerned that the new committees could politicise policing by creating substantive council committees that are based on the political complexion of a local authority area. Holding your local commander to account could involve questioning operational activities and policing campaigns and, as a council committee, people could take political perspectives on policing matters. That is a real danger that must be considered for the future.

11:00

Councillor Whyte: I will use the example of the climate camp at Gogarburn, the public furor around that and the number of police officers who were seen by the press to be standing back and not taking action. It was not for me or the board to tell the chief constable how to police that event, who to arrest or what to do. Afterwards, however, it was for us to ask how much money he had spent, whether his tactics had been successful, how he would do it next time, how we might improve and whether the action had met what the public wanted—that is, did the protesters get to protest without the public being overly disrupted and did everyone remain safe?

Councillor Blake: To follow on from what Martin Greig said, in a unitary authority there is a risk that a political perspective could form as the proportion of members reflects the make-up of the administration, but in the five years for which I have been convener that has never been an issue.

Roderick Campbell: Do I take it, then, that none of you has had a problem with such a distinction in practice?

Councillor Whyte: No.

Councillor Greig: No.

Councillor Curran: The important point is that the chief constable has to be open to accountability. We are quite fortunate in that the chief constable who came to Strathclyde was, to put it bluntly, used to more robust accountability in England in the Metropolitan Police. He is used to being questioned. There could also be tension in that we could stray into areas that might feel like operational matters for the chief constable but on which we might understandably want answers. As long as the chief constable understands that we have a right to ask the question, he has the responsibility to answer.

The Convener: It has been put to us in a different place that police boards and fire boards seem to be overawed by the brass and the scrambled eggs. Can I take it that none of you has ever been overawed? I see Councillor Greig shaking his head.

Councillor Whyte: I like one of the things that I—and, I hope, lots of others—do at every board meeting to be to ask the chief constable a question that they do not know is coming and to which they do not necessarily know how to respond. The relationship is reasonably friendly most of the time, but there will be disagreements and we are quite right to have such disagreements from time to time.

The Convener: Are those disagreements in public?

Councillor Whyte: They are in public. Sometimes the chief constable looks quite grumpy at board meetings.

Councillor Kay: Sometimes I do, as well.

The Convener: I do not make witnesses grumpy, I hope.

Lewis Macdonald (North East Scotland) (Lab): We have heard in previous evidence that
some of the practical strategic decisions in policing in the future in a single force will still be taken at what you might call regional level—in other words, in Glasgow and Strathclyde, out in Grampian or in any of the other regions within which the police will operate. What, in your view, is the best way to secure scrutiny and accountability, for example on road policing for a region of Scotland that might go significantly beyond the boundaries of a single council and for which the police decision-making process goes beyond the boundaries of a single council? Is that best done by an association of local committees from the bottom up, or by some form of regional collaboration or devolution from the national police authority?

Councillor Curran: That is where the pathfinders have been very helpful. For example, the three Ayrshire councils are used to being policed in an Ayrshire setting and Argyll and Bute has road traffic as its top priority in the Strathclyde setting. They want the priority that will be given to that at national level to be reflected in the local policing plan. It is really important that the national authority understands how it is responsible for engaging at local level, but it is also really important that local councillors have clarity on what they must do to ensure that the communities that they represent are also involved in the process. The onus for that is not just on the national authority.

The Convener: Does anyone else wish to comment? No? That is good—[Interruption.] Do not feel obliged to comment.

Councillor Whyte: I agree with Councillor Curran.

The Convener: That is fine.

Lewis Macdonald: That was a very clear answer, but I want to pursue one point a little further. If both the national authority and the local community have responsibilities, what is the interface? Argyll and Bute is easy and obvious, in a sense, but when areas such as the three Ayrshires have a common interest, how does democratic accountability work, as opposed to the police command structure?

Councillor Curran: The situation is a bit ad hoc. The other risk is that the police force will be set up in such a way that we have a regional command structure. How will that be accountable? Will it be accountable to the chief constable, who will be accountable to a national authority, or will there be regional buy-in? I am not saying that we should recreate the joint boards that we have just now, but there is certainly room for a more collective approach. The Convention of Scottish Local Authorities and individual local authorities could look at how that might best be done. That would be helpful in the next few months.

Councillor Ross: The pathfinders will be significant with regard to how the structure evolves. The crucial thing is how we harmonise the feedback from those groups so that it has a significant influence on the structures that develop as the new service and the new authority come into being on 1 April. There is a timing issue, and we must ensure that everything matches up.

Councillor Whyte: To amplify that, we need people on the new police authority who are prepared to challenge the chief constable on how he is taking into account local need, building local policing plans into the national plan and appropriately resourcing local areas to meet their own priorities.

The Convener: Jenny Marra has been very patient. I will make this the last question.

Jenny Marra: I am looking for evidence on the gender balance in the boards and authorities. Can each of you tell me quickly how many of the elected members on your police boards or authorities and fire boards are women, and how many are men?

The Convener: There are cats among pigeons—they are having to think their way through that one.

Councillor Curran: There is certainly not a gender balance. We also have substitute representatives from the councils, who tend to be slightly older, male and white. Although we have ethnic minority members in our authority, from a gender balance perspective only about a quarter—at best—of Strathclyde’s board members are women.

Jenny Marra: The figure is about 25 per cent in your authority.

Councillor Curran: Yes, and that is not good.

Councillor Ross: I would echo that. The vast majority of the Northern board members are male and are probably even older than me.

Jenny Marra: Can you give numbers?

Councillor Ross: The percentage of women is probably 25 per cent or less. The same applies to the substitutes, so it varies.

Councillor Whyte: About a third of Lothian and Borders board are female.

The Convener: Councillor Grieg? Sorry—it is Councillor Greig; I have reverted again.

Councillor Greig: Grampian’s figure is something similar, but I cannot remember.

The Convener: Councillor Kay?

Jenny Marra: I am sorry, convener—
The Convener: I will come back to the councillors, but let us go round them all first. Councillor Kay?

Councillor Kay: Six out of the 15 members of the Fife board are female. We never set out to make that the case—it depends on who the political parties nominate as their representatives.

Councillor Blake: Dumfries and Galloway's figure is 10 per cent.

Jenny Marra: Councillor Greig said that the board meets eight to 10 times a year, but you cannot remember. Can you be a bit more specific?

Councillor Greig: There are eight to 10 scheduled meetings, but we hold additional meetings when they are required—for example, to go over the single status agreement.

Jenny Marra: I am sorry. My point is that you meet so often, but cannot remember the proportion of female elected representatives on the board.

Councillor Greig: I am not good with maths.

Jenny Marra: Okay.

The Convener: I feel that Councillor Greig has had a bit of a hard time today, for reasons that I do not understand.

Jenny Marra: Okay. I will lay off Councillor Greig.

The Convener: I see that he is smiling. You have a lovely smile, by the way.

Councillor Greig: That is very kind.

David McLetchie: This is a Frank McAveety moment.

Jenny Marra: Given the importance of gender issues in policing and the figures on domestic abuse that Women's Aid released this weekend, is there a place in the bill for a quota that would ensure better representation and better scrutiny of those issues, particularly in policing?

The Convener: That is a serious point.

Councillor Curran: Diversity in its broadest sense is really significant. It is an area that has been flagged up as a weakness in some police boards and in policing generally. It covers a range of issues including sexuality, ethnic minorities and so on. To be accurate, I would say that the women on our board are probably its most active members, and probably the ones of whom I have been most wary in the meetings that I have chaired.

Councillor Kay: I honestly do not see it as being an issue in Fife. We have a fairly robust number of female members on the board. Whether the number could be doubled would be entirely up to the parties. I attend all our inauguration meetings, and I would say—in fact, I gave this information out yesterday—that if we have not reached a 50 per cent split between female and male in the police force, we are very much heading that way.

Much more problematic is the fire service, which is a very different kettle of fish.

The Convener: I will let Councillor Greig have the last word.

Councillor Greig: We take equalities very seriously as a board, and we have fairly recently agreed an equalities policy. At our stewardship committee, I and my colleagues have questioned the chief constable and his representatives about the very low numbers of female police officers and police staff. That is an intractable problem: we will have to wait for a culture change to increase the number of women who are employed in police forces. It is an issue that we have complained about time and again, because the police force needs to reflect accurately the communities that it represents. There is still a long way to go.

The Convener: I am happy to say that there are quite a lot of women conveners in the Parliament—I do not see one from a police board in front of me just now, but there might be one somewhere.

I thank you all for your evidence this morning. I will suspend the meeting for 10 minutes, as the committee has a long day ahead.

11:11

Meeting suspended.

11:21

On resuming—

The Convener: I welcome to the meeting our second panel of witnesses, all of whom are from COSLA: Councillor Pat Watters, president; Councillor Barbara Grant, community safety spokesperson; Hayley Wotherspoon, policy manager; and James Fowlie, team development manager. Have I pronounced your name correctly, Mr Fowlie?

James Fowlie (Convention of Scottish Local Authorities): Yes.

The Convener: I ask simply because I have been getting my Griegs and Greigs muddled up this morning.

I thank the panel for its written submissions and know that they listened to the previous evidence. Councillor Watters, I believe that you are stepping down in May and that this might be your last appearance before a parliamentary committee.
Councillor Pat Watters (Convention of Scottish Local Authorities): I will certainly come back if I am invited. It all depends on how I am treated this morning.

The Convener: I am afraid that no one gets called on that basis. We could be really nasty to you and still call you back before us. However, as you will find, we are a very kindly committee.

Alison McInnes: will ask the first question.

Alison McInnes: As you will have heard this morning, two themes are emerging from the evidence that we have taken: governance, and the interface between local authority responses in local planning and the national police plan. First, on the issue of governance, what is COSLA’s view on the size of and the representation on the national board? When should those appointments be made?

Councillor Barbara Grant (Convention of Scottish Local Authorities): Having carried out a considerably long and weary examination of the issue, COSLA has come to the view that a board of either seven or 11 members is not really practical. There would not be enough people to do all the business that needs to be done. Instead, we suggest that the board should have a minimum of 15, the majority of whom should be elected members.

I think that Councillor Curran made the very valid point that elected councillors have wider interests than people who are promoted to the board simply as a result of their expertise in one or other field. They will be channelled into that particular line, while the broad spectrum of interests that councillors have will be a great help to any national board. Of course, councillors would have to consider issues from a national perspective.

The Convener: Do you have anything to add, Councillor Watters?

Councillor Watters: No. That was fine. That is our position.

Alison McInnes: It would be helpful if you could say more about the value of having elected members on the board and explain how they might be chosen.

Councillor Grant: We have suggested that COSLA put forward a list of names, which would be seen by ministers before the people in question went through the national independent selection process. Of course, those people would be from all parts of the country and would all have different interests. Councillors have very wide views on everything. My particular area is policing—indeed, Mr Pearson knows me well from my days on the Strathclyde police board—but the fact is that you do not have to be a member of a board to be interested in what is going on in your local community. After all, it is not the minister who matters; it is the people you represent who matter and COSLA is focusing on what the service will provide for the people we represent.

Lewis Macdonald: I want to pursue with you a governance issue that I pursued with the previous panel. As far as local accountability or engagement with local policing issues is concerned, we are looking at a shift from eight police boards to 32 local authorities. In some respects, that is the appropriate level at which things should be done and decisions made. However, in other areas of policing, certain decisions and strategies go wider than that and cross local authority boundaries. Is there a governance mechanism to ensure that police decisions at a strategic but sub-national level can be made accountable to locally elected members? Could that be done through a combination of local authority police committees or would COSLA have to create some kind of regional focus to maintain a degree of democratic accountability at that tier?

Councillor Watters: It will probably require a mixture of the two approaches. Although a national board will make strategic decisions, there must be a measure of local flexibility. You mentioned accountability; unless there is something that the police are accountable for to local committees, all we will have will be wee talking shops. I am sorry, but I did not come into politics simply to meet once every six weeks and be told things that I could read anyway. As I have said, if the local commander is going to be accountable to the local committee, they must have something to be accountable for.

We welcome the proposal with regard to local commanders. I can speak only for my own area of Strathclyde, but our local commander meets the police authority every Wednesday morning. We sit down and have a coffee and a blether and anyone who wants to see him can come in and have a chat. Of course, there are more formally structured meetings in which the local commander meets the leader of the authority but, as a member of the authority, I can lift the phone any time I want to speak to him. If I want to see him on a Wednesday morning, I know exactly where he is: he is meeting my authority. We already have a mixture of both approaches.

I am not saying by any manner of means that the local committee should take all the decisions. A single force will have a strategic role, but there must be local flexibility and any committee holding the force to account must have some responsibilities to hold it to account for.

Councillor Grant: In this country, policing happens by consent of the public, not the minister.
the extent that, for instance, the two constables on Barra had their own overtime budget.

Resource allocation is always an issue. What resource allocation model would COSLA favour for the new police service? You touched on the tactical tasking. We heard from Assistant Chief Constable Finlay of Northern Ireland that that would be the mechanism that would be used there to resolve any issues about allocations.

**Councillor Grant:** The difficulty is that we are being told that there will be no local budgets. The budgets will all come from on high.

**John Finnie:** That happens at the moment. Within Northern Constabulary, the budget comes from on high—from the Northern joint police board—and is devolved down.

**Councillor Grant:** Yes, but it comes through a different source. When you are sitting at a police board and you know that you have X amount of pounds at your disposal, that is translated by the chief constable into an allocation for all the various jobs that need to be done. However, if the board has a different idea of what is going to be done, it can shift the money around as it suits it.

**John Finnie:** Is that not an operational matter?

**Councillor Grant:** Not necessarily. It depends on how the whole plan is worked out.

**John Finnie:** Could you give an example of where your board has taken a contrary view to the chief constable on redirecting resources away from a plan that he or she proposes?

**Councillor Grant:** No. You would really need to ask Stephen Curran, who is the convener of the board.

We have budget meetings so that, when resources are going to be brought forward, the budgeting can be looked at in detail before we get to that point, and we will say what we feel is the direction in which we want to be travelling.

**John Finnie:** To what level do you think that resources should be devolved?

**Councillor Grant:** I will defer to my colleague, who is more into the money.

**The Convener:** Generally or specifically?

**Councillor Watters:** Specifically, in this instance.

We have a preference for the budgets to be devolved down to the local committee level and the commander level, so that there is some accountability to the local authority and the local committee for policing within the area.

**John Finnie:** Would you expect the commander to devolve money below that?
Councillor Watters: Not particularly, unless that was the way in which it was done. I would see the budget as being devolved down to the local commander, so that there is accountability to the area committee.

John Finnie: Within the structure, is a decision that is taken in the police service about how to allocate resources—for overtime, for example—not an operational matter for the chief constable, the chief superintendent, the chief inspector or the shift sergeant, rather than a local commander?

Councillor Watters: I disagree. Having budgets at the commander level and not the central level is not an operational matter but a financial governance matter that relates to how the service is operated. That is not about how policing decisions are devolved or what operational priorities are set in the police area.

John Finnie: How many budget holders would be in the model that you propose?

Councillor Watters: It would involve the divisional commanders.

John Finnie: How many of them?

Councillor Watters: How many are you proposing? If there was one in Ayrshire, there would be one in Ayrshire.

John Finnie: With the greatest respect, I am asking how many budget holders COSLA proposes.

Councillor Watters: That would involve the divisional commanders as the structure is made up.

Lewis Macdonald: I will pick up the answers to my first question from Councillor Grant and Councillor Watters. A gap between the local and national levels is recognised. Is there a risk that we will end up with polarisation between ministers saying that everything should be done centrally and the other argument, which is that everything should be done at local council level? Will you address that gap in how you relate local priorities to national priorities and local budgetary decisions to national budgetary decisions?

Councillor Grant: The problem is that we do not have enough information. There is a gap between what will happen locally and what will happen on the national board. We have had no information about whether a regional structure will be in place. We do not know any of that business and we might not know any of it until a chief constable is selected. The chief constable might make the decision or the national board might make it. We do not know about that at the moment.

The Convener: All such questions will be put to the cabinet secretary when he gives evidence next week. I am sure that his staff are listening with great interest to what is being said.

David McLetchie: Good morning, everyone. I will follow up the discussion about budgets and accountability. I can speak only from direct experience of the City of Edinburgh Council and Lothian and Borders police board. The council provided additional funding to the board to employ additional officers who focused primarily on community policing initiatives. We can leave aside for a moment whether that is interference in an operational matter. The fact is that additional funding was provided; that might have been replicated in other local authority areas. Is the proposed funding and budgetary structure likely to sound the death knell for such additionality? A council will have no obvious incentive to put in additional funds for such a dedicated purpose.

Councillor Watters: Something between 600 and 800 additional police are on the street because authorities up and down the country have prioritised that in their communities, for whatever reason. What will happen to them after the transfer to a single force would certainly interest those authorities. We could be in danger of the officers being transferred under the Transfer of Undertakings (Protection of Employment) Regulations, which would mean that the local authority budget was transferred. Before that happened, I think that local authorities would take steps to ensure that the responsibility for funding those posts was not theirs but that of the single police force.

Councillor Grant: The 600 to 800 police are part of the big number of 17,234 police, which seems to be a fixed number. If local authorities cannot fund those extra posts, how will we get the 17,234? For example, my authority puts money towards campus cops, which have been a great boon—everybody says that they are great and asks why we do not mainstream that approach. If the local authorities, which are strapped for money, cannot provide money for, say, campus cops, that will be taken out. How will those 600 to 800 police officers be funded? Will they no longer be in the force, or is the number of 17,234 sacrosanct? If it is, and local authorities do not pay for the extra posts, who will pay for them?

David McLetchie: That is a good question that I would like to get to the bottom of. Councillor Watters referred to TUPE. If I understand your answers, the 600 to 800 additional officers will have their employment transferred to the SPA—the new police service of Scotland. There cannot be any other outcome. I therefore presume that the money that is presently paid for those 600 or 800 officers will have to go with them, or the budget will not work out. One assumes that, whether one likes it or not, the local authority
budget that presently pays for the employment of those 600 to 800 officers will have to be sliced off and added to the national police budget so that the national police force can continue to employ them. Is that correct?

Councillor Watters: You presume that, in our preparations in the run-up to our budgets for next year, we will leave that money in our budgets.

David McLetchie: That is correct, but you make the presumption that your overall level of grant will be sustained. If that issue and impasse cannot be resolved—

Councillor Watters: With respect, our agreement with the Government is that we transfer to the police the money that we receive for police. The additional 600 to 800 officers are the result of a priority being set in the local government budget to meet needs in our communities. That is not part of the money—the 49 per cent of the funding—that we get for police.

David McLetchie: I understand that the money for those officers is additional. My point is that your additional contribution is largely funded from a general grant that comes to local authorities from the Government. You say that I make certain assumptions about what you might pay out of your discretionary pot, if you like—which is funded in part by revenue support grant. Equally, if the additionality issue is not resolved, the Scottish Government might say that it has to continue to pay those additional officers when they are employed nationally and, whether we like it or not, it will have to take the money from the local government pot from which they are being paid at the moment and put it in another one. Am I missing something? That seems to me to be logical. I am not saying that that is desirable; I simply put it to you that it is likely.

The Convener: Councillor Grant does not seem to agree.

Councillor Grant: No, I do not agree, because that would mean that, with anything that local government decides to put money into from its general grant—to fund a dog catcher, for example—the Government can say that it will just take the money away. If that happened, the whole thing would become preposterous. We are talking about money from the general grant that councils have decided to spend on X, rather than on Y. That money has nothing to do with the police budget or anything like that.

David McLetchie: I agree that it has nothing to do with the police budget. My point is that the money has to come from somewhere to employ the people who will be officers in the police service of Scotland.

Councillor Watters: Yes.

David McLetchie: As that money presently comes out of a local government pot, if we are to continue to employ those officers, it must instead come out of a national pot. Therefore, it seems to me self-evident that one pot will be reduced to boost the other. I am not saying that that is desirable as a matter of principle; I am simply saying that it seems logical.

11:45

Councillor Watters: With respect, Mr McLetchie, there are two things. First, that money is given by agreement at present, on the basis of an understanding between the local authority and the chief constable. If we were to continue down that road, there would have to be discussion between the chief constable for Scotland and the local authorities about priorities, what we were paying for and what the police delivered for that money. If that were not the case, our priorities might change. We budget on a three-yearly basis but review our budgets annually and, if we decide to change our budgets, that is our responsibility.

David McLetchie: Indeed, and if the Government decided that it was not going to fund 80 per cent of your expenditure any more, that would be its responsibility.

Councillor Watters: That is true.

David McLetchie: That is my point.

Councillor Watters: It would also take legislation to do that.

David McLetchie: Could I—

The Convener: David, are you pursuing the same point or is it something separate?

David McLetchie: This gets us to whether some mechanism for local budgets needs to be included in the bill. As I understand it, that is one of the points that are made in the COSLA submission. We can have additionality only if we have a local budget against which to baseline it in the first instance.

I have a more general question on the proposition that there be local budgets. In his written evidence to us, Professor Gallagher suggested that, if there were a localised element to the budget, there should be local mechanisms for money to be taken out of the police pot and put into a budget for youth work, for example, if that was felt to be a more desirable way of reducing crime levels in a community. That would involve movement between a police pot and a council pot.

Councillor Grant: The money that the police gather when they catch criminals and, for example, find a case full of money in the boot of a car could go to the local authority, which could decide what it wanted to spend it on. At the
moment, such money goes to the Government, which decides what it wants to spend it on. There are all sorts of things wafting around that need to be thought about.

**Councillor Watters:** Community safety in any community in Scotland is the responsibility of more than just the police. David McLetchie is right that there might be other ways of adding to it and driving it forward.

It is not simply about the number of police that we have on the street; other elements have to be addressed. At present, the police are involved in discussions about how we enact community safety through community planning partnerships. In any new system, they need to be fully involved in that system so that we can discuss how our communities move forward jointly to provide community safety.

**The Convener:** Surely your current police budgets are used for preventative spend anyway. The police do not only catch crooks or find pots of money in the boots of cars—wherever that happens—but do a lot of other stuff. Surely that is already part of the police budget.

**Councillor Watters:** There are good examples of how that is done. I am saying that it is not just about that budget; other parts of local authority budgets go towards community safety.

**The Convener:** I understand that, but some of the police budget—if we take just that little capsule—is already spent doing those other things. It is not as if it was tightly defined as simply policemen walking about the streets capturing people and taking them back to the police station. It already does all those other things and, on top of that, as I understand from your evidence, there is flexibility from other budgets because, if you make interventions in housing, you do not have housing issues, antisocial behaviour, health issues and other ancillary problems. Is that correct?

**Councillor Watters:** Yes.

**Councillor Grant:** The business of community planning partnerships is to bring together the police, the fire service and other bodies in a way that enhances all their operations. That is happening all the time and more and more. We want to ensure that it continues to happen and continues at an even higher level, because that is what makes life better for our communities. To take fire for example, there are new alarm systems in which the fire alarm is connected into the community pendant alarm. Everything is gathered together to make the whole service better.

**The Convener:** I understand. In my constituency and the neighbouring one, because the local authorities are coterminous with the NHS, the police and so on, there is good partnership working to make the money go further and be more effective. I just wanted to clarify the issue about pots.

**Graeme Pearson:** Councillor Watters’s comments about not wanting local talking shops and about the need for people to have a budget for which they are responsible chimed with my question to conveners on the previous panel, when I asked them who should be responsible for the financial picture for their local areas during the changeover to the new force and as things go forward.

I have struggled with the issue to do with the 17,234 officers, which David McLetchie mentioned. Under the current arrangements, it seems to have been difficult to maintain support staff and management numbers, and there seems to be a disconnect between the notion of employing additional police officers and its knock-on effect, which is the loss of support staff. Is that a shortcoming in the current levels of accountability, or is it something that we will always have to bear? I read a report last week that said that we have 1,000 fewer support staff in the current set-up.

**Councillor Grant:** The savings that have been made have been achieved through redundancies in support staff, which have happened only where the support staff were not required. In future, if the amount of money must be saved that has been suggested, and if the police and fire services have a new responsibility to pay VAT of £30 million, that money must be found from somewhere.

The civil servants tell me that the calculation has already been made and the £30 million is included. However, the money has to come from somewhere, and the obvious answer is that support staff will have to go. The Government has a policy of no compulsory redundancies, so if people do not decide to take voluntary redundancy they will transfer, and the new police authority will have to manage the situation. If the authority is to make savings of the order that is being talked about, something like 2,000 support staff will have to go.

If those support staff go because the money must be saved, the cops will have to take up the slack. We really do not want to pay police, who should be out there doing the business on the street, to sit behind a desk and pick up a phone. That does not seem sensible at all.

I do not know whether I have answered your question.

**Graeme Pearson:** I could ask a lot more, but let us leave the issue there.

We have touched on one devilish issue, as has been said. There are only 12 months to go before
the single force comes into operation. Are there other devilish issues that the witnesses want to bring to the committee’s attention—issues on which we are not focusing? There were subtle differences in the views on the way forward of the conveners from whom we heard earlier. What issues does COSLA think that we should be paying attention to?

Councillor Watters: I am not sure that there are issues that you have not considered. Consideration must be given to appointing the chief constable as soon as possible, to give him an opportunity to think about how he will take things forward. The process could operate in a number of ways. The current police conveners could work jointly with the cabinet secretary to consider how to do it. The situation is not ideal, but we do not have long and there is a big job ahead of us.

We must be aware of other issues. To transfer from eight bodies to one body the number of staff that we will transfer, all with the same conditions of service that they have now, will cause us an on-going problem. We must start to tackle that problem now, so that we are prepared in taking it forward. We have to be aware of some big issues that could come back and bite us.

This might not be the right time to say it, but we are 100 per cent behind ensuring—along with the Government, the Parliament and other partners—that we have the best police and fire services that we can possibly have in Scotland. We do not want to put anything down as being problematic, but a big job lies ahead of us.

Graeme Pearson: Do you envisage that the buildings will transfer over to the ownership of the new single authority, or will there have to be a capital allocation to local authorities to reimburse them for the loss of those facilities?

Councillor Watters: We are in active discussions with the cabinet secretary about that.

Councillor Grant: A huge number of issues around assets and liabilities have not been tackled. Some buildings that the police and fire services operate from are joint buildings. Over the past few years we have gone out of our way to ensure that police, fire, health and housing services are all together under one roof. Does that roof belong to the council, to the NHS or to the police? All that mess will have to be unknotted, as it were. That will take a bit of time—it will not happen in a hurry.

The sooner that we can get a chief fire officer and a chief constable in place, the better for the services. Kevin Smith can only do so much under the transitional arrangements. It will then be up to whoever becomes the chief constable. He or she may have a particular way of going about the business that has not been thought through or considered. You cannot do these things overnight. We suggested a different way of picking somebody, because we felt that it was an important matter.

Councillor Watters: Another issue that jumps to mind is how we interact. Staff in both the police and fire services would like still to be part of their national bodies, but that will become difficult when there is a single police authority and a single fire service authority in Scotland that report directly to the Government, because the Government would be the employers of those forces. Therefore, they will not have any right to representation, or additional representation, on either the Police Negotiating Board or the National Joint Council for Local Authority Fire and Rescue Services.

Alison McInnes: Councillor Watters touched on the transitional arrangements and the Cabinet Secretary for Justice’s determination to have the single service up and running on 1 April 2013. The last time that there was a major reorganisation of local government there was a full shadow year. Is there any merit in exploring that option?

Councillor Grant: There is plenty of merit in that suggestion, but it is not what we are being engineered to do. The Cabinet Secretary for Justice is fairly determined that from 1 April next year there will be a single service.

My priority is to ensure that the service is right. It does a good job now and we want it to continue to do a good job. We do not want it to fall at the first hurdle. It must continue to be good and become better. There is no point in changing something for the sake of changing it; it must be changed to make it better. When it comes to day one, we do not want to have something that appears to be falling down. The transition should be seamless. It will be quite a tricky thing to do and there is a very short timescale in which to do it, but that is what the efforts are all about.

12:00

Roderick Campbell: I touched on the boundaries between operational and non-operational matters with the previous panel, and I got the impression that that distinction was not something that would give them any problems. In your submission, you refer to the fact that “operational” is not defined. I suggest that defining operational matters might cause additional problems and that, in reality, a lack of definition has advantages.

Councillor Grant: There are advantages because, if you are not too prescriptive, you have a bit of leeway. However, by the same token, sometimes the situation can be too open. There have to be certain parameters. At the moment, the
chief constable in my area is responsible for almost half the population of Scotland. If I want to speak to him, all that I have to do is lift the phone. I do not know that I will be able to do that when there is one force and one chief constable for the whole of Scotland.

I am sure that a lot of parameters will be engineered into the business. I do not know how the chief constable will deal with the work that happens below his level. At the moment, we do not have a clue how we are going to get from a chief constable down to the local commander. There is a big gap in the middle and we have no idea how all that is going to work. It is difficult to see how the system will be prescriptive; on the other hand, it is difficult to see how it will not be prescriptive.

I am sorry if that sounds a bit vague, but we do not have sufficient information and I do not see how we will get sufficient information until we have a chief constable in place.

The Convener: How many divisional commanders are in the Strathclyde area, which, as you say, contains half Scotland’s population?

Councillor Grant: I do not know. Maybe Mr Pearson has a better idea.

The Convener: I am not allowed to ask him, but he might just tell me.

My point is that Strathclyde contains half our population and is a very diverse area. People at the local level must deal with the chief constable. To some extent, does that not provide us with an operational model for what might happen when we have a single police force?

Councillor Grant: Stephen House is our chief constable, and there are various commanders. For example, in my area, G division, which covers the Pollock/Govan area, plus the East Renfrewshire Council area, has one commander; all the Ayrshires are under one commander; and A division has one commander. I am not sure how many there are altogether, but the system works well, and I am sure that it would not be a bad thing to build on that model. At the moment, however, we have no idea how it is going to pan out.

The Convener: I am just trying to say that we are not reinventing the wheel, as there is already a system that works in a large part of Scotland. While that situation is not exactly the same, it means that we are not starting from nothing.

Councillor Grant: I hope that we are not reinventing the wheel, but the problem is that we do not know what is going to happen. It will be for the future chief constable and the national board to decide what is going to happen.

I think that the Cabinet Secretary for Justice will say to the national board that this is the way he sees things going and that it is up to us to make it work. He says that he will not have direct contact with the chief constable, but he does not need to—he can just say to the board that he wants it to tell the chief constable to do X, Y and Z, and, in my understanding, it will have to follow his instructions.

Strathclyde Police does a good job in a wide, dispersed area. I hope that that good practice can be followed.

The Convener: I will bring this session to a close at this point.

Although I might be premature in doing so—he may be back with us, by invitation only—I wish Councillor Watters a happy future, whatever it might hold; I am sure that he is not retiring.
Police and Fire Reform (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is our final evidence session on the Police and Fire Reform (Scotland) Bill. I welcome to the meeting the Cabinet Secretary for Justice, Kenny MacAskill, who is accompanied by four Scottish Government officials. Liz Sadler is head of the policy and legislation unit; Nick Bland is head of the police reform unit; Lorna Gibbs is head of the fire and rescue reform unit; and Kevin Gibson is from the legal directorate.

I invite the cabinet secretary to make a short opening statement if he wishes to do so before I invite questions from members.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you for inviting me to speak to the committee about the Police and Fire Reform (Scotland) Bill. I will make some general comments before I take questions.

Both the police service and the fire and rescue service have done excellent work in recent years to contribute to making Scotland’s communities safer and stronger, but the Scottish Government believes that, in the face of unprecedented cuts from Westminster, it is necessary fundamentally to restructure the services to protect and improve the service that they give local communities. Single services are the best way to achieve that aim. Sir Hugh Orde acknowledged that a couple of weeks ago in front of the committee in noting the deficiencies in England and Wales of relying on enhanced collaboration to create a service that is fit to deal with the demands of the 21st century.

Over the past couple of years, we have worked closely with the services, staff associations, trade unions and other stakeholders to shape the proposals for single services. The Minister for Community Safety and Legal Affairs, Roseanna Cunningham, her predecessor, Fergus Ewing, and I have undertaken visits and meetings in communities across Scotland, from the northern isles to the Scottish Borders. We have met senior officers, the men and women on the front line, support staff and the people and communities who rely on the services.

My officials have maintained regular dialogue with all key stakeholders, particularly in the services and local government. We have drawn on best practice by hosting an international policing summit, and I have visited the Police Service of Northern Ireland, which, as members have heard, is a successful single service. I welcome the positive way in which stakeholders have engaged
with us on reform and their commitment to ensuring that it is successful. Many have reiterated that commitment in their evidence to the committee.

This is a critical time for our work on police and fire and rescue reform, and the next few months will be vital to the success of the programme to develop single services, both in progressing the bill and in continuing the vital work on implementation. As the bill progresses, I am keen that we keep listening. With the services, unions, representative organisations, the Scottish Government and Scottish Parliament working together, I am confident that we will deliver a robust, effective and high-quality piece of legislation that meets the expectations of Scotland’s communities.

The bill sets out, as never before in legislation, a detailed framework for the new services, and it will modernise the governance of the Scottish police and fire and rescue services. For the first time, the bill clearly defines the respective roles and responsibilities of the key players: the Scottish ministers, the Scottish police authority, the Scottish fire and rescue board and the chief officers of both services. In particular, it defines and clarifies the operational responsibilities of the chief constable more than ever before by making it clear that only the chief constable has direction and control of the police service and that only the Lord Advocate or the appropriate prosecutor can direct the chief constable in relation to the investigation of crime. It also makes it absolutely clear that the chief constable is accountable to the Scottish police authority, not to the Scottish ministers, and, for the first time, it provides opportunities for the Scottish Parliament to scrutinise policing and fire and rescue services on a regular and systematic basis.

The strategic police plan, the annual police plan, the SPA’s annual report and accounts and the SFRS’s strategic plan, annual report and accounts will all be laid before the Parliament. The national governance structures will also ensure an enhanced focus on local delivery of policing and fire and rescue services. I believe that the single services will strengthen the links between police and fire and rescue services and the communities that they serve by enabling individual local councils, not regional joint boards, to take on a new role at a national level and to shape services in the local area. They will do that through a range of detailed measures, for example by requiring the chief constable and chief officer to designate a local police commander and senior local fire officer for each council area.

Crucially, the bill clearly links the national and the local by providing that local authorities will be consulted on strategic priorities and strategic plans, by placing duties on the chief constable and the SFRS tied to local service delivery and by ensuring that local plans reflect national strategic plans where appropriate, all while retaining the flexibility for local authorities to develop their own models of engagement and formulate local plans reflecting local priorities and circumstances.

The bill will also provide greater integration with community planning by placing specific duties on the local senior officers. These new local and scrutiny arrangements are already being trialled by 16 formal pathfinders and I expect more local authorities to be involved in the pathfinder network following the local government elections in May.

Having given this briefest of overviews of an enormously detailed piece of legislation, I am happy to respond to any detailed questions.

The Convener: I shall take Rod Campbell’s question first. As we have a long agenda today, it would be very useful if members could ask short, sharp questions.

Roderick Campbell (North East Fife) (SNP): Good morning, cabinet secretary. Some individuals have suggested that there would be merit in delaying the timetable for reform. What is your view on that? In particular, what is your view on the merits of the early appointment of the chief officers?

Kenny MacAskill: There are two issues there. On the bill, I think it is appropriate that we have a start date, and we have specified 1 April 2013. As with anything, one has to set a date. We are clearly on course and on target and I do not see any merit in delay. If something untoward were to happen, we have fallback procedures, but at present it is important that we stick to that date. We have always made it quite clear that although some things will change and although that is the start date for a single service, many other things will take some time, and we will allow those to be operated out by the chief constable and the Scottish police authority. The start date should remain April 2013, and we are on course to achieve that.

We are obviously taking steps to try to ensure that we get the chief constable in, whoever he or she might be, at an optimum time. I am aware of the concerns that you have heard in evidence, to which I am prepared to listen and on which I will reflect. It is fundamental that we avoid any ministerial appointment but I am happy to give consideration to what is felt not only by the bodies that have given evidence but by you.

Roderick Campbell: On the question of how much parliamentary scrutiny there should be of the new set-up, we heard from the Auditor General for Scotland in particular, as well as from representatives of the Fire Brigades union, that
they thought that there was a need for an increased role for the Parliament. What is your view on that?

**Kenny MacAskill:** I think that I agree. A variety of suggestions have been made, including by Graeme Pearson. We take the view that it is not for the Government to decide how the Parliament should carry out its scrutiny role, but we accept that the Parliament has a particular role to play. We think that there is good merit in such matters being considered, but fundamentally it is for the Parliament to work that out. We have made provision for representations to be made and for the documents that would be laid before the Justice Committee. That is the Government's direction of travel. As I say, we accept the merits of the argument but think that it is for the Parliament to work out the detail.

**Graeme Pearson (South Scotland) (Lab):** You talk about parliamentary oversight of the governance of the police service, in particular, but also of the fire service. From your experience and knowledge of discussions on such matters, do you have any notion of how that would work out in practice?

**Kenny MacAskill:** Our experience and knowledge were gained from our international conference—although it would be fair to say that some of the international comparators do not have the same level of parliamentary scrutiny—and from visiting Northern Ireland. Northern Ireland has particular issues relating to the divide, but it was felt that there was merit in the approach that has been adopted there. In discussions, especially with Chief Constable Smith and other officers, it was felt that the involvement of the Justice Committee would be beneficial because of the breadth of its work, which covers all aspects of justice. Policing does not exist in isolation—it interacts with health, social work, prisons and so on—and those who serve on the Justice Committee are more likely to have a broader understanding of wider justice issues.

As a Government, we do not wish to be too specific. We think that it is for the Parliament to work out what the best method would be. I have seen what Mr Pearson has suggested, and I recognise the merits of parliamentary scrutiny. Given the significance of the body in question, that will be essential. How that is best dealt with and whether it is best done by the Justice Committee or by some other means is an issue that we think is for the committee, the Presiding Officer and the wider Parliament to reflect on. We think that what we have built in provides the opportunity for that, but it is for the Parliament to build on it.

**Graeme Pearson:** You sound as if you would welcome amendments on the matter.

**Kenny MacAskill:** It would be fair to say that we are happy to look at the issue. We do not think that it is for the Government to decide how the Parliament constructs itself. We have taken the view that there are aspects of what happens down south with the Metropolitan Police in London that we may not want to replicate, and that we would be better to have the breadth that exists elsewhere. However, we are happy to listen to what the committee and others have to say. We are open to discussing the matter, because we accept the principle that Mr Pearson and others have put forward that, with single services—both police and fire—it is important that there should be parliamentary involvement and scrutiny, and that it might be best for the Parliament to decide on the shape of that scrutiny. We accept the logic and the merit of that position, and we are open to discussion.

**Graeme Pearson:** I think that you would also accept that the move towards a single service involves a fundamental change in the relationship between Government, the police and the public, which is why it is so important that we ensure that proper democratic oversight and governance are delivered from the outset.

**Kenny MacAskill:** Absolutely. We accept that, which is why we are happy to enter into discussion.

**Lewis Macdonald (North East Scotland) (Lab):** I would like to ask you about some of the fundamentals of the reform proposals. You will be familiar with the evidence that the committee has heard and the submissions that it has received. I will refer to three of those submissions.

The position of the Convention of Scottish Local Authorities is that there are alternatives to a non-departmental public body model, one of which could be a single shared local government service. Likewise, Unison said:

"A national police force could still be a local government body and this would provide a better governance model than that proposed in this Bill."

Professor Jim Gallagher, a former head of the Justice Department, said:

"There is no reason in principle why a single force could not be part of local government."

How much consideration have you given to the proposition that a single force could be achieved by the police service remaining within local government rather than by its forming part of national Government? What were your reasons for your judgment not to pursue that option?

**Kenny MacAskill:** We have been considering the matter for several years. When we went into the election, some parties had formed the view that we should have a single service. It would be
fair to say that my party said that the status quo was not tenable, but that a single service model and a regional model—which would have been much more local authority based—were both possible. After further consideration, we have come down in favour of the single service model, which is also supported by some of, if not all, the parties that are represented on the committee. We felt that the best way to proceed was the way in which we have been proceeding.

The Scottish police authority and the Scottish fire and rescue service will be distinct legal entities and will be classified as other significant public bodies. We want to ensure that they have the necessary skills and democratic accountability, some of which will come from local authorities. That is why we will ensure that we build in local authority representation.

The Government’s only caveat is that we believe that those who represent local government—some of whom are outstanding—should be able to meet the criteria and quality tests that the Public Appointments Commissioner for Scotland would have for any other member of that board. I am sure that that is a matter that will be appreciated, given the size and significance of the board. Equally, there are other people who can bring an array of other skills and talents that are relevant to the running of a public body.

We think that the method that we have arrived at strikes the correct balance between allowing some democratic oversight and scrutiny and ensuring that we have the appropriate skills and resources to run what is a major public body with a significant number of staff members and a significant public budget.

10:15

**Lewis Macdonald:** Do you accept the point that has been made by COSLA, Unison and others that the fact that there will be a single force does not require it to be a national force—in other words, the single force could operate in a local government context, with a combined board, as it were? Do you further accept that that model has advantages over the model that you have brought forward?

**Kenny MacAskill:** Those suggestions have come in at a late stage. We have formulated a method that ties in a significant public body and which strikes a balance between democratic scrutiny and the requisite skills and talents that we feel are necessary to assist the chief constable and the chief fire officer in their jobs.

I have to say that some of the other models that have been suggested are not fully fleshed out. Although we have given consideration to the suggestion that you mention, it still lacks clarity.

**Lewis Macdonald:** One advantage of such a scheme would be in relation to VAT. In a recent letter to Unison that I have seen, a Treasury minister was clear that the Scottish Government was aware from the outset of what the limitations were on VAT exemption in the event of the creation of a national body that is no longer, in any respect, part of the local government sector. That is a difference from the position south of the border, where the Police Reform and Social Responsibility Act 2011 included a provision on VAT exemption to favour the new commissioners of police.

Can you indicate how far that aspect was considered when you decided that you would not pursue a local government option for the creation of a single force and a single fire service?

**Kenny MacAskill:** First of all, the VAT situation applies in relation to the Scottish Police Services Authority. That method was set up by a Government of which you were a member, not me. We have been and still are involved in negotiations with the Treasury. We do not feel that the door is closed. Negotiations are on-going between it and my colleagues in the finance department.

It would be fair to say that we very much regret the Treasury’s current position, given issues of the sort that you heard about in evidence from Her Majesty’s inspector of constabulary for Scotland and the assistant chief constable in Northern Ireland. It is a matter of regret that we are still involved in negotiations when the Police Service of Northern Ireland and, ironically, the security services of the United Kingdom are not in this position.

The door is not closed. Regardless of that letter, we seek to negotiate and, as I said, negotiations are on-going between the finance department and the Treasury.

We think that the single service strengthens the link between the police service and the fire and rescue service and the communities that they serve. The system that we will put in place—a pyramid structure, built from the bottom up—creates better accountability in places such as Orkney where, currently, two councillors go once a month to the chief constable’s office in Inverness. That will be replaced with a situation in which every councillor in Orkney sits in the council offices once a month and hears from the local commander, who has come to see them. Similarly, in the Scottish Borders, Councillor Parker and his colleagues have also realised that, rather than having to send delegations to the headquarters of Lothian and Borders Police in Fettes Avenue, they will be able to ensure local accountability through meetings with the local commander.
Having considered the matter, we believe that the arrangement that we propose enhances local accountability. We take on board the fact that it will be a national service. That goes back to the points that were made, correctly, by Graeme Pearson. That is why, as well as building in local accountability at the base of the pyramid structure, we have to ensure that, at the top of the pyramid, there is accountability and scrutiny by the Parliament of Scotland.

Lewis Macdonald: In the structure that you have created, is there a role for local government on the national boards of the new services?

Kenny MacAskill: Yes. We have already said that, if the board has 11 members, four of them should be local authority representatives. I have discussed the matter with COSLA and we are genuinely open to discussions about the make-up of the board. That said, given that it will probably be the biggest and most important board in Scotland—and will, indeed, be bigger than the health boards with regard to budget and, in many cases, staff—it is important to ensure that those who serve on it have the skills and talent to assist the chief constable and the authority that will hold the chief constable to account and to deal with certain matters. We think that our approach will secure the best possible array of talent from local authorities and provide democratic accountability and representation on the board; equally, it will ensure that those who serve on the board have the ability to be on the board.

Lewis Macdonald: I have a final, short question, convener.

The Convener: Please make it very short. There is a big queue behind you.

Lewis Macdonald: Indeed.

Section 26(2) provides for the authority to make arrangements with “a third party” in relation to police staff. What is the purpose of that provision?

Liz Sadler (Scottish Government): That provision replicates the provision in the Police Act 1967, which allows the police authority to employ on a contract basis as well as directly.

Lewis Macdonald: Does it reflect any intention or expectation of taking a different approach to such matters?

Liz Sadler: Not at all.

Humza Yousaf (Glasgow) (SNP): Following on from Lewis Macdonald’s question about the make-up of the board, I want to ask about the size of the board itself. Although the majority of witnesses have said that the issue is one of quality rather than quantity, reservations have been expressed about the proposal that the board have seven to 11 members. Might there be any scope or leeway to increase that number?

Kenny MacAskill: I welcome all comments and advice on the issue. We plumped for a board of 11 on the basis of the Auditor General’s comments about the boards of the top FTSE companies. One would need the wisdom of Solomon to stipulate that the board should have nine, 10, 11, 12 or 13 members, and we are happy to take advice on the matter.

Nevertheless, we are certain that the issue should be quality, not quantity. Frankly, we also think that a huge board would be unworkable. For good reason, there is an optimum size of committee in the Scottish Parliament; after all, if you cannot squeeze everyone around the table, you have a problem. As I have said, we are happy to take on board members’ advice and comments on the issue. I repeat that it is all about quality, not quantity, but we need sufficient membership not only to reflect the fact that this is a national service but to take account of gender, ethnicity and Scotland’s geographical differences.

Humza Yousaf: How do you intend to reflect those factors in the board membership? Are you suggesting a quota of some sort?

Kenny MacAskill: Not at all. However, if whoever is in charge of selecting and clearing ministerial appointments does not balance the numbers, they will leave themselves open to appropriate criticism. It is a pivotal issue that must be examined.

Humza Yousaf: If it is recommended that the board be slightly increased, will you welcome an increase in the representation of locally elected people?

Kenny MacAskill: I am not persuaded that the majority of the board should be local authority members but logic would dictate that, if the board were to be increased beyond the proposed figure, the proposed local authority representation of four members would also be increased. I am happy to take on board the committee’s advice and thoughts, and I assure members that I am not being dogmatic or drawing a line in the sand. As I have said, we based the proposal of an 11-member board on the Auditor General’s comments; many successful companies have fewer board members, although some have more. Much of this comes down to having the flexibility to address issues.

Humza Yousaf: I have another question on the fire and rescue service, convener, but do you want me to ask that later?

The Convener: Alison McInnes has a question on the size of the board. After she asks it, I will let you back in.
Alison McInnes (North East Scotland) (LD): Given the size of the board, will the members be full time or part time? Have you considered a salary yet for those roles?

Kenny MacAskill: The board members will not be full time. Obviously, there will be a full-time chief executive, but we do not expect the chair or the board members to be full time. Their roles will involve more than simply a couple of hours every month or so. It will be one of the most prestigious boards on which to serve and it will be one of the most important in our country. However, we expect that the board members will be part time to allow those who have a variety of other roles to give their commitment to the board.

Alison McInnes: And the salary?

Kenny MacAskill: We have not given any consideration to that, but we will look at how it ties in.

Nick Bland (Scottish Government): We are looking at a salary that would fit within the banding for that size of public body. It is a band 1 body, to be technical about it, so we are looking at probably £300 per day for members and £450 per day for the chair.

The Convener: If you want to apply, Ms McInnes, you know how much the salary is now.

Humza Yousaf: It is not a bad rate at all.

The Convener: You are probably barred from the board, being a member of the committee—it is an either/or.

Humza Yousaf: I have a brief point on the fire and rescue service. There must clearly be a balance between being far too prescriptive and being far too vague about the service's functions. The Fire Brigades Union in particular believes that the new service has an opportunity to broaden its functions and be more inclusive in its work. Is there merit in what the FBU suggests? I thought that it made a good case at the committee.

Kenny MacAskill: We think that we have got the correct balance. Even in my lifetime, the fire and rescue service has gone from being about fire to being much more about rescue. A fire officer is more likely to cut you out of a vehicle than to pull you out of a burning house. The Government recognises that, whether we are talking about dealing with floods or other situations, the nature of the fire and rescue service has changed. That is why we have sought to ensure that we do not restrict its range of functions. There is a danger that if it goes too far in that regard, the service will become too specific. We think that we have the appropriate balance, but we are happy to discuss that. Lorna Gibbs might wish to comment further.

Lorna Gibbs (Scottish Government): The service’s functions were last reviewed by the Parliament in the Fire (Scotland) Act 2005. We have not been persuaded that anything has changed significantly enough in the intervening period to change what is in the legislation. That said, in addition to the legislation there is the fire and rescue framework, which we are consulting on at the moment. That document is much more flexible and easier to change, so our preference would be to have more detail on the Government’s priorities in the framework, which is a document that comes before Parliament. That would be less rigid than putting something in the bill.

Humza Yousaf: The FBU feels that the 2005 act does not quite cover enough. The FBU gave good examples about flooding on plains and other areas, and I thought that it made a very good case. However, you are reiterating that the detail perhaps should not be in the bill but in the framework.

Lorna Gibbs: We think that the detail is more for the framework.

Humza Yousaf: Okay.

Kenny MacAskill: We can give an absolute assurance that we recognise that the nature of the job is evolving because of the nature of what we do as a society. For example, 50 years ago there would have been no anticipation of the kind of chemical transportation that we do now. We think that it is important to have the flexibility to allow those who serve in the FRS to do what they think is required. We think that flexibility and related matters are covered by the bill. We do not want to box ourselves in with regard to what the FRS does by putting in a particular line in a particular statute. We believe that we have the right balance, but we are happy to reflect on that.

Jenny Marra (North East Scotland) (Lab): We have heard evidence that police officers are filling civilian staff roles at the moment. Given that police officers are paid significantly more than civilian staff, is that an efficient use of resources?

Kenny MacAskill: That is not my understanding, nor is it the understanding of the Association of Chief Police Officers in Scotland. Police officers are employed in a variety of roles and are not all front-line officers. Indeed, I was late in arriving at the Parliament today because I was with community police officers at Castleview primary school’s citizenship day as they tied in with those who look after the park. The Scottish Government will not go in the direction that the Winsor review pursued in dividing the police family. Police officers have to do back-office jobs, just as they have to do jobs that are not always what you might view as front-line jobs but which are nonetheless important. We do not accept the
suggestion that police officers are doing jobs that are routinely dealt with by civilian staff.

10:30

Jenny Marra: That is interesting, as we have heard in evidence that that is happening in many police forces throughout Scotland. The Government introduced 1,000 additional police officers while 2,000 backroom staff were being made redundant. Given the fact that we have heard evidence that police officers are doing civilian jobs, have you not just replaced civilian staff with higher-salaried staff called police officers? Is it not disingenuous, at best, to call those 1,000 extra officers police officers, and could that not be misleading to the public?

Kenny MacAskill: No. Our position is that the additional officers serve in a variety of ways. We have sought to put them into communities, and there are other officers who do the jobs in the back office. I am aware from my constituency involvement that there is an issue about redundancies among police custody support officers at the St Leonard’s police station in Edinburgh. When I challenged the chief constable about that I was told that, although that was the case, a police constable is more flexible than someone who does nothing when nobody is in the police cell, which is frequently the case between 10 o’clock and 5 o’clock. I was told that a police constable can be redeployed and that there is, therefore, a significant difference in salary. That is a matter for the chief constable, both now and in the future, and I will not interfere in it.

I do not recognise the scenario that you have painted. Indeed, the evidence that I hear from the police officers whom I meet is that officers carry out a variety of tasks, not all of which are front line, but they are all essential to keeping our communities safe. I welcome the contribution of support staff in carrying out a variety of tasks, but we do not see a scenario in which police officers take over civilian roles except in the scenario that I have described concerning the police custody support officers in Lothian and Borders Police.

Jenny Marra: In these tight financial times, I am sure that you more than anyone appreciate that an appropriate balance must be struck between civilian staff performing a task on a lower salary and the scenario that you just painted, in which Lothian and Borders Police are being a bit flexible and the chief constable is putting police constables into roles that were previously carried out by civilian staff. Are you going to give chief constables a clear indication of how they should balance civilian staff and police officers, given the financial constraints?

Kenny MacAskill: The decision that was taken by the chief constable of Lothian and Borders Police was perfectly sensible given the cost constraints on his force. It is much better that, when there is nobody to guard or watch at the St Leonard’s police station, a police officer goes out and does something to make our communities safer. I do not wish to be disparaging about police custody support officers, but they could not do that. They are employed as police custody support officers and, when there is nobody in custody, there is nothing for them to do. Although the decision that has been taken by the chief constable is regrettable for the constituents whom I met, it is perfectly understandable in the circumstances, as it maximises the use of a police officer.

Jenny Marra: I have one last question, convener.

The Convener: Before you ask it, Graeme Pearson has a supplementary question on the same issue.

Graeme Pearson: There is a real problem here, cabinet secretary. Last week, you acknowledged that about 1,000 support staff jobs had gone in the past 18 months. It would be challenging to imagine that all those 1,000 people could be missing from the service with nobody fulfilling their functions. Many of them must have been engaged in essential work and, if they are no longer there, police officers will necessarily have to do that work.

In the current environment, given the concentration on the fact that there are 17,234 officers in the service, it would be understandable if administrators used their budgets to maintain that number and made savings in some other part of the service. That does not mean that efficiency is being delivered. I am not suggesting that any of those 17,234 officers are not essential—the public want more police officers on the streets—but is any effort being made to see whether sufficient budget is available to chief constables to fully support staff posts? I am thinking of forensic accountants, analysts, people involved in warrants and so forth.

Kenny MacAskill: Those are fundamentally matters for the budget and, if people oppose the budget that the Cabinet Secretary for Finance, Employment and Sustainable Growth has allocated to the justice department and onwards to the police, that is a matter for them.

Given the significant financial cuts, the police have received well the fact that their budget has been preserved to an extent. You are right that there has been a reduction in support staff, but that is an operational matter for the chief constable. As I said to Ms Marra, I reflect on such
matters when a constituent comes to me with concerns about them but, equally, I leave them to the chief constable.

We would certainly be concerned if significant essential roles were being lost but, so far, my understanding from discussions with the police is that they are coping with the situation, which is still resulting in a 35-year low in recorded crime. We think that that is related in no small measure to the fact that we have 1,000 additional officers. The Government remains committed to that.

The Convener: I will allow two more questions on support staff, not because I do not think that the issue is important, but because we are discussing the bill and I want to get back to it. I know it has consequences for staffing. We will take a question each from Humza Yousaf and Lewis Macdonald, and then we will move back to Jenny Marra on staffing.

Humza Yousaf: Kevin Smith from the Association of Chief Police Officers in Scotland said that, in all his experience, he had never seen police officers directly fill the function of support staff. Calum Steele also rebuffed that suggestion. The cabinet secretary says that staffing decisions should remain in the ambit of the chief constable’s power over operational matters. How can he assure us that that power will not be compromised by the bill’s references to ministerial direction?

Kenny MacAskill: The power of ministerial direction does not allow me to interfere with operational matters, because it refers to the Scottish police authority. It is for the chief constable, who will be accountable to the board, to decide how resources will be balanced between police constables and support staff.

I am aware of the concerns of the committee and others, but we have built into the bill clear requirements to ensure that the Cabinet Secretary for Justice, whoever he or she is, cannot interfere with operational decisions by the chief constable, whoever he or she is.

Lewis Macdonald: We have discussed the current position. There are proposals, contingent on the bill, for substantial savings over 15 years. Once you have dealt with duplication at chief officer level, will any savings not inevitably fall on police officers and support staff? If there is a VAT liability, will that not increase further the number of police staff posts that will be lost and require constables to, as you say, spend time in the custody suite rather than out on the street?

Kenny MacAskill: No, it will not do that because the outline business case was predicated on there being no VAT exemption. We still negotiate hopefully with the Treasury on that and continue to argue that there is a manifest injustice, as the PSNI and security services are exempted.

To deal with the fundamental point, savings have to be made. That is why we are moving towards a single service. If we do not, we will face the scenario that is playing out south of the border, where Her Majesty’s Inspectorate of Constabulary anticipates that 16,000 officers will be lost. That will also impact upon others. Indeed, through the Winsor review, there is also an attack upon the terms and conditions of those who serve.

The Scottish Government has made it clear that it believes that keeping up police numbers is not negotiable and provides a safer community. Equally, it is unacceptable that I should go to police officers, who do a difficult and sometimes dangerous job—often putting their lives on the line—and tell them that we will lower their starting salaries, vary their terms and conditions and seek to divide them between front-line and community police. We are not prepared to countenance that, so I accept that there must be savings. Many of them will come from stopping duplication, and not simply the duplication that is involved in having eight chief constables plus all the ancillary staff that go with them.

In everything that Deputy Chief Constable Richardson examined, there has been a clear obligation to improve matters. I remember his comments on the waste of resources. For example, we have motorcycle deployment in every area, but with more flexibility we could probably achieve the same with fewer resources.

Will there be a reduction in support staff? The answer is probably yes. No matter whether we have eight boards or one, however, it will still be necessary to type in data, so a catastrophic loss could not be accepted as credible. Data input and analysis will still be necessary, but there is duplication out there and there will have to be some reduction to reflect that. If the number of chief constables goes from eight to one, their back offices, which are not insignificant, will go from eight to one, so there will be a reduction there. However, in taking that approach, we will avoid the scenario that is being played out south of the border, which is a reduction in police numbers—we regard our numbers as non-negotiable—and an attack on the terms and conditions of officers who serve, which we view as reprehensible.

The Convener: Thank you. We will move on. Jenny Marra has a second question, then we will have questions from David McLetchie, Alison McInnes, Graeme Pearson and John Finnie.

Jenny Marra: I will follow up on the cabinet secretary’s comments on the situation that is being played out south of the border. The bill provides that staff may be

"provided to the Authority under arrangements between the Authority and a third party."
Can you assure us that all staff will be directly employed by the new police service and that there will be no back-door privatisation of our police service, with an impact on terms and conditions for staff?

**Kenny MacAskill:** Yes. Those will be matters for the police authority as the employer, but there will be no back-door privatisation.

**Jenny Marra:** Okay, so the provision about “arrangements between the Authority and a third party” for staff employment is to come out of the bill, is it?

**Kenny MacAskill:** I will ask Liz Sadler to comment, but I recall that her evidence was that such a provision has been in place since 1967. I was alive then, unlike Ms Marra, and my memory is that there was a Labour Government at the time. Perhaps Liz Sadler can enlighten us.

**Liz Sadler:** There always needs to be some flexibility for particular short-term projects. For example, there could be a research project or other work that needs to be done on a short-term basis, so there is a requirement to enable the police authority to employ staff on such contracts. However, there is no intention that that is to be the norm for the employment of staff.

**Kenny MacAskill:** There are scenarios in which things cannot be dealt with in-house. We see that in relation to the technical wizardry that is now available. It is often necessary to put the information technology stuff out to IT people. It is one thing to train up a police officer, but it is quite another if one is starting from scratch. We have seen difficulties in the police with personal digital assistants and various other matters.

My experience is that, as is the case here in the Parliament, it is sometimes necessary to give tasks to the people who are the experts, and that might mean giving them to a third party—without privatising the jobs, as I said. In such cases, what we are doing is getting the experts to do the work.

**Jenny Marra:** You are saying that some of the IT services will be outsourced.

**Kenny MacAskill:** No, I am not saying that at all. I have given you a scenario and explained that, as some things are complicated, it is better to have the flexibility to hire in the best possible advice. We can do that in a whole array of areas—not just in IT, but in accounts, finance or procurement. There are areas in which we need to take advice from the best possible people to do the work.

I give you an absolute assurance that the privatisation scenario that seems to be being looked at south of the border is not being—and never will be—considered by this Administration.

**Jenny Marra:** Thank you, cabinet secretary.

**The Convener:** There are murmurings about IT, but I am sure that both Graeme Pearson and John Finnie were techie wizards when they were in the police service.

**David McLetchie:**—at last, this is your moment. I hope it has been worth the wait. Let us see.

**David McLetchie (Lothian) (Con):** I hope so, too. Good afternoon. Sorry—I mean good morning, everyone. It is not that late. I am losing track.

**Humza Yousaf:** That was not a good start.

**David McLetchie:** It was not.

Cabinet secretary, I want to ask you about the further submission that we received from COSLA following our discussion with Councillor Watters last week on the additional police officers who are employed by our forces as a result of the supplementary funding that a number of councils make available. In that evidence, Councillor Watters estimated that some 600 to 800 police officers are employed by our eight forces as a result of the additional subventions.

10:45

He went on to say that one should not necessarily assume that that funding would be in place in the coming financial year, 2012-13, because some councils might fear that they would be expected to continue to fund what is a discretionary payment by them on an on-going basis, so that all the officers who are transferred to the national force continue to be paid. Can you explain how the Government intends to ensure that funding will remain in place for the officers who are currently employed as a result of the additional funding contributions?

**Kenny MacAskill:** As Councillor Watters said, there is no suggestion that the funding is about to be pulled. As you say, the funding is put in by local authorities because they see a particular need. They have discussed the issue with the police and that is how we see the arrangements continuing. It would be for the local authority to discuss the issue with the police and for councillors to account to their own electorate if the officers were removed.

The Government is clear that we provide funding to the police for 17,234 officers. If local authorities wish to remove from particular areas additional officers who they currently pay for, that is a matter for which they are accountable to their own electorate. It is not for us to backfill; it is for us to provide the chief constable with the requisite number.
David McLetchie: Indeed, but there was a suggestion that the additional officers might be pulled. That is apparent in COSLA’s additional submission, which states that Councillor Watters “questioned whether councils would continue to fund these posts in 2012/13, given that the additional funding being provided would likely transfer with the posts out of Local Government and into the new single service budget to subsidise the commitment to 1000 extra police officers in the new single service.”

Councillor Watters’s suggestion is that that funding might be pulled in the run-up to the creation of the new service, which would clearly create a difficulty with the continued employment of officers, who would transfer to the new service under the Transfer of Undertakings (Protection of Employment) Regulations arrangements.

Kenny MacAskill: It would make no difference to the employment of the officers but it would make a difference to their deployment, because it would clearly be for the local commander and the chief constable to decide where the officers are deployed. The specific reason that they are currently deployed where they are is that the local authority has thought it essential to have them there. The chief constable has clearly thought that they are not necessarily essential, but they are willing to have them put there.

We believe that we will maintain police numbers. If the local authority wishes to retain the visible deployment in a particular area and the situation is perhaps not seen in the same way as it was before those police were deployed there, they will have to enter into discussions on the matter with the police, because we are not in charge of operational directions. I do not see why local authorities would seek to withdraw officers from areas where they thought there was a clear need to put them in.

David McLetchie: Indeed, but does that mean that the present establishment number will be maintained, irrespective of whether the councils that currently give the additional funding continue to do so? Is that what you are saying?

Kenny MacAskill: We have made it clear that we will maintain the figure of 17,234. We believe that that is essential. It is clearly for the chief constable to deploy officers and it will be for the chief constable and local commander to negotiate with local authorities.

David McLetchie: That sounds to me to be a positive incentive for the councils not to continue the funding into next year, because the officers will be employed come what may.

It has been suggested that, if councils are to continue to provide additional funding to the new national force, which I would like to think that they will—and I am sure that you would, too—it will be difficult to demonstrate the additionality of the deployment that you have described. Without some kind of local budget base, when a council puts additional money into a particular area—usually to do with some kind of community safety scheme—how will it know that its contribution is additional and is not just filling a gap that has resulted from a deployment elsewhere?

Kenny MacAskill: Nick Bland might want to comment.

Nick Bland: We would expect the arrangements that are currently in place to continue in the new single service.

Currently, where local councils choose to pay for additional police officers from their own funding, there is some form of service-level agreement with the force regarding the deployment and use of the officers. They are identified as being funded by the local authority, and are deployed in a specific way in agreement with that authority. There is no suggestion that that arrangement would not continue in a single service.

David McLetchie: Yes, but how do you know that that money is additional to the funding for the force in a particular area? At present you know, because the budget is based on the police board of which the council is part. Unless there is a budget with some kind of localised base, how do you know that the extra money is extra, and that it is not just filling a gap that has arisen as a result of deployment elsewhere? How can you be confident that that is the case?

Nick Bland: One of the benefits of a single service is that, in any local area, the local commander can draw on that wider service and bring in specialist expertise when and where it is needed. A local authority area not only has a dedicated set of officers, but can draw on wider resources, specialist expertise, assets and equipment when such things are required.

Kenny MacAskill: In my discussions with COSLA, it was at pains—understandably—to ensure that local authorities would know what the baseline was on 1 April 2013. We will have that in place, so that we know where each authority is and what is specifically funded.

The real reason that I do not see the emergence of a doomsday scenario—to which Pat Watters alluded only as a possibility—is that the local authorities have agreed on the basis that a single service will add to community safety. In Broomhouse, for example, as in other areas of Edinburgh, I would have thought that if the council sought to withdraw, the only alternative would be to put in community wardens, and there would be an argument over the cost of deployment.
We expect the local authorities to work through those matters with the local commander, as we work through the pathfinders, to see where they can get additional benefits that will apply to their communities. We will provide them with the core resource for April 2013. As Nick Bland pointed out, they will get the additional benefits of being part of a single national service, in which resources for particular events that we hope do not occur will be available.

**David McLetchie:** Let us hope that the councils see it that way.

**Alison McInnes:** Cabinet secretary, you said that you believed that the bill would improve links with local authorities and communities. Many of us—not least COSLA—disagree with that.

Some—in fact, quite a lot—of the evidence that we have taken in the past month or so has related to the national-local relationship and how we define it. The bill potentially sets up a conflict between the local policing plan and the strategic plan, but it is silent on how to resolve that conflict. Many people have said that the lines of responsibility and accountability are not clear enough in the bill. Have you had time to reflect on that, and do you intend to introduce some clarity at stage 2?

**Kenny MacAskill:** I think that matters are clear. We are trying to build a pyramid structure with a firm base. We will reflect on what comes out of the pathfinders; there are 16 of those already, and more local authorities wish to come on board.

We will have the benefits of a local plan and the chief constable will ultimately be in charge of directing it. As with a variety of other things in Scottish life at present, such issues will be worked out through discussion.

**Alison McInnes:** That goes to the heart of the matter. You say that the chief constable will determine how resources will be deployed, so we might have more dialogue at local level, but there will be less accountability and less ability to direct those resources. COSLA has called from the most senior level for a right of response and for the bill to be amended to include a definition of the relationship between the chief constable and local authorities. Will you consider that?

**Kenny MacAskill:** I am happy to consider that. I do not necessarily think that the inclusion of such a definition is necessary, but I will not prejudge the issue. We will see what emerges from the pathfinders. Areas such as Orkney and the Scottish Borders are working closely with their local commanders and they see the benefits in that. We are seeking not only vertical but horizontal benefits. Part of the issue is how we will engage with the other services that are necessary to keep our communities safe. We are using the pathfinders to see how things work out. It is not only about the vertical police-silo level, but about how we mix the police in with other agencies to ensure that we get the best possible system.

**Alison McInnes:** That is why chief constables are best placed to be part of the local authority family. It is about horizontal integration.

That takes us on to community planning partnerships, which are key. We have heard evidence that, given the scale of the reorganisation, there will inevitably be a period of inward reflection when the police service is sorting itself out and it will not be so easy for it to be involved in the community planning partnerships. According to evidence that we have received, Northern Ireland looks fondly on our community planning partnerships and says that it is way behind us. It would be useful if you could define in the legislation the role of the community planning partnerships. As I understand it, the local commander has responsibility for responding to community planning partnerships at the moment. There would be real benefit in giving the chief constable that responsibility.

**Kenny MacAskill:** At the end of the day, we want to see what works. That is why we are doing the pathfinders. Not everything is dealt with at local authority level. That is why health boards are structured in a variety of ways; in my experience, we in Parliament have changed the number of health boards in Scotland. We must ensure that we get the best possible system of integration.

We recognise the benefits of community planning partnerships, and we think that the proposals add something. Instead of joint police boards sitting separately—apart from in the two parts of Scotland where there are unitary boards—we are putting them into the local government family, which they will enhance. We need to ensure that not just the services that rest within local authorities but services such as health co-operate in that. We are proceeding on the pathfinders to see what works. There might need to be some flexibility between various communities, which is why we are setting it in the legislation that it will be dealt with at local authority level and we have said that we will not interfere with local authorities if they wish to consider sharing.

**Alison McInnes:** You have said that there is quite a lot that we still need to sort out, yet you are determined to have all of this in place by 1 April next year. Is it time to draw breath?

**Kenny MacAskill:** No. We see the pathfinders as a way of ensuring that we have a seamless transition at 1 April 2013. We have always said that various matters will be for the chief constable and police authority to work out. It is accepted that...
it will ultimately be good to have a single payroll and to reduce replication of functions times eight and, in some instances, times nine. It will be for the chief constable and the SPA to work out where those functions should be located, and whether they should follow a unitary or a regional model. We have to ensure that the currently outstanding provision by the police service and fire and rescue service continues to be outstanding as the clock strikes midnight and we head into 1 April 2013. Thereafter, it will be for the chief constable, working with others, to work out what happens.

**Roderick Campbell:** You talked about the pathfinder projects. Is there a case for the bill being more prescriptive in relation to local arrangements for scrutiny and engagement?

**Kenny MacAskill:** We are happy to consider that. We think that we may have a basis for doing that: it will to some extent depend on the outcome of the pathfinders. We will feed back into that. We have to recognise that things change and flow. Although we are ensuring that the set-up is built around the possibility of 32 local authorities acting individually, I have made it clear to local authorities that if they think that it is better to share with a neighbouring authority, I will not say that they cannot. If they think that that will add to democratic scrutiny and accountability and ensure that we get a better service, I am comfortable with that. We need a legislative base that not only provides for the separation of powers and the building blocks of the pyramid structure, but gives an element of flexibility. If, for example, Stirling and Clackmannan wish to share a police and fire committee, they can do so.

11:00

**Nick Bland:** Part of the purpose of the pathfinders, which will run through the coming year, is to inform the development of national guidance on operation of the scrutiny and accountability arrangements. Instead of putting any prescriptions in the bill, we will take what we learn from the pathfinder process and put it into guidance outwith primary legislation.

**The Convener:** Can I clarify the timetable in that respect? Will the outcome of the pathfinders not be known until the bill has concluded its passage?

**Nick Bland:** The pathfinders are separate to the bill.

**The Convener:** I know that, but there have been a lot of comments about knowing this or that when the outcome of the pathfinders is known. Will you know that outcome after the bill has been passed?

**Nick Bland:** Yes. Local authorities that have come forward to be pathfinders and are working with the services in their local areas will over the coming year develop their arrangements. We will take what we learn from those arrangements to inform the development of national guidance, which will be in place for 1 April 2013.

**The Convener:** You are talking about guidance, and not primary legislation.

**Nick Bland:** Yes.

**Kenny MacAskill:** As I have said, the legislation is meant not only to set out the necessary basics but to give flexibility to allow for other matters.

**Lewis Macdonald:** In your response to Alison McInnes, you acknowledged that the operational delivery of services might happen on a unitary or regional basis. If the structure is a regional one, how do you envisage democratic accountability working with regard to regional decisions on roads policing and other such matters?

**Kenny MacAskill:** That is for the police authority to work out; after all, it will hold the chief constable to account. Equally, I have no doubt that the local commander will be made aware by the police authority of any dissatisfaction at local level. However, it is up to the chief constable and those who work for him to deal with such operational issues. It might be best to deal with certain matters more flexibly.

**Graeme Pearson:** We need to put some flesh on how this is going to work, because it is a major concern for many of us around the table. Will the local commander be able to lay out to and share with the local committee a picture of the financial resources, the personnel and the other forms of support that will be at his or her disposal? Is that part of your plan?

**Kenny MacAskill:** Many local commanders are already allocated budgets. No matter whether we are talking about the police or anyone else, no organisation can work on an entirely centralised budget, and that will be the case when we move to a single service. The size of the budget will be a matter for the local commander to work out in conjunction with the chief constable, but I expect the local commander to discuss it and to interact with others on it. I presume that they will also seek added value from other agencies, which brings us back to the role of the CPP.

**Graeme Pearson:** What if, after that pen-picture of locally available services is shared with the board, there is disagreement in that forum? You have indicated that a divisional commander could raise with the chief constable any unhappiness at local level, but how will the political and democratic elements work themselves out in the
national board? Will there be a channel for making representations or for debating and resolving issues?

Kenny MacAskill: Any such issues will have to be dealt with by those who are involved at the time. It will depend on the nature of the problem. The authority can make representations to the commander, who can, in turn, make representations to the chief constable. Equally, it will be possible for the local authority board to make representations to the police authority. It is not up to me to work out how the police authority deals with such matters; we need to leave them to the police authority and the local authority police committee. They will have the opportunity to do so. I have no doubt that they will, that the situation will evolve and that things will work out.

Graeme Pearson: It is important that there be a channel to resolve issues. David McLetchie mentioned the possibility that a local authority might invest resources but be unhappy about whether it was getting value for money and about whether the resources were being used elsewhere. Will there be a democratic way to resolve such matters between the local committee and the national board?

Kenny MacAskill: I have no doubt that the local authority would go to the national board.

Graeme Pearson: Let us move on to national oversight—the governance that we spoke about earlier. Would you also welcome the fact that any parliamentary involvement would be proactive, in that rather than responding to reports, there would be a regular meeting of a group within the Parliament to review national strategy and how business was being done on the national board?

Kenny MacAskill: That would be best left for Parliament to work out.

Graeme Pearson: I am asking for your opinion.

Kenny MacAskill: My opinion is that we should get the balance right between avoiding having an authority like that in metropolitan London, which sits regularly and looks over the shoulder of the police authority and the chief constable, and ensuring that we have an authority that deals with matters that are correctly the remit of Parliament when there is significant concern, and which is equally able to ensure that it is satisfied with how things are going.

I welcome parliamentary involvement, although I caveat that with the thought that the Justice Committee is best placed to deal with such subjects because of its breadth of knowledge. By its nature, that would mean something more than the chief constable’s appearing before you once a year and reporting to you when matters of concern arise. I have no doubt that the committee would seek to investigate and to drill down and be available if there were issues of concern, such as a dispute between a local authority area and the national board.

Graeme Pearson: You would accept that the philosophy—certainly in Scotland—is that we have policing by consent and that that consent can be offered only knowingly. Although it is a great gift to have people such as you in the justice department, one looks to the future when others might not be so well-meaning. There needs to be some form of governance in such circumstances.

The Convener: I am missing this flirtation. I had drifted away; I see you smiling at each other.

Graeme Pearson: There is time to come to it.

Cabinet secretary, you must welcome the fact that the Parliament would proactively engage in such matters.

Kenny MacAskill: We do not want to specify what the Parliament must do. There is obviously this committee as well as the remit of the office of the Presiding Officer. As a Government, we think that the Parliament has a clear role. The authority will have a role in holding people to account and in ensuring that matters are dealt with as best they can be. There is a clear role in examining some of the more political aspects, if we can put it that way, of ensuring that we get policing by consent. That is why when issues such as Taser use have been brought to me, I have said that they are operational matters that are best dealt with by the authority or, ultimately, considered by the Parliament.

The Convener: I am just dwelling on the word “gift”. That does not mean that your amendments will go through on the nod, Graeme, although we will see.

Graeme Pearson: I know that.

Colin Keir (Edinburgh Western) (SNP): Good morning, cabinet secretary. What are your views on the effectiveness of any new local board that might spring up in the coming months in comparison with the current boards? How effective will the new boards be? A number of comments have been made about the accountability of the chief constable, who provides reports to the board, which then holds him to account, and the relative security clearance of certain members. How do you perceive the local aspect of the police boards being continued and how effective could they be?

Kenny MacAskill: First, as I said earlier, it will be enhanced. There is a dynamic change. Even in the unitary authorities, people will be going to the council as opposed to the office of the chief constable. It is a little like the fact that I have come here to give evidence today—if you were coming up to my office in St Andrew’s house, that would
be vastly different. That would change the dynamic and it is important to consider that.

Secondly, as I said, in places such as Orkney, rather than two councillors, every councillor will be involved. Even in the Borders, rather than two or three councillors going up to Fettes Avenue—I cannot remember how many—if not a full council, then certainly a full council committee will be in charge of scrutiny.

We are conscious that there will be change, and we are looking to work with the current police board conveners, their clerks and COSLA to ensure that, after the local authority elections—when, doubtless, many current police and fire board conveners will be returned, but others might not be—we provide resources and support so that, in going towards the unitary authority, people who have already been quite immersed in police matters will move in when the local authority board is set up, as opposed to a person waking up on 1 April and discovering that they are the police convener in Orkney. It is a matter of working with the local authorities and the current police boards to ensure a seamless transition. I think that that will happen and that accountability will be enhanced.

**John Finnie (Highlands and Islands) (SNP):** Good morning, cabinet secretary. I want to ask about two apparent gaps in the bill, and part of the bill on which people have mixed views. The gaps relate to what might be referred to as mutual aid. We heard about the cross-border arrangements for the fire and rescue service from the Chief Fire Officers Association Scotland. It seems that a pragmatic approach is taken that is not necessarily supported by a legislative framework. That was perceived as one gap. The other gap is the bill’s silence on mutual aid arrangements with the British Transport Police. To balance that, there are differing views on the police investigations and review commissioner. You may be familiar with the line of questioning on who would have primacy. It seems that a pragmatic approach is taken that is not necessarily supported by a legislative framework. That was perceived as one gap. The other gap is the bill’s silence on mutual aid arrangements with the British Transport Police. To balance that, there are differing views on the police investigations and review commissioner. You may be familiar with the line of questioning on who would have primacy. It is important that there is public confidence in the arrangement.

Will you comment on those three issues, please?

**The Convener:** The police investigations and review commissioner is a separate issue from the other two.

**John Finnie:** There are two deficiencies, and there seem to be widely ranging views on the police investigations and review commissioner.

**The Convener:** That is fine. I am just separating the questions.

**Kenny MacAskill:** You are right. There are issues to do with cross-border mutual aid and how we would interact with the British Transport Police, the Civil Nuclear Constabulary and Ministry of Defence police. Obviously, we want to ensure that that assistance continues. Officers require to be assisted, and we welcome the assistance that we receive from the BTP. In my experience, even Northern Constabulary quite often used to welcome assistance by the Civil Nuclear Constabulary.

We are working with UK departments on that, and amendments will have to be tabled down south. Suffice to say, we know what has to be done, and all parties want to ensure that officers, irrespective of their cap badge, continue to provide mutual support. We expect to be able to work that out, although I cannot give members precise details on that at the moment. The issue will have to be dealt with south of the border and, I presume, by a legislative consent motion here.

**John Finnie:** I also asked about the cross-border fire arrangements and the police investigations and review commissioner.

**Lorna Gibbs:** I will pick up the fire point. The approach is similar to that which is being taken with the police. We are discussing matters with colleagues down south to clarify the position and put beyond any doubt the fact that the new service will be able to have mutual arrangements with colleagues south of the border. Again, that will need to be done through the Scotland Act 1998. We are pursuing that matter positively with officials in the UK Government.

**John Finnie:** Will that pick up on any concerns about pension arrangements that the FBU perhaps has?

**Lorna Gibbs:** I need to double-check the point about pension arrangements. We can do that and get back to you.

**Kenny MacAskill:** We are happy to do that.

We are aware of comments that have been made about the police investigations and review commissioner. Obviously, it is about getting the balance right and ensuring that we maintain public confidence and meet our human rights obligations. We are willing to look at how we can best deal with matters; some will best be dealt with through regulations—section 67 of the bill specifies that—and we are happy to look at any further change to the bill if it is necessary to ensure that, while we maintain public confidence, we do not perhaps provide for a role that would be prospective rather than reactive.

**The Convener:** I thank the cabinet secretary for taking questions. I suspend the meeting to allow the witnesses to leave.
Introduction

1. Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

2. Amnesty International welcomes the opportunity to submit written evidence for the Justice Committee's consideration of the Police and Fire Reform (Scotland) Bill 2012. Our response will focus on proposals for a single Scottish police force.

3. The Scottish Government's proposals to create a single Scottish police force raise a number of issues relating to human rights which we have raised in earlier consultations. Reform is an opportunity to improve transparency and accountability in policing and ensure that the Scottish police force adheres to the highest international human rights standards.

Policing and Human Rights

4. Scottish policing has a long and proud history of policing by consent and taking a community-centred approach. Any change in the organisation and structures of a new Scottish police force should retain this approach, imbedded within a human rights framework.

5. The nature and extent of police powers make them the front line of defence in protecting our human rights on a daily basis, whether protecting the right to life and freedom from harm, defending the right to property, or prohibiting discrimination.

6. In upholding the Scottish Government's duty to protect the human rights of people in Scotland, police have legitimate powers to take action which might limit the rights of others, most notably in depriving people of their liberty and in the state-sanctioned use of force. However, any actions which affect the rights of individuals must be in accordance with the law, strictly necessary and a proportionate means of achieving a legitimate aim. The Universal Declaration of Human Rights states that “Everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.”

7. Scottish police forces are also bound by the Human Rights Act to respect the European Convention on Human Rights including, the prohibition on torture, inhuman and degrading treatment, the right to liberty and security, the right to a fair trial and the right to family and private life.
8. This unique position must come with a commensurate level of scrutiny and accountability with clearly defined international standards being adhered to.

9. The UN Standards of Policing Code of Conduct (1979)\(^1\) states that ‘every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole’, establishing a clear and fundamental standard of the nature of human-rights based policing, and the relationship police should have with the communities they serve and the political system within which they function.

10. The Independent Review of Scottish Policing (2009)\(^2\) identified gaps in the current accountability mechanisms of Scottish policing at local, regional, and national levels and the new Scottish police force in the future must ensure that these concerns are fully addressed and that clear constructs are in place to allow transparent scrutiny of police policy and robust engagement with communities and stakeholders to ensure accountability in decision making processes.

Policing, Accountability and Human Rights

11. Amnesty International welcomes the Scottish Government’s proposals in the Police and Fire Reform (Scotland) Bill to provide more clarity, transparency and accountability. We welcome proposals for clearly defined roles for Scottish Ministers, a Scottish Police Authority, the Chief Constable of the Scottish police service, local councils and designated Local Commanders for each Local Authority area. We welcome the proposal to ‘provide the Scottish Parliament with more opportunities to consider and scrutinise the Scottish Police Authority and service.’ We also welcome the proposal to ensure independent custody visiting in Scotland is fully OPCAT compliant.

12. However, this reform of policing provides an opportunity to create the most robust structures for transparency and accountability of any police force in the world, learning from international examples.

13. As a result of recommendations made by the Patten Commission on Policing in Northern Ireland in 1999, the Police Service of Northern Ireland (PSNI) now has some of the most robust human rights based policies and structures of any police force in the world.\(^3\) Emphasising that human rights are central to the fundamental purpose of policing, the report, *A New Beginning for Policing in Northern Ireland*, recommended measures including the appointment of an independent human rights advisor to the force, training for all new and existing officers in human rights, and the introduction of mechanisms to promote transparency and democratic accountability within the local community.\(^4\)

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\(^{1}\) [http://www2.ohchr.org/english/law/codeofconduct.htm](http://www2.ohchr.org/english/law/codeofconduct.htm)

\(^{2}\) [http://www.scotland.gov.uk/Publications/2009/01/23133505/0](http://www.scotland.gov.uk/Publications/2009/01/23133505/0)


14. In our response to the Scottish Government’s consultation on a single police force, Amnesty International urged the Scottish Government to adopt a similar approach. We are disappointed that our recommendations on this and on other areas to bolster human rights in the single police force proposals at consultation stage did not make it on to the Bill. We hope that the Justice Committee will consider the importance of human rights in 21st century policing in Scotland in the Bill. We believe that the following issues should be included in the new police structure in Scotland to ensure accountability for human rights performance.

- **A Modern Purpose for Policing**
  Given the importance of a Scottish police force to upholding human rights, the new purpose should include a reference to protecting fundamental human rights which can be introduced in section 32 of the Bill.

- **The Oath**
  Amnesty International also believes the duty of police constables to protect human rights should be reflected in the new oath. For example, the Northern Irish oath is:
  “I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in so doing I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.”

- **Code of Ethics**
  The Scottish Police Service Code of Ethical Practice already lists integrity, transparency, accountability, responsibility and impartiality as principles which all members of the Scottish Police Service observe and support. Although it is clear that these principles go some way to support human rights objectives, human rights should be explicit within this Code of Ethical Practice, to ensure their centrality to the Scottish Police Service.

  A positive example of this is the Police Service of Northern Ireland Code of Ethics (2008), which states that “public confidence in the Police Service is closely related to the attitude and behaviour of officers towards members of the public, in particular their respect for the human rights and fundamental freedoms of individuals as enshrined in the European Convention of Human Rights”.

- **Training**
  Training for both new recruits and experienced personnel should contain clear reference to human rights standards.

- **Personnel Appraisals**
  Awareness of human rights should be set down as an important element in appraisals of personnel.

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• **Independent Advisor**
  An independent Human Rights Advisor should be appointed to monitor compliance with the Human Rights Act (1998) and publish these findings on an annual basis. The Northern Ireland Policing Board examines the following factors in their report on compliance with the Human Rights Act and could be taken as a positive model for a Scottish compliance report.

1. “Police Service of Northern Ireland (PSNI) Programme of Action
2. Adequacy and effectiveness of PSNI human rights training
3. Compliance of PSNI policies with the Human Rights Act 1998
5. Adherence by PSNI officers to the Code of Ethics
6. Complaints, discipline and civil actions raising human rights issues
7. Public order
8. The Use of Force
9. Covert Policing
10. Victims’ Rights
11. The treatment of suspects
12. Human rights awareness among PSNI officers”

• **Human Rights Committee**
  A permanent Human Rights and Professional Standards Committee should be established, with responsibility for reviewing complaints and disciplinary matters and monitoring the use of force on an on-going basis.

Shabnum Mustapha
Director, Amnesty International Scotland
6 March 2012

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6 [http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm](http://www.nipolicingboard.org.uk/index/publications/human-rights-publications/content-previous_hr_publications.htm)
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Association of Chief Police Officers in Scotland

1. Introduction

1.1 ACPOS is firmly committed to delivering the Scottish Government’s three objectives of reform:

- Sustaining and improving local policing in a time of financial constraint
- Improving the availability of specialist operational support throughout Scotland
- Improved arrangements for local engagement

1.2 Whilst recognising the present record levels of performance and significant contribution the current structures of policing have made to the safety and well being of the people of Scotland over the last 37 years, we are also committed to delivering an effective and comprehensive reform programme which maintains such levels of performance, within a constrained public sector budget.

1.3 There are, however, a number of challenges and constraints in meeting reform objectives whilst continuing to deliver record levels of performance within the financial settlement. Parliament and the Committees will want to be fully sighted on that wider context and the detail of the challenges, which we outline below and in the attached appendices.

1.4 In this context, this summary and the attached appendices articulate, to the Justice Committee, our specific concerns around the significant issues on governance and accountability, operational independence, local policing and resourcing (already presented to the Local Government and Regeneration Committee) and the financial challenges and Outline Business Case (already presented to the Finance Committee). In terms of issues not previously raised, this summary report outlines our concerns on complaints and the Police Investigations & Review Commissioner, and our opinion and considerations on the proposals for future forensic services.

2. Threat to the Operational Independence of the Chief Constable

2.1 We believe certain provisions within the Bill threaten the operational independence of the Chief Constable and, thereby, policing.

2.2 The ACPOS response to the Local Government and Regeneration Committee of the Scottish Parliament provides further detail on this issue and is attached at Appendix A.
3. Strengthening Local Planning and the Role of the Local Authority

3.1 We recognise the need to strengthen the role of local authorities in the local planning arrangements. Presently, the Bill lacks clarity on how local arrangements and formalised reporting mechanisms should link in with the statutory requirements of accountability and scrutiny under the new Scottish Police Authority.

3.2 The ACPOS response to the Local Government and Regeneration Committee of the Scottish Parliament provides further detail on this issue and is attached at Appendix A.

4. Resource Allocation & Local Resourcing of Police Services

4.1 Work is underway to develop a robust resource allocation model for the new service and ACPOS understands the importance of local policing resources to local communities. This will be a highly contentious issue and our response to the Local Government and Regeneration Committee of the Scottish Parliament provides further detail on this issue and is attached at Appendix A.

5. Outline Business Case – The Challenge of Delivering Savings

5.1 The Scottish Government has used the financial case detailed in their Outline Business Case (OBC) to set the future police budget. We have a number of concerns relating to the Outline Business Case, which present challenges if we are to meet the financial savings within the timescales set.

5.2 Our response to the Finance Committee of the Scottish Parliament provides further detail on these issues and is attached at Appendix B.

6. Forensic Services

6.1 ACPOS has concerns that separation of all aspects of forensic services from the future police service is flawed and will not serve the best interests of either the public or the new single service.

6.2 We do acknowledge the Scottish Government's preference for a forensic service model where all functions sit independently from the chief constable, and whilst our view differs somewhat, this will in no way undermine our commitment to support its implementation alongside the creation of the new single police service.

6.3 We acknowledge that colleagues from the Forensic Services of SPSA advocate the "independent" model, effectively a continuation of the structure that has been in place since 2007. We respect that view and hope that a mature debate on the merits of both options provides the basis for informed decision making on a critical aspect of reform.

6.4 The specific issues we would like to raise are as follows: -
1. Investigation of crime & scene examination

- It is our opinion that the proposed arrangements for forensic services – and specifically the separation of the crime scene examination function from the chief constable – require to be re-examined. We believe the proposals, as they stand, are counter intuitive to the primary objectives of police reform to streamline and modernise services to secure best value and deliver an efficient and effective service.

- Reference to forensic services requires a clear distinction between 'forensic analysis' and 'scene examination' (or laboratory vs. crime scene). We are not advocating that forensic analysis falls under the police service; that should be the preserve of scientists and respective experts (i.e. fingerprint examiners). Our argument is based on the premise that examination of a scene is intrinsically linked to the investigative process, responsibility for which falls under the direction of the police in accordance with the senior investigator's (SIO) policy and decision making. Investigative work, in this context, is the preserve of the police.

- The considerations of the investigating officer require to be taken holistically, and any aspect of this process where the SIO's policy and decision-making, direction or requirements are not followed can undermine their role and the case. The separation and independence of scene examiners introduces such risk to this process. This is a point not missed on the Scottish Government who is keen to ensure the interaction between scene examiner and police officer are fully explored during the transition work.

- There are other examples within UK policing where scene of crime examination falls under the control of the police through specialist crime directorates, and separate from the 'laboratory process'.

- The collection of physical evidence is not the sole preserve of specialist crime scene examiners; police officers regularly collect 'scientific samples', an example being the use of early evidence kits in the investigation of serious sexual offences. The public can also act as the first link in the evidential chain, presenting into the investigative process physical evidence that results in laboratory analysis.

- Our argument is based on our acknowledgment of the broad range of skills, knowledge and experience of scene examiners, which they apply in support of the police response to any number of diverse incidents beyond that considered routine (i.e. fatalities, road accidents, CBRN and terrorist incidents). On such basis we are keen to ensure that any critical need for fast-time response to incidents proceeds without any need for negotiation with an independent body.
2. Governance, accountability

- On its inception in 2007, SPSA assumed responsibility for the provision of forensic services previously under the control of chief constables. This arrangement is referred to as 'crime scene to court' approach, and within the UK context is unique to Scotland. There was a conscious decision at that time to bring crime scene work and analysis together to ensure that there was consistency in practice and standards across the forensic regime. However, this was at the expense of separating out the scene examination from the primary investigative process, where in our opinion, it is better aligned.

- This separation of 'scene examination' from 'police investigation' creates the issue of having two governance structures within the same business area, and therefore operating under two separate budgets where the practical requirements of one 'agency' could be in conflict with the financial sensitivities of the other (and vice-versa). We would be keen to avoid any such conflict of interest.

- Under current arrangements the Director of Forensic Services reports to the Chief Executive of the SPSA, and is accountable to the SPSA Board. Current membership of the Board includes representation from two chief constables\(^1\), and whilst these appointments preserve a link with the police service in terms of current governance, there remains a critical separation between forensic services and policing at operational level where its impact on service delivery is at its most vulnerable.

3. Public Confidence / Independent Scrutiny

- There is a body of opinion, within the Scottish Government, that in order to maintain public confidence in forensic science, police investigations, and the criminal justice system, it is recognised as good practice to maintain a 'sterile corridor' between scientific investigation and police investigation. We believe the case for separating out all aspects of forensic services from the police governance structure is weak, and have yet to see evidence to suggest otherwise.

- The Scottish Government has quoted the 2009 report into Forensic Science by the United States National Academy of Sciences (NAS) who recommended ‘the creation of an independent science-based federal agency with strong ties to state and local forensic entities, but not in any way committed to an existing system or part of a law enforcement agency’.

- The US has approximately 18,500 separate police forces (and numerous other law enforcement agencies), some of which have an

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\(^1\) Chief Constable Stephen House - Chair of ACPOS Crime Business Area and member of the Serious and Organised Crime Taskforce; Chief Constable Colin McKerracher - Chair of the ACPOS Business Change and Forensic Science Programme Boards
establishment of just a handful of officers and many of whom carry out their own forensic evidence gathering - the circumstances and forensic integrity of which can often be less-than-ideal. To compare the needs of such a disparate national structure that clearly requires some measure of cohesion, with one that will consist of a single entity embracing equity of service provision and quality, is perhaps not the most appropriate, nor relevant, comparison.

- The need for reliability and impartiality of evidence is a basic tenet of all police investigations. If, as implied, having forensic services under the chief constable places these principles at risk then there is a vulnerability that exists in almost every aspect of police work; by applying the same rationale, all evidence-gathering and processing facets of police investigations should be subject to independent governance. In reality we don’t understand how this would be practical, and raises the question, ‘where is the line drawn?’

- The police have a statutory duty to investigate offences and bring offenders to justice. Responsibility rests with the police to ensure that actions taken during the course of any investigation satisfy the demands of prosecutors, and can ultimately stand scrutiny of a court of law. This includes the work undertaken by scene examiners operating as part of the investigative team in support of any given police operation. It is our opinion that the argument that their contribution needs to be perceived to be independent from policing activity is not true.

- In relation to independent scrutiny, England & Wales follow the Codes of Practice produced by the Forensic Services Regulator (FSR), The PSNI voluntarily embrace the FSR’s Codes of Practice, despite there being no obligation to do so. Adopting such a course of regulation – either voluntarily or on a statutory footing may be something worth exploring for Scotland if this is considered such an issue.

- The integrity of forensic process can be enhanced through a standardisation of forensic gateway processes across Scotland, to serve as a key administrative function to support processes and the clear evidential trail from the initial evidence capture, lab examination, results, and retention of evidence.

7. Complaints and Investigations

7.1 ACPOS support the concept of an independent investigative body. The legislation, as proposed within the Police and Fire Reform (Scotland) Bill, will create this independent body through the transformation of the Police Complaints Commissioner for Scotland (PCCS) to the Police Investigation and Review Commissioner (PIRC).

7.2 It is crucial public confidence in the police remains high but also that they have confidence in how we investigate complaints and the recourse available when
they have concerns about investigations. The establishment of the PIRC has our unqualified support in this regard, and it is essential it has an effective capability on Day 1 to provide appropriate services.

7.3 The Bill provides a high level narrative on how the PIRC will be established and what its investigatory powers will be, but there remains a degree of ambiguity in the policy and provisions of the Bill. It is this detail that will set the parameters of jurisdiction for the PIRC, and crucially set the tone of the relationship between the Commissioner, COPFS and the police service.

7.4 By way of example, clarity is required in relation to the term “public interest”, as this could be drawn too widely and create confusion and tension. Equally, it is unclear where specialist knowledge and skills will be sourced from, if this will be required from police resources and, if so, who will be responsible for cost. A further issue relates to oversight of the PIRC; who will have responsibility for investigating complaints against its investigations/staff and where will governance and accountability for same rest?

7.5 To assist Committee members, a number of these issues are reproduced at Appendix C, however, this is not a comprehensive list, as the detail required will not all be resolved within the Bill.

7.6 On the face of it, the legislation appears to provide a comprehensive and flexible framework for the exercise of power by the PIRC; however, discussion is required as to whether these powers are clearly understood by all interested parties or whether additional detailed definitions are required.

7.7 It is clear that there will be an early requirement for drafting and acceptance of detailed protocols and multi layered MOU’s between COPFS, the PIRC and the Police Service of Scotland in order to provide a clear understanding of the roles and responsibilities of all three organisations.

7.8 Notwithstanding, ACPOS is concerned that such information sharing and exchange arrangements may not be sufficiently mature or defined on Day 1, which could lead to a significant adverse impact on public and staff confidence in the new arrangements.

7.9 Answers to some of these questions and observations are likely to emerge from ongoing discussions and debates undertaken in various forums. ACPOS is fully committed to working closely with the Scottish Government to ensure the services offered on Day 1, and beyond, fully meet public expectations.

8. Conclusion

8.1 The introduction of the Police and Fire Reform (Scotland) Bill undoubtedly signifies a momentous change to policing in Scotland.

8.2 We fully acknowledge that reform on the scale proposed inevitably brings considerable challenges, not least the practicalities and logistical considerations of combining eight individual forces and two policing agencies into one single
organisation. ACPOS welcomes the unique opportunities this presents and looks forward to actively engaging with communities, partners and stakeholders as we reshape and modernise policing into a service that is more efficient, effective and responsive to the needs of all citizens and communities in Scotland.

ACPOS
21 February 2012
Appendix A

Written evidence to the Local Government and Regeneration Committee of the Scottish Parliament on the Police and Fire Reform (Scotland) Bill

1. Introduction

1.1 We believe that we are reforming police from a position of strength, with record levels of performance2, and our aspiration is that reform presents an opportunity to continue to develop and enhance policing across Scotland. In doing so, we recognise the challenges and anxieties that such a significant process of change presents, which we discuss in this paper. We feel this is best tackled by open and honest articulation of the issues to ensure any problems are recognised and mitigated now. Close scrutiny of the proposed arrangements in that open and transparent manner will be key to ensuring the governance arrangements assist in the design and development of a new policing model that meets the needs of all communities across Scotland, the individual citizen, police service, and politicians.

1.2 It is the intention of the service that policing under the new single force structure will remain locally focussed with strong community relationships and partnerships with local authorities. As such, we firmly believe that reform will not fundamentally change the policing that the vast majority of the public see day-to-day, but it will change how the service is organised.

1.3 Despite the record levels of police performance under the existing arrangements, the recent debate on reform has raised a question mark over the quality of that local scrutiny from various quarters. Likewise, it is recognised that national governance arrangements are ad hoc and in need of modernisation.

1.4 We recognise that appropriate governance and accountability is a fundamental aspect of policing reform. In terms of formal structure, police accountability in Scotland is currently based on a constitutional settlement known as the tripartite structure. This tripartite structure was established to try and resolve historical tensions between national and local influences, and clarify the relative powers of local authorities, national government and chief constables in framing and implementation of policing policy, all whilst recognising that police officers are responsible to the law and that operational policing decisions must therefore be insulated from political interference.

1.5 The proposals will redefine the current tri-partite arrangements and our goal is that this should not undermine the importance and quality of local policing nor threaten the operational independence of policing by introducing an unwelcome imbalance through greater national control of the service. Governance and accountability play a crucial role in ensuring that our policing is ‘by consent’, and any change to these arrangements need to be critically examined.

1.6 Changes to local governance and accountability are unavoidable, particularly in view of the creation of the Scottish Police Authority (SPA) and the dissolution of

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the current Police Authorities and Joint Police Boards. The new arrangements proposed in the Bill, in our view, describe arrangements for the relationship and engagement that the police have with communities and their elected representatives rather than a clear role of governance that currently exists locally. This amounts to a momentous and historic change to the policing in Scotland, and has focussed the mind to define the new structure, and importantly, the "new relationship" between the police service and Local Authorities. While the Local Government and Regeneration Committee is principally interested in local arrangements, our professional view is that local and national arrangements need to be considered together.

2. Operational independence of the chief constable / police service

2.1 We believe that provisions within the Bill threaten the operational independence of the chief constable, and therefore policing.

2.2 A key component of the current arrangements is that the chief constables exercise their operational responsibilities free of undue political interference, while subject to appropriate accountability and scrutiny. We are keen to ensure that the Bill provides the necessary safeguards to satisfactorily address and eliminate the inherent concerns that a 'single' chief constable could be subject to political influence and pressure. These concerns are real. They were raised by respondents to the Scottish Government consultation process and indeed the Cabinet Secretary for Justice himself recognised these concerns during the reform debate.

2.3 Specifically, we would raise the following issues:

1. Ministerial Direction

- Whilst the Bill sets out a separation between Scottish Ministers and the chief constable, the provisions provide that the SPA must comply with any 'direction' given by Scottish Ministers. There is a clear risk that for the Authority to meet such compliance, undue pressure and influence could be asserted on the chief constable, ultimately challenging the impartiality and independence of the role to meet a political demand.

- We have asked Scottish Government for practical examples and instances of ministerial direction of other national bodies, in an attempt to allay our concerns. It is our position that past experience of ministerial direction is not indicative of the new relationship with the future policing organisation, failing to take proper cognisance of the unique status of policing.

- Scottish Government’s position is that ministerial directions are used rarely and come as a consequence of the SPA being a national body and that policing can be no different from other Government departments.

- Our view is that policing is different. It has coercive powers and in a democratic society it not only must be separate from Government, it must be seen to be separate. We believe that the power of ministerial
direction of the SPA, if it is to remain, needs to be more fully articulated and described, and appropriate caveats placed thereon, to ensure that it cannot result in an unintended consequence of ministerial direction of the chief constable.

- Sections 5(2) refers to “(a) a specific operation being or to be carried out by the Police Service”, and “(b) the way in which the Police Service is carrying out (or is to carry out) a specific operation”. We believe that this is too narrow in its definition and should be broadened to “any operational matter being carried out by the Police Service”.

2. Power to call on Chief Constable to retire in the interests of efficiency and effectiveness

- While this has its origins in the 1967 Act, the Bill as presented removes any protection from an arbitrary use of this power. The context of the 1967 Act was a significantly greater number of chief constables. We are now moving into a new era of a single service and the arrangements for removal of the single chief constable need to reflect that. We believe that the bill should articulate a more detailed formal process; procedures to be followed, definition of efficiency or effectiveness, and appellate process. The new arrangements should maintain the general principle but there should be a much more robust and documented process to provide clarity for all and to protect the single chief constable from arbitrary use of the power.

3. Scottish Police Authority

We have concerns regarding the specific provisions set out in the Bill for the new SPA:

- The SPA will have a limited number of members. We believe that for the SPA to be effective, in terms of holding the chief constable to account and discharging its wider responsibilities will require not simply high calibre multi-skilled people but in a sufficiency of numbers. We do not believe that the proposal for 7-11 members will be sufficient for this purpose. We believe that 15 would be a more appropriate number to provide capacity and resilience. To effectively discharge its role, the SPA will require a range of sub groups and we are concerned that co-opted members bring another element of lack of accountability.

- The Bill places no responsibility on the SPA to engage formally with local authorities. There should be a formalised connection and relationship between both tiers to ensure ‘local’ influences ‘national’ and vice-versa.

- The SPA has unclear and limited accountability to the citizen due to the small number of members who are appointed, not elected, and there must be some form of compulsion on the SPA to engage with the local committees and consult directly with the citizen.
• There should be a number of locally elected members on the SPA. They should not be in a majority and they should be appointed on the same terms as other members, through the public appointments process, for their personal skills and experience and not simply on the basis of being an elected member. Their contribution on ‘local’ issues will be as important to the SPA as the other corporate disciplines brought by independent members.

• The financial arrangements of the new organisation, as a consequence of its national status, place significant restrictions on the chief constable. Hitherto able to develop financial reserves to assist in good financial and risk management, the new arrangements, and in particular the restrictions on holding reserves, will encourage a ‘spend it or lose’ mind-set. Moreover, we are concerned that where the chief constable requires additional resources, in the absence of being able to accrue reserves from allocated resources, (s)he will be required to approach Scottish Government (presumably through the SPA). This provides Scottish Government with unnecessary leverage on what may be an operational decision for the chief constable.

• We question the proposals in the Bill, whereby the SPA is responsible for development of the strategic plan for the Police Service of Scotland. Whilst we recognise that the SPA will have its own organisational priorities within its own strategic plan we believe the strategic plan of the Police Service of Scotland (as distinct from the SPSA) should be the responsibility of the professional and independent chief constable but would be subject to approval from the SPA.

3. Local Planning and the role of the Local Authority

3.1 We recognise a need to strengthen the role of local authorities in the local planning arrangements to satisfy requirements around local accountability through the community partnership processes.

3.2 Chapter 7 of the Bill sets out the provisions for local policing arrangements, and is prescriptive in the alignment of local policing with the 32 Local Authorities and the requirement for the local police commander to involve the Local authority in the setting of priorities and objectives, and preparation of a local police plan.

3.3 There is, however, a lack of clarity on how local arrangements and formalised reporting mechanisms should link in with the statutory requirements of accountability and scrutiny under the new Scottish Police Authority. As articulated previously, there needs to be connectivity between ‘local’ and ‘national’. National plans must reflect the importance of local delivery. Equally, local plans need to ensure appropriate prioritisation of national objectives. However, there must be clarity of accountability in terms of these two constituent parts of the governance structure.

3.4 Without such clarity, the proposals as they stand risk placing the new service under obligation to serve two 'masters'; one on a statutory footing with governance
and fiscal responsibility but little local accountability, and the other with influence in determining local policing plans and outcomes but no statutory authority or fiscal responsibility to support delivery.

3.5 In some respects, the planned pilots and pathfinder projects that will test the new arrangements are key to determining future policy and practice in local policing arrangements. Moreover, the police service has a well refined and mature methodology, through the Strategic Policing Assessment and the Tasking & Co-ordinating Process for developing policing plans and effecting delivery of them, balancing local and national and through our active participation in the pilots/pathfinders, we believe that we have a positive contribution to make.

3.6 We fully support the practical benefits of the proposed alignment of local policing with the 32 Local Authority areas. Indeed this largely reflects current arrangements throughout Scotland. The chief constable will have a duty to ensure adequate arrangements for local policing and the SPA will hold him/her to account for that but there can be no ambiguity about the role of the chief constable, who must remain responsible for local policing and to whom local commanders are accountable. The question is one of balance. Just as it would be inappropriate for an over emphasis on national policing, an inflexibility at the local level that fetters the chief constable from his/her wider responsibilities would be equally inappropriate.

3.7 ACPOS advocates current community planning arrangements as a key consideration in determining how policing can be delivered locally within partnership arrangements, through:

- Professionalising and realigning existing community planning partnerships to bring corporacy to the 32 local area structure in support of local policing
- Linking the local policing plans into the community planning process and SOA’s through a local strategic assessment
- Consolidation and enhancement of partnership working to support the principles of policing

3.8 Linking policing plans into the community planning process, and feeding into SOAs, would provide a structure conducive to requirements of both local and national accountability, and a correlation between local and national priorities.

3.9 We recognise the significant contribution that has been made to local policing in recent years through the formalised community planning processes, partnership and collaborative working. Furthermore we acknowledge the progress made by the police service in Scotland though a clear focus and effort on community engagement, and improved accessibility and willingness to respond directly to local problems.

3.10 This effort has resulted in increased levels of trust, confidence and public satisfaction in policing, and the processes that support it, and this must be preserved under the new arrangements. A continuation and standardisation of these
arrangements is key to the future success of local policing delivery within the new structure.

**Local Police Plans and Priorities**

3.11 The inclusion of all stakeholders is crucial to this process; delivery of the local police plan cannot be seen to be the sole preserve of a newly defined 'police - Local Authority' relationship.

3.12 We believe the terms of the localised delivery around this requirement must be reflective of the need for flexibility in its application, and integral to the wider local community planning processes. This approach will encourage the citizen and all key stakeholders to contribute meaningfully to local policing planning process. This is in accordance with a model that conforms to the policing principles and purpose of policing to improve the safety and well-being of communities.

3.13 The Bill is clear on the statutory responsibility on the local commander to prepare and submit a local police plan to the relevant local authority for approval. This places emphasis on the local commander to consult with and seek ratification from only one partner (the respective local authority) on local policing. We believe this should be modified to reflect wider local policing arrangements; it would be more accurate to ask the local commander, with community planning partners, to produce a **local strategic assessment** which will assist and inform the local police plan.

3.14 Ownership and responsibility for the local police plan remains with the police, and the plan is still prepared and subject to approval by the Local Authority, per the provisions of the Bill. However, the local strategic assessment upon which the plan is based, in broader terms, will be developed by the police through wider consultation with partners. This takes full cognisance of the importance of a partnership approach in the participation and responsiveness to the delivery of policing. Local policing, in particular, is not delivered in isolation and aspects of local policing will be delivered with and by local partners.

3.15 As a consequence of this approach the local strategic assessment highlights the priorities for local policing more broadly, and ensures delivery of these priorities - and therefore the local police plan, at least in part - is integral to community planning and the local SOA. This approach will contribute to the wider effort to focus on preventative effort through partnership working, where there is a need to link police reform to the work currently ongoing under the Scottish Government Review of Community Planning and Single Outcome Agreements.

3.16 There is almost a bit of the unknown here and how this will work in practice. All of these processes, and the detail around it – setting priorities, the approval of the plan, community planning partnership delivery - needs to be fully exposed and subjected to rigorous scrutiny and testing through the local Pathfinder pilots.

3.17 In addition to this, ACPOS is resolute in its assertion that local policing arrangements (governance and scrutiny) must take full cognisance of the wider statutory requirements and responsibilities on the chief constable around continuous improvement in the carrying out of police functions in terms of Best Value, and
scrutiny through the Scottish Policing Performance Framework (SPPF) in terms of national performance and outcomes (and notwithstanding the important external inspection and scrutiny arrangements by HMICS).

4. Implications for local resourcing of police services

4.1 Work is currently underway as part of the mandated Police Reform programme to develop a blueprint for the new Police Service of Scotland. In full recognition of the importance of local policing, ACPOS have appointed a dedicated team to apply the appropriate focus and effort to this significant aspect of police reform. This work is further underpinned by effort from across a number of executive-led workstreams within the reform programme, with full cognisance of interdependencies.

4.2 Whilst a final resource allocation model has not yet been determined - and is subject to the outcomes of these wider processes of remodelling - ACPOS fully acknowledges the importance that the commitment of local policing resource does not suffer to the detriment of police reform. A number of objectives and determining factors, critical to the successful outcome of this remodelling process are being followed, and this is fundamental in preserving that balance of local resource within the context of the new single service.

4.3 However, within the revised resourcing framework there will be the inevitable movement and displacement of some officer numbers and police staff from existing resource allocation within the geography of the 8-force model, SCDEA and SPSA. This is a fundamental objective of the reform of the police service, and will eventually remove some duplication of support services, and create more equal access to specialist support and national capacity where and when they are needed. ACPOS does not anticipate this will have a detrimental effect on local policing; indeed the contrary position should apply in that communities will benefit from the availability of increased cadre of specialist resource when required.

4.4 Local policing resource needs to reflect variance in our communities across the country. We would caution against a potential risk of bias from outcomes being too narrow and focussed on, for instance, crime levels and solvency; outcomes must be reflective of the broader well-being of all our communities, and not a charter for something that would result in resources being dragged in to the busier urban areas at the expense of localised need or lack of regard for geography or spread of population, or other variables.

4.5 The 17,234 police officer numbers should ensure that we maintain correct levels of policing in local communities. Key to maintaining this is a reduction of costs in other areas, the risks to which are outlined in our paper to the Finance Committee.
Appendix B

Written evidence to the Finance Committee of the Scottish Parliament on the Police and Fire Reform (Scotland) Bill

1. Commitment

1.1 ACPOS is firmly committed to delivering Scottish Government’s three objectives of reform:

- Sustaining and improving local policing in a time of financial constraint
- Improving the availability of specialist operational support throughout Scotland
- Improved arrangements for local engagement

1.2 Whilst recognising the current record levels of performance and significant contribution that the current structures of policing has made to the safety and well being of the people of Scotland over the last 37 years, we are committed to delivering effective reform to position the service to continue that within a constrained public sector budget.

1.3 Our structured Programme Management arrangements, therefore, are designed to ensure that reform objectives are met, while identifying the true costs and savings of reform. We recognise any reform in the public sector carries the associated risk of failing to deliver objectives and benefits, with costs being greater and savings less than anticipated. We seek to avoid that.

1.4 Our commitment extends not just to the delivery of reform, but business as usual, including future threats within current financial constraints. Savings of £88m by 2014/15 have been set, increasing to £106m in the following spending review in 2015/16. In view of the nature and extent of public sector finance constraints, these savings of 8%, increasing to 10% over the next 3 - 4 years, are not unreasonable and our collective professional view as the senior leaders of the service is that, as a financial saving alone, this would be achievable.

1.5 There are, however, some challenges and constraints in meeting reform objectives while continuing to deliver our record levels of performance within the financial settlement. Parliament and the Committees will want to be fully sighted on that wider context and the detail of the challenges, which we outline below.

2. The Outline Business Case

2.1 There are issues relating directly to the Scottish Government’s Police Reform Programme Outline Business Case, which in our view presents a number of challenges to meet the financial savings within the timescales set while conforming to the government’s commitments on key issues.

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2.2 The first point is that the Financial Memorandum and the budget has been set on the basis of an Outline Business Case (OBC), not a fully developed Business Case. Within the OBC, there are some high level projections and assumptions that have not been subject to a process of due diligence that would more accurately assess delivery, costs and savings. The OBC was the means by which Scottish Government planned to assess the three options for reform against each other and make its decision, following which, and in line with established practice, a full business case was to be developed, providing a more accurate and a more comprehensive projection of costs, savings, business benefits and so on.

2.3 It now falls, rightly, to the police service to shape our future, from which will flow substantial business cases that will more accurately predict costs, savings, timelines and deliverables. If the OBC’s projections have been overly optimistic, then there is a clear risk that costs may have been under-estimated and savings over-estimated. That said, if the OBC has been pessimistic the converse may apply.

2.4 The Scottish Government’s position is that the OBC is not a blueprint for the service and if savings cannot be accrued in particular areas of policing, as predicted within the OBC, they will be accrued in ‘others’. While we acknowledge this principle and will look to every area of policing to deliver the overall savings required to meet the budget, there is no guarantee that those ‘other’ areas have potential for savings.

2.5 All of that said, this does not diminish the ACPOS’ commitment and drive to deliver reform within the budget set. It merely highlights a significant risk that needs to be recognised, managed and mitigated. All of this is closely aligned to our second substantial issue, which is that, as a consequence of Scottish Government commitments, there have been significant limitations placed on the service in terms of where it can find savings within the entire budget. These are detailed below.

3. Constraints and Assumptions

3.1 There are a number of constraints and assumptions, based on commitments made by the Scottish Government. These are:

- Police Officer numbers will be maintained at 17234
- There will be no introduction of the Winsor Review Recommendations on police/police staff terms and conditions
- There will be no compulsory redundancies
- Police and police staff will transfer to the new service on their existing terms and conditions
- The service will develop a dispersed (rather than a centralised) model of service delivery to minimise the impact of job cuts on any specific region of Scotland

3.2 Each of these is laudable, and represents a significant contribution to policing but, when taken together, the consequence is that they restrict the opportunities for making the savings set within the budget. This can be seen more clearly when the budget profile for policing is examined.
3.3 The Financial Memorandum has set out, within the overall £88m of savings, three main heads of savings:

1. Police staff reduction costs of £50.3m
2. Non staff costs of £30.7m
3. Police Officer delayering of £5.4m

3.4 Whilst an initial element of savings is due FY2012/13, the substantial part kicks in during FY2013/14 and FY2014/15. The delivery of these savings is dependent on the new service starting on the earliest possible date of 1 April 2013, therefore any deferral beyond this date will add delay and cause slippage.

3.5 There are four specific issues worthy of highlighting from this:

- Police officer numbers being protected effectively closes off almost 75% of the spend to making financial savings
- Maintaining police officer and police staff terms and conditions on transfer to the new organisation will limit the opportunities for significant savings on staff costs in the first few years, particularly since any negotiated settlement will take time and is likely to include some degree of incremental protection
- With savings of over £30m already set within the non staff budget of £130m, the scope for significant further savings is limited when much of that budget is unavoidable (fuel, utilities, rates, etc)
- Achieving the scale of savings from police staff costs is dependent on significant numbers of police staff leaving the organisation on a voluntary basis.

This is more fully articulated in the following section.

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4 This figure also includes other non-specified costs of £1.6m
4. The Scale of Police Staff Job Cuts

4.1 A key component of reform is to sustain and enhance community based operational policing by reducing duplication. It is an unavoidable consequence that to achieve the scale of savings there will be a significant reduction in police staff jobs. The scale of police staff cuts is recognised by Scottish Government, not simply in terms of the savings it has set within the budget but in the investment of £80m to fund voluntary redundancies.

4.2 Based on these figures, this equates to a reduction in circa 2000fte leaving the organisation by April 2015, in the following (cumulative) phasing:

<table>
<thead>
<tr>
<th>Year</th>
<th>Reduction</th>
</tr>
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<tbody>
<tr>
<td>2012/13</td>
<td>240</td>
</tr>
<tr>
<td>2013/14</td>
<td>906</td>
</tr>
<tr>
<td>2014/15</td>
<td>1864</td>
</tr>
<tr>
<td>2015/16</td>
<td>2054</td>
</tr>
</tbody>
</table>

4.3 The above figure of 2054 will increase to circa 2400 if projected savings of £10 million in police staff terms and conditions is not achieved.

4.4 This equates to approximately 33% of all police staff posts and has to be achieved by Voluntary Redundancy. Police forces and the SPSA have already reduced police staff levels by c1000fte in the last 2 - 3 years, much of it by voluntary redundancy. There is, therefore, a diminishing pool of people likely to be attracted to voluntary severance, particularly when there is a clear statement that there will be no compulsory redundancy.

4.5 Our professional assessment based on that recent experience has shown that it is highly unlikely that voluntary redundancy schemes will attract such numbers, particularly within the current economic climate and a less than buoyant jobs market. By way of example, a Voluntary Redundancy Scheme within Strathclyde Police over the last eighteen months released only c200 members of staff and this was on more favourable terms than is assumed within the Financial Memorandum. The Scheme attracted c500 notes of interest, many of whom were in areas of business that were not in scope for change (station assistants, custody, control rooms).

4.6 The scale and phasing of police staff voluntary redundancies, if it can be achieved, carries a risk that police officers will be drawn into non police roles. Our drive is to avoid this at all costs as we believe that it is not efficient, effective or the best way to design the new service. It does not represent Best Value. Police staff make a significant contribution to the overall policing effort and our professional view is that we require an appropriate workforce mix between police officers and police staff. Any notion that police staff simply perform a “back office” function is not an accurate description of the professional role they play.
5. **Cost**

5.1 ACPOS recognises the commitment of the Scottish Government to invest in Police Reform in order to achieve recurring savings of £106 million by 2016/17. It is widely recognised that reform of this magnitude cannot be achieved without significant investment. ACPOS also welcomes the inclusion of optimism bias within the Financial Memorandum to provide a measure of protection against the costs being greater and the savings less than predicted within the OBC, however, our professional view is that there will be a lag before the benefits of the investment in reform are accrued.

5.2 It should be noted, however, the savings of £88m relating to police reform are not the only savings the police service is required to make. The flat cash settlement is a cut in real terms, because of inflationary considerations and pay awards during the spending review, therefore additional focus over and above the £88m will be required in order to meet the savings necessary to stay within the budget settlement.

5.3 Having just received some detail from Scottish Government on the status of the new organisation, further work is ongoing to better understand the implications. There are other financial management issues associated with the service having to work within ‘Scottish Government Rules’ rather than ‘Local Authority Rules’ which are only now being fully understood, e.g. reduced procurement costs could result in increased administrative costs, an inability to hold reserves, and a significant VAT liability.

6. **Value Added Tax – additional financial commitment**

6.1 The new Police Service of Scotland, as a consequence of its status as a national organisation, which is a significant departure from how police forces and police authorities are currently constituted, will attract an annual liability of VAT of £22m. We recognise that the Scottish Government is in liaison with HMRC to consider an exemption from the requirement to pay VAT.

6.2 That said, we raised similar concerns on the VAT liability of the Scottish Police Services Authority (SPSA) when it was formed in 2007 and there has been no relaxation on the HMRC position.

6.3 Our planning assumption, therefore, is the new Police Service of Scotland, will have a recurring VAT liability of £22m per annum, which is the equivalent of 800 police staff jobs or 630 police officer posts, on top of what has already been assumed. Over the period covered by the Financial Memorandum this amounts to a liability of £280m.

7. **Reserves**

7.1 There is ongoing debate between Scottish Government and COSLA regarding the disposal of reserves currently held by Police Authorities on behalf of the existing forces. As we understand matters, Scottish Government and COSLA have agreed that these funds will be recovered from Police Authorities and returned to Scottish Government and COSLA on the 51/49% split. Scottish Government’s preference is
for this to occur at the end of the current financial year, while COSLA’s position is that the reserves should be retained within the current structure of policing and returned only with the commencement of the new service.

7.2 The ACPOS view is that this money was allocated to police for policing purposes, was managed accordingly, and should be retained within the policing, providing the new service with a contingency to fund aspects of reform.

8. Conclusion

8.1 All of that said, our absolute commitment is to achieve the objectives of reform within the budget set by Scottish Government. In doing so, the challenges need to be clearly recognised, articulated and managed given the parliamentary and public interest in such a significant reform of an important public service.
Appendix C

COMPLAINTS AND INVESTIGATIONS

Section 14 – Senior Officers: retirement for efficiency or effectiveness
Very little detail in this Section in comparison with the requirements set out under the Police (Efficiency) (Scotland) Regulations 1996 (requirement for progressively staged application of the regulation). It would be reasonable to expect that such provision reflected these existing regulations as a minimum. The process as laid out within the Bill in this respect is insufficiently defined at this time.

We have other pressing concerns around Section 14 that relate directly to the significant issue, already raised, in terms of operational independence of the chief constable (detailed in ‘Appendix A’ in the accompanying papers). The Bill provides for Ministerial Direction of the SPA, but not the chief constable. However, it is our opinion that the provisions of Section 14 risk placing such undue pressure on the chief constable to comply with requests or instructions from/through the SPA, as a consequence of the unregulated power of the SPA to “require a chief constable to retire from office…”, without any apparent appellant process. We feel this requires to be explored from both contexts.

Section 22 – Failure to perform duty
Section 23 – Failure to return equipment
The specific criminalisation of these issues appears to be disproportionate to the acts. There is already legal provision, both criminal and civil, for dealing with any unauthorised retention of property. The Conduct Regulations appear to satisfactorily provide for issues under the proposed Section 22.

Section 24 – Liability for unlawful conduct
It is unclear what is to be considered as “unlawful conduct” in this context, as it could be construed to include misconduct in addition to criminal acts and it is likely that this legislation would conflict with current legislation where vicarious liability is provided for (Health and Safety etc). Would this “unlawful” conduct require to be confirmed within a criminal court prior to being considered under this section, or is it to be based on balance of probabilities standards of evidence? The consideration of compensation to affected parties is more appropriately considered within the existing civil legislation and it is unclear what the requirement was to have such a provision within this Bill.

Section 50(1)(e) – Appointments, Promotions etc – Regulations to make provisions for "restriction on the private life or business interests of Constables or Police Cadets”.
The Police Service has competently addressed such issues for some time by way of the provision of clearly articulated Ethical Standards and associated Force policies. Any deviation from these standards and policies are effectively addressed through existing or new conduct regulations or, in extreme cases, the criminal law. It is unclear what specific restrictions of officer’s private lives is intended to be proscribed here and whether this can be suitably articulated and catered for within such regulations, given the extent and diversity of the private lives of Officers and their families in this modern age. This appears may be an unnecessary proposal and
contrary to contemporary thinking in terms of developing employment and human rights legislation.

Section 53 – Disciplinary procedures: conduct and performance
In terms of the references to performance, it seems Section 53 may not have taken cognisance of the Police (Efficiency) (Scotland) Regulations 1996, which we suggest competently addresses issues of efficiency and performance for officers up to Chief Superintendent rank.

Section 53(2)(d) provides for regulations made under Section 49, conferring functions on the PIRC in relation to investigations as to whether a constable has been engaged in misconduct or whether a constable's performance has been unsatisfactory. Whilst there may be occasions when the Commissioner may require to consider the conduct of an officer, particularly where there is an inference of serious misconduct, it is unclear what circumstances would cause performance issues of a police officer to be considered by the Commissioner. This proposal appears to conflict with the current Efficiency Regulations.

If the Commissioner does acquire such responsibility and powers it raises the question as to the efficacy of the information sharing and exchange mechanisms between the Commissioner and the Police Service of Scotland that will be essential to effectively meet these requirements.

It is clear there will be an early requirement for the drafting and acceptance of detailed Protocols and/or MOU’s between the PIRC and the Police Service of Scotland (PSoS). These will be crucial in order to provide a clear articulation of the roles and responsibilities of both organisations when it comes to such misconduct and performance matters under consideration.

Chapter 9 – Police Appeals Tribunals
The proposed provisions in Chapter 9 appear to be more than “….re-ordered and updated to provide appropriate independence” as stated in the Bill explanatory note. The Bill introduces Section 60 which provides strong powers for a Tribunal to obtain information including making it a criminal offence to fail to “answer any question” in addition to the statutory requirement to attend a Tribunal and provide information when requested and the associated criminal offences in failing to do so. This appears more of a substantial development that indicated within the explanatory note and might be subject to challenge, in terms of witnesses self incriminating if required by law to answer any question, as the section may be interpreted.

Chapter 10 – Complaints and Investigations
This is a critical element in the Bill. It is questionable (particularly in the early stages) whether the PIRC will or can be resourced in the time available to be self sufficient in respect of investigative capacity. This will likely require an approach to the PSoS Chief Constable for specialist resources to progress certain aspects of their investigations. This could lead to conflicts of interest and present particular issues, such as fatal road traffic collisions involving police officers and deaths in custody, where the potential for consideration of offences under the Corporate Manslaughter legislation are possible. It is questionable whether resources from the corporate body
under investigation can competently undertake such investigations or even actively participate in them?

There may be a requirement to consider the concept of the “Independent Oversight of an Investigation” in order to address this issue. This is already a practice undertaken by the IPCC in England and Wales and might be considered further. Again, as highlighted previously, there will be a fundamental requirement for the early development and agreement of detailed Information Sharing and Exchange protocols and MOUs between the PIRC and the PSoS (and potentially COPFS).

It would seem sensible to consider such arrangements already in place between similar organisations and we would suggest the Independent Police Complaints Commissioner (ACPO Forces), Garda Siochana (Garda Siochana Ombudsman Commission - GSOC) and the PSNI (Police Ombudsman Northern Ireland - PONI) arrangements as potentially a source of good practice to be considered.

Section 63(1)(d) - Investigation of “other matters” which may be in the “Public Interest” to do so

Whilst the volume of such cases may be low (GSOC have conducted 6 such investigations since 2007) it will be critical to clearly define the Public Interest Test which can be a difficult concept to clearly define. The PIT in terms of the Freedom of Information legislation does offer a relatively well defined explanation of the public interest test but it is business area specific and may not readily meet the requirements of this Bill. The parameters of what constitutes “other matters” also need to be properly and fully defined.

Section 63(1)(e) introduces the function of the Commissioner, “to perform any functions imposed on the Commissioner by regulations made under Section 49 of the Police and Fire Reform (Scotland) Act 2012 (asp00) in relation to procedures for dealing with constables whose standard of behaviour or performance is unsatisfactory”.

This is a significant development and may present a potential conflict of responsibility between the Commissioner and the Deputy Chief Constable, assuming the DCC will retain similar responsibilities for the staff of the PSoS as at present. If there are issues around a constable’s “behaviour” then this would most likely fall into the realm of conduct as prescribed in Police Conduct Regulations. If the matter is one of “performance”, this is likely to remain within both Force policies for performance management and also by way of the Efficiency Regulations. As noted earlier, under the provisions of Section 53, it is unclear what locus an independent Commissioner should have in this respect, given these matters currently effectively managed in line with existing Regulations, other than to remit such considerations back to the Chief Constable if they arise from any investigation conducted by the PIRC. We believe this issue needs further consideration and/or clarification.

It is also unclear how the process of undertaking appeals against conduct matters will function effectively and who will be responsible, particularly if the PIRC is to become involved in the investigation of conduct issues. There could be duplication of effort if matters are remitted back to the PSoS from the PIRC and information is not effectively shared between the bodies. Additionally, there is a real risk of the loss of
confidence in the process by both the public and staff if this process is not properly articulated. This could become confusing for the public who may find themselves dealing with two separate organisations for the same issue.

**Complaints against the Commissioner / PIRC staff**
The Bill is silent in this respect and is reflective of the position of Police Ombudsman in Northern Ireland. However, it seems reasonable, and reflective of the relationship currently between PCCS and the Scottish Police Service, that the PIRC should be subject to the external scrutiny of the Public Services Ombudsman for Scotland, as are other similar public bodies; this body has the skills, experience and resource to do so. Otherwise, there is a risk that public confidence in the new arrangements would be adversely affected if there is no recourse to independent scrutiny for complaints, particularly those initially and directly investigated by the PIRC.

**Composition of the Commission**
Finally, there is a fundamental issue in the composition of the Commission, particularly in terms of the number of Commissioners. The premise of the establishment of a Commission is one of independence from both the police service and from Government. The Commissioner is a Government appointee and could be seen to be liable to undue influence, not just from a Government perspective but also the wide and diverse lobby, single issue and pressure groups. The model adopted by the Irish Garda Siochana Ombudsman Commission was to establish a three person collegiate body, which was predicated on the desire for the Commission to discharge its functions in a deliberative manner allowing for both overall consensus and majority vote thereby introducing an appropriate level of protection from such undue influence; this approach provided a robust level of resilience for the Commission. The diverse backgrounds of the three Commissioners also offered the benefit of wide life experience and the prospect of a balanced level of determination. Given the similarities between the countries it seems appropriate this model should at least be considered as an option.
Early appointment of the Chief Constable

Thank you very much for allowing me to contribute to what I thought was, from our perspective, a very productive session of the Justice Committee on 28 February 2012. I hope it was helpful to you and your Committee. On reflection, there is one particular area upon which I should have placed greater emphasis at Justice Committee, and that is the early appointment of the Chief Constable. I did raise it briefly at the Finance Committee but it is such an important issue that I thought that I should raise it with you in some more detail.

Until now our position has always been that an early appointment is necessary but we recognised, and were sympathetic to, the position held within Scottish Government that the due process was by necessity a lengthy one as a consequence of the parliamentary process and the Public Appointments process, which had to precede the selection and appointment of the Chief Constable.

At this stage we are advised by Scottish Government colleagues that the appointment of the Chief Constable, following the appointment of the first Chair of the new Scottish Police Authority under the Public Appointments process, is likely to occur in December 2012. That would be followed by the selection and appointment of the full Executive Team at Deputy Chief Constable, Assistant Chief Constable and Director level. As you know, agreement has already been reached that 1 April 2013 is the optimum start date for the new service, to provide the fullest opportunity to deliver reform and the savings required in the police budget. This would leave the Chief Constable with a maximum of three months, and the wider Executive Team a small number of weeks, to prepare for the ‘go live’ date. My professional view is that this is too late.

As you know, I am leading on Police Reform which perhaps puts me in a particularly unique position to understand why the reform programme would benefit from the early appointment of a Chief Constable. That said, I also have the unanimous support and endorsement of all other Chief Constables, the Chief Executive of the Scottish Police Services Authority and the Director General of the Scottish Crime and Drug Enforcement Agency in writing to you to provide our collective position on the early appointment of the Chief Constable.

In summary therefore, I would raise the following points in support of that position.

- As currently scheduled, there is insufficient time between December 2012 and 1 April 2013 for the new Chief Constable to be fully prepared to take control of a new organisation and be ready for Day 1.
• These time constraints become even more acute in respect of the appointment of wider Executive Team at Deputy Chief Constable, Assistant Chief Constable and Director level, leaving them only a number of weeks at best to prepare themselves and the organisation for ‘go live’.

• An earlier appointment would allow the Chief Constable and his/her Executive Team to articulate their early vision for policing for the future and to determine the ethos and style of policing which will be key to delivering the type of policing that is sympathetic to the goals of reform.

• This would also ensure that the new Chief Constable and the Executive Team are fully engaged in the reform process and able to take early decisions, or provide early guidance on key issues such as the design of the new service. While progress has already been made, and further progress will be made, under the current arrangements, the new Chief Constable would have the mandate and legitimacy for taking decisions now that will influence the service from now and into the future. Indeed, there may be a risk that decisions may be delayed in the absence of the new Chief Constable.

We do recognise that this proposal for an early appointment is not without risks or difficulties. In particular, we recognise that in the ideal world, the process for appointment of the Chief Constable should include the first Chair/Convenor of the new Scottish Police Authority. We are not operating, however, in an ideal world and it is this very appointment under the Public Appointments process that elongates the identification of the new Chief Constable to December 2012. It is worth highlighting that the existing process throws up many examples of new Conveners or Chairs of Police Authorities who inherit an existing Chief Constable, without compromise to an effective and enduring professional relationship.

Any early appointment must still be based on an open and transparent process and we recognise that there would be a need for a specifically designed process. It is not for the service to determine how that may look but we would be willing to contribute ideas if requested.

The timelines for introducing reform are tight as are the timescales for securing the savings already set within the budget. In our professional view, there is a clear and compelling case that the early appointment of the Chief Constable and the wider Executive Team should be brought forward to ensure that we meet the 1 April 2013 deadline as effectively as possible.

Kevin Smith
Chief Constable, ACPOS President
13 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Association of Principal Fire Officers Scotland

1. Scottish Fire and Rescue Board

APFOS has no particular comment to make about the number of members forming the new Board, however the Association supports the principle of members being appointed on the basis of relevant skills and expertise.

APFOS is of the opinion that members of the Board have a key role to play in supporting the delivery of high quality front line services whilst aligning to the principles of Best Value. It is imperative that members are competent to assess risk and allocate resources within a difficult economic climate, and then properly scrutinise performance.

2. Functions of the Scottish Fire and Rescue Service

APFOS is disappointed to note that the Bill does not propose to change the functions of the fire and rescue service. The Association considers that it is timely to introduce new functions which better reflect the contribution that the fire and rescue service already makes to a much wider community safety agenda.

Although there is some risk associated with the inclusion of new statutory duties in that they need to be sufficiently resourced, the function described as ‘Promoting fire safety’ does not adequately reflect the broader prevention function on which services are presently engaged. Members of the Association remain convinced that the key role that services play in a wide range of preventative and educational work is not appropriately recognised and would recommend that the function needs to expand beyond its singular fire focus.

The Association is of the opinion that ‘Responding to road traffic accidents’ should be matched by a proactive prevention and education function. Similarly, services have made a significant contribution to the work of Paddy Tomkins and more latterly to the ‘Water Rescue Stakeholders Group’. The duty to respond to flooding does not adequately reflect the expectations of Scotland’s communities and any new modern purpose should capture the much broader water rescue role.

APFOS remains convinced that the Bill should better reflect the broad engagement with partners on initiatives which contribute towards improving the safety and wellbeing of communities.

3. Inspectors of the Scottish Fire and Rescue Service

APFOS supports the principles of scrutiny and audit and is of the opinion that future scrutiny and audit arrangements must be independent, capable of assessing the performance of the operational function and consistent with the recommendations of the Crerar review.
The requirement for the Inspectorate to work closely with the Auditor General is welcome. Audit Scotland is recognised as being an independent audit body and, with support of peer assessors, has been successful in carrying out performance reviews following ‘modernisation’ and as part of the Best Value regime.

APFOS recognises that the Chief Inspector, Inspectors and Assistant Inspectors of the fire and rescue service will be non-Ministerial office bearers and that the Chief Inspector and Inspectors will be holders of the Royal Warrant, however some concern remains over the degree of independence and the potential for a conflict between the Inspectorate and Advisory roles.

APFOS would also wish to ensure that any audit and scrutiny role takes account of the requirements of the Health and Safety Executive (HSE) and draws on its expertise in relation to post-accident investigations.

4. Delivery of fire and rescue services

The principle of stronger engagement with local councillors is supported however it is difficult to see how the proposal to involve far more local councillors in shaping priorities, challenging and scrutinising performance can operate in practice. The Pathfinders provide a welcome opportunity to test these principles however they clearly need to take account of the changing operating landscape.

There also appears to be a conflict in terms of accountability of Local Senior Officers (LSOs) to each local authority within a structure which is centrally directed. Delegating authority to the LSO is welcome, but their ability to deliver against local priorities and expectations within a centrally developed policy and budgetary arrangement will create a difficult and constant tension. APFOS would therefore heed caution as to imposing statutory duties on the LSOs.

One of the main policy objectives of the Bill is to protect and improve local services despite financial cuts, and this is supported, however APFOS is unclear as to how the cost savings outlined within the OBC, particularly those related to prevention, protection and response, support that proposal.

It is also proposed to provide a more equitable access across Scotland to specialist support and expertise and, although this is laudable, APFOS would be keen to learn how that can be achieved in reality. Fire and rescue services already have well developed arrangements to support one another in delivering specialist capabilities, based on risk, and there has been no evidence to suggest that this will be improved upon or delivered any more effectively.

5. Financial and workforce matters

The financial forecasts and requirement to make substantial savings were the principle drivers which initiated the reform of Scotland’s Police Forces and Fire and Rescue Services. On that basis, APFOS has been critical of the fact that the financial analysis was omitted from the initial Outline Business Case and, even now, is based on a number of questionable assumptions.
With over 80% of the current cost of fire and rescue services being attributed to staffing, it is only reasonable to assume that the realisation of the projected savings will emanate from a significant reduction in staffing levels.

As a staff association, APFOS is particularly interested in the impact of reform proposals on its members. As a staff group, Principal Officers, are particularly vulnerable and the uncertainty on how reform impacts on them individually and collectively remains a concern. Unfortunately, even at this stage, no proposed staffing structure has been made available against which the financial assumptions can be tested.

The Association welcomes the Government’s commitment to no compulsory redundancies and the policy that on transfer no individual will suffer any detriment. APFOS also welcomes the commitment for staff to retain their existing mobility arrangements on transfer recognising that placing a requirement for officers to work in other areas of Scotland could place an undue hardship on them. The Association however, is of the opinion that those promises are in contradiction to the projected savings contained within the OBC unless the expectation is that the new authority will be required to deliver those savings through the implementation of sweeping changes, immediately following its establishment. Although any such changes will need to be negotiated, no comfort is provided to the Association or its members, that the Government’s commitments will be carried forward beyond the date of transfer to the new authority.

APFOS is particularly concerned with the assumptions and commentary in relation to voluntary redundancy payments set out in the Financial Memorandum. A figure of £4m has been attributed to the fire and rescue service on the basis that reduction in uniform staff could be managed through staff turnover and retirement and therefore no redundancy costs will be incurred. The Association is of the opinion that this assumption is flawed and is wholly inconsistent with the £80m set aside for the Police.

Association of Principal Fire Officers Scotland
6 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Association of Scottish Police Superintendents

1. Introduction

1.1 The Association of Scottish Police Superintendents (ASPS) support the policy objectives described in the Policy Memorandum (PM). We recognise the reality of the challenging economic environment in which we are currently placed has led to a need to reduce the cost of policing whilst ensuring improved outcomes for communities. We also believe that this process should be allied to wider public sector reform. That said, the change programme must be considered against a backdrop of current police performance which has provided the lowest recorded crime figures for thirty five years allied to improved detection rates which has led Scottish Government to describe policing in Scotland as “excellent”.

1.2 ASPS is a long established body that represents constables holding the ranks of Superintendent and Chief Superintendent in Scotland. Our immediate concern with regard to the contents of the Bill is the failure at Section 11 (6), and elsewhere, to specify ASPS as the statutory consultee in respect of these ranks. This is a designation which we have repeatedly requested throughout the consultation phase with a view to establishing for our Association a similar statutory basis to that which has been afforded to the Scottish Police Federation. A satisfactory explanation for this continued omission has yet to be provided to us.

1.3 In relation to the other provisions of the Bill, we offer the following comments for consideration in our capacity as the senior operational leaders of the service in Scotland and in respect of our role as a staff association, tasked with protecting the interests of our members in terms of welfare, efficiency and conditions of service.

2. Operational independence of the Chief Constable

2.1 At a national level, ASPS believe that further safeguards are required in order to protect the operational independence\(^1\) of the Chief Constable. Section 5 of the Bill instructs the authority to comply with any direction given by ministers, with certain restrictions given in respect of specific operations. In our opinion, these safeguards are insufficient and must be extended to ensure that all police operations are protected from the potential for inappropriate political interference.

2.2 Moreover, Section 14 of the Bill provides the Authority with an option to require a senior officer to retire from office. When allied to the provisions of section 5, it is not inconceivable to imagine a Chief Constable being required to retire on political grounds. This is a situation that must be avoided and further protection should be afforded to senior officers within the legislation not only for their personal protection

\(^1\) The Court of Appeal judgment of Lord Denning in the case of Blackburn in 1968
but in the wider public interest. In any event, we should wish to be informed with regard to the appeal process that would apply in such circumstances.

2.3 At a local authority level, ASPS support measures which strengthen the connection between services and communities. We recognise the need to be responsive to the needs of communities and ensure that local government can influence local policing whilst protecting the service from the potential for inappropriate political interference from either local or central government - in the wider public interest.

2.4 Clearly, local governance arrangements will be required in order to ensure openness, transparency and fairness in the setting and agreeing of local plans. That said, the Bill does not specify how this is to be achieved and to whom local commanders will report. In any event, we would be opposed to an element of local government control being introduced to policing and would wish to ensure that responsibility of the Chief Constable as the individual with operational autonomy over the deployment of policing resources is thoroughly underlined. Formal reporting and accountability from Local Commanders for operational performance must be to the Chief Constable alone.

2.5 The PM does state, however, that “it will be for the local authorities to determine the most appropriate local mechanism for exercising their role…and formalising their relationship with the local commander…to help shape and deliver local outcomes.” This infers considerable latitude for local authorities to place demands upon the local commander and appears to erode the authority of the Chief Constable.

2.6 It is our view that the operational responsibility of constables and the local police commander to act in pursuance of Section 19 (function and jurisdiction), 20 (general duties) and 32 (policing principles) of the Bill, in the context or local policing, must be explicitly stated and understood. This will avoid a situation in which local policing might become inappropriately influenced by any individual or organisation and the impartial execution of the office of constable or public confidence in that impartiality is eroded as a consequence.

2.7 Furthermore, Section 46 (3) (a) instructs local commanders to produce ‘reports’ for the local authority as ‘reasonably required’. Without further clarification, this section of the Bill may result in police resources being diverted from their primary policing tasks in order to collate information and prepare such reports.

2.8 We would also welcome the provision of greater detail in respect of the “joint development of a local plan”, as outlined in Section 48, and the potential for disagreement between contributing parties. Clarity over the extent to which the Local Authority is to “approve” the local policing plan is necessary in order to ensure that police officers are not hindered from following the direction and control of the Chief Constable and can impartially execute their statutory duties at a local level. We believe that “agreement” rather than “approve” represents a more appropriate description of the relationship between local commanders, local authorities and the Chief Constable.
2.9 Public Sector reform offers an opportunity to legislate for improved collaboration between other agencies and police and we hope to see such a legal duty in other public sector reform legislation.

3. Frontline policing and the provision of forensic services

3.1 We agree that there is considerable scope for reducing the duplication of support services in Scotland by the creation of a single Police Service. That said, we are keen to see police officers performing roles that require the office of constable whilst being provided with support from professionally qualified individuals in those roles that do not require the post holder to utilise police powers. This will provide a balanced workforce. Indeed, in this respect, we believe that there are opportunities and cost savings available in wider private or public sector involvement in support of police operational delivery.

3.2 Notwithstanding, some clarity is required in respect of the widespread use of the term "frontline" when discussing policing. We have long held the opinion that the term ‘frontline’ is primarily used by external parties to describe visible uniformed police operations and ‘crime fighting’. In reality, the use of this term in such circumstances betrays a lack of knowledge and understanding of policing. In our opinion, ‘frontline’ service delivery includes a number of other functions such as surveillance, intelligence, custody handling, case preparation, counter terrorism and offender management which are sometimes referred to as ‘middle’ or ‘back’ office functions. Errors in any of these areas can have a serious detrimental impact on crime figures, public confidence and community safety and thus their importance should not be downgraded or overlooked.

3.3 We also believe that change to local operational service delivery should be kept to a minimum in order to reduce the potential for adverse impact on performance or a reduction in outcomes for communities. Where changes are proposed, evidence for the change, cost savings to be achieved and the potential for improved outcomes should be clearly articulated. When policing in Scotland is recognised as “excellent” we would not encourage wholesale change.

3.4 We would encourage a focus on the removal of duplication and cost reduction in the directly non-operational areas and in the provision of enabling services, such as, ICT where there is an annual spend of circa £60 million.

3.5 One area of concern to our members, however, is the proposals in respect of forensic services as outlined in Chapter 3 of the Bill. We believe that further thought should be given to the proposed arrangements being applied with any distinction being drawn between the forensic analysis of evidence and responsibility for the gathering of that evidence.

3.6 In our opinion, responsibility for operational direction and control of staff at crime scenes should be a matter for the police alone. This will ensure appropriate levels of service at crime scenes under the control and direction of senior investigating officers, whose role it is to oversee all elements of evidence gathering, whilst public confidence in the impartiality of the analysis of evidence and submission of reports in the criminal justice process is maintained. We do not wish to see savings that are
realised from reform being invested in the creation of large public bodies with their own management structures and support functions.

4. Complaints and investigations

4.1 We acknowledge the decision to introduce the post of Police Investigation and Review Commissioner (PIRC). We are concerned, however, that there is insufficient time available to implement this change prior to the establishment of the Police Service of Scotland.

4.2 Indeed, whilst we support the establishment of a PIRC, we should wish to be provided with greater clarity in respect of the investigation protocols, particularly as they apply to 'investigations of other matters in the public interest' as outlined at section 63 (d). In our opinion, this section, as worded, may enable a PIRC to embark on an investigation of their choosing in their subjective interpretation of public interest.

4.3 Similarly, in our opinion, the provisions of Section 70 as they relate to complaints about the PIRC do not provide an acceptable level of scrutiny in that the post holder in effect oversees the procedure to be adopted in respect of any complaint about their own department. In our view the role of the Public Service Complaints Ombudsman must be clearly stipulated within this section.

4.4 We note the development of the role of the PIRC and that it will require significant investment to fulfil the expanded role described in the Bill. We hope the PIRC will operate in a proportionate, accountable and transparent manner and be conscious of not disrupting ongoing operations.

5. Her Majesty's Inspectors of Constabulary in Scotland

5.1 Similarly, we believe that the role of Her Majesty’s Inspector of Constabulary in Scotland (HMICS) requires greater clarity. In our opinion, the individual holding this post must not only be independent of both the police service and the government but clearly seen to be so. This will require an alteration to current practice and the identification of new office premises out with St Andrew’s House.

5.2 The HMICS must provide an alternative voice to that of the Chief Constable in matters of policing policy and practice and oversee the decisions and scrutiny provided by the Police Authority. Most importantly, the HMICS must be able to ensure that there is no misuse of the ministerial power to direct the authority.

5.3 In addition, HMICS must establish inspection protocols that ensure a consistent approach across Scotland in terms of policy implementation and best value. This should ensure a consistency of approach to local authority relations.

6. Terms and conditions of service

6.1 ASPS should wish to express serious concern about certain provisions which appear to enable the removal or addition of ranks below Assistant Chief Constable and achieve officer savings by “adopting a standard span of control ratio” as part of
the reform programme. Moreover, the Bill also appears to introduce the power to
demote constables in rank other than for misconduct, discipline or individual
inefficiency (for which we believe there is sufficient legislation available at present)
and to make new regulations for constables to “hold and vacate office”.

6.2 When these provisions are combined with the duty on Best Value on both the
Chief Constable and the Scottish Police Authority, financial and political expediency
may result in the introduction of regulations which might require constables to exit
the police service at any point in time by virtue of the open ended nature of Section 49 of the Bill.

6.3 Such an action would introduce severe uncertainty to the service, reduce the
attractiveness of serving as a constable and leave individuals exposed to financial
and political pressures which may adversely impact on the way in which they
impartially execute their duty. Whilst police constables are currently neither subject
to employment law nor subject to the prospect of redundancy, they do operate in a
uniquely difficult environment. They face significant personal hazards, restrictions on
their personal life and severe penalties for failure to perform their duty. The PM
indicates that the policy intention of the Bill is to make “prosecution easier”. In this
respect, ASPS would seek to identify the gap in current provisions that this change in
penalty is seeking to close.

6.4 Indeed, it is our view that Sections 11, 12 and 49 of the Bill create unnecessary
uncertainty and signals an intent that has not thus far been reflected in conversations
with the Cabinet Secretary for Justice. This is unhelpful and may serve demotivate a
committed and highly performing workforce.

6.5 At this time, it is difficult to assess the impact that police reform will have on our
members but it is likely that the roles that we adopt will broaden and deepen as
responsibilities increase and our numbers decrease as part of “management de-
layering”. We believe though that command resilience must be maintained in order to
protect our communities and the welfare of our members. We do not believe in “a
one size fits all” approach to span of command. We believe that re-structuring can be
achieved through appropriate succession planning and the exercise of professional
judgement and restraint by the Chief Constable.

6.6 We hold the office of constable. We execute a duty and uphold the law fairly,
impartially and without favour. Therefore no individual may direct a police constable
to act other than in accordance with the terms of the law. Moreover, we accept
limitations and restrictions on our personal life to ensure our impartiality and in
exchange are compensated by specific terms and conditions. We regard Sections 11, 12 and 49 as representing a serious undermining of the safeguards of the office
of constable and not in our members or the wider public interest.

7. Other issues

7.1 ASPS wish to underline our concern at the proposed dissolution of the Police
Advisory Board for Scotland without any alternative body having been identified to
undertake the role and responsibilities that presently sit within that structure.
Consequently, we believe that further consideration of this role is required before Section 94 is implemented.

7.2 We also wish to highlight the contents of Section 20 of the Bill which outlines the general duties of Constables. We deeply regret the decision to remove the symbolic wording of the 1967 Act ‘guard, patrol and watch’ and would seek that phrase re-instated. It is our belief that these functions remain as relevant today as they were in 1967 and provide every constable in Scotland with a basis for performing their duty.

7.3 Furthermore, the penalty in respect of a constable who neglects or violates their duty contained within section 22 (3) is, in our opinion, wholly disproportionate. Indeed, we would argue that sufficient powers are provided at common law and would therefore question the need for this statutory provision.

7.4 Finally, we have always connected police reform with a wider public sector reform programme. The emphasis on prevention - a key pillar of public sector reform - is perhaps not as evident in the Bill as we might expect, receiving only two explicit references. We should also wish to have the provisions of the Christie and McClelland reports considered as key pillars of reform as progress is made.

David O’Connor
President
23 February 2012
CHAPTER 10: POLICE INVESTIGATION AND REVIEW COMMISSIONER

Introduction

This additional submission arises from our concerns over the detail of Chapter 10 of the Police and Fire Reform (Scotland) Bill SP8 (as introduced) and the timing of its implementation in relation to capability and capacity of the new Police Investigation and Review Commissioner (PIRC).

Independent Investigation and Review

ASPS fully understand and support the public interest requirement for an independent body to be able to investigate and review police conduct. Effective action by the PIRC is essential to maintain confidence in policing as well as in the new Independent Investigation and Review Service.

Capability, Capacity and Timing

While the most serious of incidents that the PIRC will be involved in are very rare in Scotland, the PIRC will need to have full capability and capacity to fulfil its statutory function from the same date that the Police Service of Scotland (PSOS) becomes operational. In order to meet this statutory duty the PIRC is likely to require sufficient appropriately qualified, skilled and experienced resources. Some of the particularly sensitive and specialised capability that may be required to conduct investigations into the most serious cases is currently only available within law enforcement organisations across the UK.

Recent events involving the Independent Police Complaints Commission (IPCC) and the Metropolitan Police in the case of Mark Duggan indicate that when dealing with the most serious of complaints, issues do arise. We are keen that the detail of how PSOS and PIRC interact, are established and understood in time for both organisations becoming operational. This requires guidance and protocols to be agreed, produced, staff trained and arrangements implemented. We are concerned that unless the PSOS Chief Constable and the Chief Officer Team are in place as early as possible, the detail will not be agreed and suitable arrangements will not be in place in time. We would urge the Justice Committee to satisfy itself that not only is the Chief Constable and the Chief Officer Team in place as early as possible but that the PIRC is also in place and operationally effective for Day1.

1 http://www.ipcc.gov.uk/en/Pages/inv_reports_london_se_region.aspx
Primacy – Lord Advocate and PIRC

Some clarity may be required in the Bill as to primacy in relation to authorising the instigation of investigation into “serious incidents involving the police”. The wording of the Bill could be clearer to confirm that the PIRC may only conduct such investigations when directed to do so under Section 33A (1), (b). The current structure of the Bill is such that it is unclear if such investigations can only be carried out when directed by the “appropriate prosecutor under the 2006 Act under Section 33A (1), (b) (I) (person serving may have committed a serious offence) or (II) (death of person serving with the police) or if the PIRC can unilaterally decide to investigate “serious incidents involving the police”, under Section 41B of the 2006 Act.

These “serious incidents” under Section 41B, may include circumstances that might be a matter for consideration by the Procurator Fiscal in the first instance as there may well be a need to consider and eliminate that a “person serving with the police may have committed a serious offence” under Section 33A (1), (b) (II) (death of person serving with the police).

Section 41B appears to cover situations whereby a person may have died following contact with police. This may include circumstances that might amount to a person serving with the police who may have committed a serious criminal offence and as such the “appropriate prosecutor” may wish to direct the PIRC in such circumstances.

Defining Public Interest and Decisions to Initiate Public Interest Investigations

Section 63 of the Bill amends the Police, Public Order and Criminal Justice Act 2006 Section 33, by inserting Section 33A regarding the general functions of the Commissioner. Section 33A, (d) empowers the PIRC to investigate “other matters” relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so.

Section 66 of the Bill (Investigations of other matters in the public interest) empowers the Commissioner to investigate “any relevant matter”. The term “any relevant police matter” can be interpreted very widely and there is a risk that it may be so interpreted by the PIRC. We are concerned that the wording of this section empowers the PIRC to conduct investigations without limit. Consequently significant time, resource and cost is likely to be devoted to investigations arising as a result of a wide interpretation of “public interest”. This may have an unintended consequence for effective and efficient operational policing both in terms of disruption to operations, the effort required and in changing police culture to be increasingly risk averse.

The probability of the police service becoming increasingly risk averse is very real when considering the implications for individuals at Sections 11 (add, remove, demote rank), 12 (hold and vacate office), 14 (senior officer retirement for efficiency and effectiveness) 23 (4) (a) (5 years imprisonment for failure to perform duty) and 49 (introduction of any regulation).

When taken as a whole the working environment proposed under the Bill for police officers is being radically changed. With the potential of a wide interpretation of
“public interest” by PIRC this will place an additional factor on police decision-making and may impact adversely through greater risk aversion in working practices.

We do understand the need for public interest investigations but would encourage the Justice Committee to question whether it is appropriate to invest such significant power to commence such investigations in one person. We would encourage the exploration of alternative models to ensure that democratic and ECHR compliant principles are included when determining public interest investigations.

We would also encourage the Justice Committee to satisfy itself that the PIRC will be sufficiently open, transparent, proportionate and accountable in its operations and as such progressed through the legislative processes of the Bill.

We do note the constraints on investigations available to the Scottish Ministers by Regulations they might make in relation to section 33A, (1), (c) or (d) under Section 67 of the Bill by inserting Section 41 D in the 2006 Act, which enables intervention by the Scottish Ministers. While we hope that the circumstances that would require Scottish Ministers to make such Regulations to intervene in these matters would be rare, we believe that the probability of such a requirement for Ministerial intervention could be reduced, by considering alternative arrangements for making decisions on “public interest” investigations by perhaps a “Public Interest Investigation Panel” or other such arrangements.

Costs

Given the extensive function of the PIRC, we would also suggest the Justice Committee may wish to examine closely the financial assumptions made for establishing the PIRC. The 2011/12 budget for the Police Complaints Commissioner Scotland was £930K and the cost of the new arrangements is estimated at £2m to £4m. As these costs are currently being incurred by police forces in Scotland, it is assumed that introducing the PIRC will be cost neutral, with transition costs of circa £80 to £122K and £50K to £76.5K. While we lack access to the detailed costings associated with current investigations, for the scope of investigations that the PIRC will be undertaking in the future, intuitively, the estimates do seem somewhat low.

Complaints Against the PIRC

As police officers we fully understand that our role in society will frequently place us in conflict with individuals and groups as we execute our duty. It is quite right that complaints can be made, investigations undertaken and reviewed. However, we feel that the vague nature of Section 70 of the Bill does a disservice to those people that are required to uphold and enforce the law and who, by their action or inaction can be subject of complaint, investigation and face severe sanctions.

We need clarity on how complaints against the PIRC can be addressed not only in relation to complaints by a member of the public but as a point of fairness where a serving member of PSOS has legitimate concerns regarding the conduct of the PIRC or a member of the PIRC staff. While the Police Appeals Tribunal may consider

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2 Police and Fire Reform (Scotland) Bill, Explanatory Notes, Pages 17-18
appeals against the findings of the PIRC, there does not appear to be any complaint process available to a person subject of a complaint investigation by the PIRC. In our view the role of the Public Service Complaints Ombudsman must be clearly stipulated within this section.

**Intrusive Surveillance**

We note the provision under Schedule 6, Part 1 to enable the PIRC to authorise and conduct intrusive surveillance operations under the Regulation of Investigatory Powers (Scotland) Act 2000. The Police Service uses this power carefully and has checks and balances in place to ensure it is proportionate and minimises collateral intrusion. Given our concerns over capability, capacity and timing we would encourage the Justice Committee to satisfy itself that appropriate safeguards are in place for the PIRC from April 2013 and that it has access to appropriately trained and qualified resources to implement and handle intrusive surveillance.

**Workplace Accountability and Criminal Accountability**

We would encourage the Justice Committee to consider the Bill and the provisions relating to the PIRC in a broad policing context. We are of the view that there is a risk of the PIRC taking too strong an interest in workplace accountability. We understand the need for the PIRC to address issues where the public have expressed a concern at police action and are dissatisfied with the outcome of complaint investigations; however a balance needs to be struck to enable the police service to function effectively and maintain internal discipline on a daily basis.

The role of the Deputy Chief Constable in relation to efficiency and misconduct is appropriate to deal with matters that do not amount to serious criminality or serious misconduct requiring external involvement.

Policing is complex at the best of times. When dealing with members of the public who are non-compliant, under the influence of drink or drugs, mentally ill or having experienced a sudden bereavement or are in crisis, it can be particularly difficult. As a Service we expect and demand high standards of conduct. At the same time it is recognised that officers face a range of challenging incidents, some of which can have a major affect on their health and welfare. For these reasons Forces provide training, support and occupational welfare arrangements.

As police officers we exercise our professional judgment constantly. We do this by applying our training, knowledge, experience and our values. We also exercise discretion. This can mean that sometimes we take action and sometimes we do not. This can be a cause for complaints against police particularly when individuals misconstrue the reasons for an officer’s action or inaction. Policing accountability has to take a range of factors into consideration as is shown in this example and for this reason, we are disappointed and somewhat confused at the penalty of 5 years imprisonment for “failure to perform duty” introduced at Section 22, (4), (a). Indeed this seems extremely harsh treatment for an officer subject to misconduct proceedings. The Policy Memorandum indicates that the policy intention is to make

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3 Policy Memorandum, Section 151, Page 29
prosecutions easier. We are very disappointed at the inference that the Scottish Government is of the view that there is a need to make prosecution of police constables easier and would ask for clarification of the problem that this legislative change is trying to address.

The Bill appears to seek to erode the status of the office of constable whilst at the same time increasing the penalty for “violating” the office of constable by increasing from summary proceeding levels under the 1967 Act, to 5 years imprisonment in this Bill. We struggle to understand the validity for seeking this extreme change.

We are particularly concerned that the independence of police constables to act impartially, without fear or favour in the discharge of their office, will be compromised by this Section of the Bill

In Conclusion

ASPS does not dispute the requirement for a PIRC however we do have concerns that:

- the reach of the PIRC may be too far;
- it may result in increasingly risk averse policing and increased costs; and
- it may ultimately be unable to function effectively within the set timescales unless the Chief Constable and the senior management team as well as the PIRC and their staff are in place with key protocols agreed and implemented by April 2013.

We have real concerns about “public interest investigations” and their affect on operational policing and feel strongly that with the introduction of these measures there is potential for instilling a risk-averse culture in the PSOS.

Finally, we are concerned about the fairness of the proposed method of dealing with complaints against the PIRC. There must be included within its terms of reference and Policy Memorandum a clearly defined procedure to address this shortfall in the current Bill including a role for the Public Service Complaints Ombudsman.

Chief Superintendent David O’ Connor
President, Association of Scottish Police Superintendents
14 March 2012
Introduction

1. The creation of a single police service in Scotland will be one of the most significant changes in the Scottish public sector since devolution. In my submission I concentrate on the proposed arrangements for governance and accountability. In my opinion, the Scottish Parliament should have a much greater role in providing democratic oversight of the new national force than is currently proposed. It is also important to ensure there are proper arrangements for governance and control during the transition process.

Governance and accountability

2. Two principles have underpinned how policing works in Scotland. The first is the tripartite model of governance, where responsibility for policing is shared between the chief constable, Scottish Ministers and locally elected councillors. Secondly, there is the principle of policing by consent. In other words the police must have the support of the public to work effectively.

3. Public trust in policing, as in any other public service, is hard won over a long period. From my work as Auditor General it has become clear to me that effective democratic accountability, good governance and independent audit and inspection are necessary for building confidence in public services and ensuring they are delivered efficiently and effectively.

4. The police service has a unique role in maintaining and upholding the law and ensuring public safety, and has the power to remove an individual’s liberty. It is therefore of vital importance to ensure there are effective arrangements for the democratic oversight of the police service in Scotland.

5. The creation of a single Scottish police service as a central government body will change the democratic tripartite framework under which policing has traditionally operated. In my view it is therefore essential that the legislation establishes a formal mechanism to give the Scottish Parliament, as the democratic forum covering the whole of Scotland, a major role in ensuring there is open, participative and transparent oversight of policing in Scotland.

6. With the creation of a national police service, we cannot risk losing the long-established important connection between the police and the people of Scotland whom they serve and protect. It is of the first importance that there is open public debate on, for example, the strategic police plan and the performance of the Scottish Police Authority, HMICS and the new Police Investigations and Review Commissioner. The operational independence of the chief constable must be preserved and protected, but the police service must also be open to democratic scrutiny.
The Scottish Parliament is designed to operate in a way which promotes and enhances the democratic process. Parliamentary debates and committee meetings are open to the public; they are televised and official reports of the proceedings are produced. Everything is on record. This is why the legislation must, in my view, be amended to set in statute a clearly defined role for Parliament in the oversight of the new national police service.

It is for the Scottish Parliament to determine the most appropriate mechanism to achieve this oversight. There are various possibilities which I would invite the Committee to consider.

- A new mandatory committee of the Scottish Parliament could be established with a clearly defined responsibility for the oversight of policing matters in Scotland. Mandatory committees, such as the Public Audit Committee or the Standards procedures and Public Appointments Committee, operate under rules agreed by Parliament (Standing Orders). They must not be concerned with policy but have a clear role which, in the case of the Public Audit Committee, involves holding the Scottish Government to account;

- Additional responsibilities could be given to the current Justice Committee of the Parliament. However the Justice Committee has a key role in the consideration of policy matters relating to the whole justice sector and the scrutiny of proposed legislation. Experience has shown that this committee has a heavy workload; indeed, in the first Parliament there were two justice committees;

- A parliamentary commission for policing in Scotland might be created. There are some parallels here with the Scottish Commission for Public Audit, which was put in place by Parliament to safeguard the independence of the audit function. The Commission has proved to be an effective accountability arrangement which preserves the independence of the office of the Auditor General while ensuring public scrutiny of the efficiency and effectiveness of Audit Scotland.

Proposed arrangements for the SPA board

I support the proposal in the Bill that all members of the SPA board will be appointed through the public appointments process. It is very important to recognise the distinction between a board which has a governance function with responsibility for scrutinising performance and holding management to account and a board which is representative and operates in an advisory capacity. The board of SPA will have to ensure the highest standards of governance and management in relation to policing in Scotland, and must be structured in such a way that enables it to fulfil this function effectively.

My report to Parliament in October 2010 on the Scottish Police Services Authority (SPSA) found that the composition of SPSA board (which was structured to reflect the local governance arrangements for policing) created tensions in the competing roles and duties of some of its members.¹

¹ The Scottish Police Services Authority, Audit Scotland, October 2010
11. The policy memorandum recognises the importance of board members having the skills and expertise relevant to the functions of the authority. Members of the SPA must have the appropriate skills and experience to enable them to fulfil their role effectively in relation to all areas of policing, including specialist and sensitive operational areas. My report of October 2010 to Parliament on the role of boards found that the successful operation of a board depends on the skills and expertise the members and on how well they work together.\(^2\)

12. SPA board members will also require access to independent expert advice on policing and related matters. For example, the Northern Ireland Policing Board directly employs about 50 staff to ensure there is effective oversight of the Northern Ireland Police Service. The Police Service of Scotland will be the second biggest police force in the UK and it should have the resources and expertise available to enable it to fulfil its role.

*Role of the Accountable Officer*

13. Accountable officers are an essential part of the governance structure of all central government bodies. They are appointed by the Permanent Secretary and are personally answerable to Ministers and to the Scottish Parliament for both the propriety and regularity of an organisation’s finances and for the economical, efficient and effective use of the resources placed at their disposal. Their roles and responsibilities are laid out in the Scottish Public Finance Manual.

14. In my view, the structures proposed in the Bill will require two Accountable Officers for the SPA, one to be accountable for the expenditure under the control of the chief constable, and one for the expenditure under the direct control of the SPA (the forensics service and the SPA executive and support). Given the need to preserve the operational independence of the chief constable, it would not be appropriate for the Permanent Secretary as the most senior civil servant in the Scottish Government to appoint the chief constable as the Accountable Officer for the Police Service of Scotland (PSS). I would suggest that the legislation should clearly specify that the chief constable will be the Accountable Officer for the Police Service of Scotland.

*Matters relating to democratic scrutiny*

15. It is extremely important to ensure both national and local democratic scrutiny of policing in Scotland. My suggestion that there could be a new mandatory committee or a parliamentary commission on Scottish policing could provide a national dimension for democratic scrutiny, since the committee or commission would consist of MSPs. Parliament might wish to consider whether the committee or the commission might put in place arrangements for a dialogue with local councillors in order to reflect the important local dimension of policing. With a mandatory committee or a parliamentary commission, it would be easier to ensure (a) *effective governance* of policing by the SPA and (b) *democratic scrutiny* by representatives of civil society at both national and local levels.

\(^{2}\) *Role of boards, Audit Scotland, September 2010*
16. A vital element of local accountability will also be achieved by the provisions in the Bill for local policing plans to be considered by local authorities. In addition, the SPA board could establish its own mechanisms for engaging with local communities and elected councillors. A further support for local accountability will be provided by the Auditor General and HMICS who will be reviewing together whether the SPA is achieving Best Value, an essential element of which is effective community engagement.

17. I welcome the responsibilities to be given to the Auditor General in relation to auditing the economy, efficiency and effectiveness and reviewing Best Value in both the SPA and the PSS. I also welcome the proposed creation of a Police Investigations and Review Commissioner with independent powers to investigate relevant police matters in the public interest.

18. The Committee may wish to explore whether HMICS should be established as a corporate body, which would give the chief inspector the ability to employ staff to undertake inspection activities. Whatever arrangements are put in place for staffing the inspectorate, they must be designed to ensure public trust and confidence in the independence and impartiality of HMICS.

Supporting the process of change

19. While not directly relevant to the proposed legislation, I would like to conclude my evidence with reference to how the transition from the existing arrangements to a single police force should be managed.

20. It is essential that the Government, together with existing police forces and boards, ensures that (a) there are clear governance arrangements for decisions relating to the formation of the new service, with proper audit trails in place, and (b) there is minimum disruption to existing services during the transition phase.

21. My report on the Scottish Police Services Authority (SPSA) found that SPSA’s early development was hampered by a lack of clarity on how it was to deliver its long term benefits. This was compounded by poor information about the services transferred, the resource requirements to deliver those services and leadership problems. Appendix 2 of that report lists some questions that the Scottish Government and public bodies should consider when planning shared services initiatives. Many of these questions are relevant to the formation of the SPA and Police Service of Scotland and I recommend that consideration is given to them.

22. The on-going oversight role of existing joint boards and committees will be important during the transition phase. These bodies must ensure that there is proper governance and control in relation to decisions on how resources are used over the following months. The Accounts Commission is recognising this in their findings on the on-going programme of Best Value audits on police currently being undertaken by Audit Scotland and HMICS.

23. It will be important to appoint the SPA convener, some members of the SPSA, and the chief constable as soon as possible after passage of the legislation, to provide clear leadership in planning for the new system and through the transition
process. The Government has announced that, subject to Parliamentary approval of the Police and Fire Reform (Scotland) Bill, the new police and fire services are expected to be established on April 1, 2013. This is a very tight timetable for such a significant change.

24. It will be essential that on the appointed day when the legislation takes effect, all the new bodies operate as one policing system in Scotland. This will require a clear strategic plan of action and a culture of openness, cooperation and mutual understanding.

Fire reform

25. The Bill also includes proposed legislation to create a single fire service for Scotland (SFRS). In my view, this is, relatively speaking, a more straightforward process. The remit of the service has already been clearly defined through the Fire (Scotland) Act 2005. The move to a single service can therefore be compared to the creation of other NDPBs.

26. I would, however, emphasise that the points I have made above in relation to the process of transition are equally valid for fire reform. In addition, I endorse the proposals in the Bill for the board of the SFRS to be appointed through the public appointments process and welcome the responsibilities given to the Auditor General in relation to auditing the economy, efficiency and effectiveness and reviewing Best Value in the new service.

Robert W Black  
Auditor General for Scotland  
February 2012
Thank you for your invitation to provide additional evidence to the Justice Committee following my evidence session on 6th March. My main purpose in writing is to inform the Committee about some of the early messages which are likely to be in Audit Scotland’s forthcoming report arising from the performance audit of mergers in Scotland’s public sector. These may be relevant and useful to your consideration of police and fire reform.

I shall also take the opportunity to provide further information in response to the question from Mr Roderick Campbell.

**Early emerging findings from the Audit Scotland performance audit on mergers**

The report on public sector mergers was timed to help inform future mergers, and is therefore due to be published in June. However, given that the findings might assist the Committee’s consideration of police and fire reform, I am taking the unusual step of informing you of some of the emerging messages. The audit work has only recently been completed, so I would emphasise we are still finalising the content.

The audit team has identified that the most significant factor in creating a successful merger is good early leadership. When leadership teams were in place from early in the process and remained stable, the mergers worked well. The absence of such a team could mean that difficult decisions were deferred and that the vision and strategic objectives for the new organisation were not well developed.

The Scottish Government often establishes ‘programme boards’ to manage the process, and these tend to focus on ensuring that mergers happen on time, and that stakeholders are involved. However, this can mean that the important work of creating the vision for the new organisation and designing its structure, strategic objectives and early priorities for action receive less attention. This work has not always been done early enough to benefit the new organisation and ensure its full operational effectiveness from day one.

Given the strength of the evidence supporting this emerging finding, and the importance of ensuring the new Police Service of Scotland and Scottish Fire and Rescue Service are given the best possible start, I would like to suggest that the Committee might give further consideration as to how the early appointments of the first post-holders might be achieved. I wonder whether, for example, the Committee could suggest that the Bill be amended to include a clause providing for the first appointments of the conveners of the Scottish Police Authority, and the Scottish Fire and Rescue Service, the chief constable and the senior fire officer to be made by Parliament, with the possible involvement of the Crown Office in the case of the police appointments, and with the agreement of the Cabinet Secretary for Justice.
**SPA Board**

I was asked by Mr Campbell to give some examples of how the SPA board could establish its own mechanisms for engaging with local communities. I stressed in my answer the importance of members of the SPA board getting a good understanding of the real and proper concerns of local communities in relation to policing. Local circumstances of individual council areas vary enormously, and the SPA board as well as the local commanders need to be aware of the differing local priorities. However, local communities also need to be aware of national priorities and the resources available both nationally and locally, hence the importance of a dialogue between the SPA and local communities.

How the SPA chooses to do this will, of course, be for the board to decide. However, there are a number of ways board members could promote and encourage such a dialogue. For example, board meetings could be held in different parts of the country, board members could have skills or expertise in a specific aspect of policing (for example, antisocial behaviour) and engage with councils where this is a local priority, or board members could attend local meetings where police performance was being considered. The chief constable will also of course be in constant dialogue with the local commanders and can inform the board members of relevant issues that may arise at a local level.

However the SPA board chooses to engage with local communities, I remain of the view that the board should be one of governance rather than representation, with board members having appropriate skills and expertise to effectively hold the chief constable to account for the performance of the Police Service of Scotland. I have given examples to the Committee of the tensions that could be created if any other membership structure was selected.

**Parliamentary scrutiny**

Finally, I would like to mention again the view which I offered in both my original submission and in the evidence session that the Scottish Parliament should be seen as having the central role in ensuring there is a mechanism for open, transparent and democratic scrutiny of the new Scottish Police Authority and Police Service of Scotland. I recognise that the Justice Committee has a heavy workload, and indeed I mentioned the pressures of that workload in my written submission. I would suggest that this adds weight to my thought that the Bill might include a specific mechanism for ensuring Parliamentary scrutiny of the SPA and the Police Service of Scotland.

I would be happy to provide further information if this would be of assistance to the Committee.

Robert W Black
Auditor General for Scotland
16 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from David Baldwin

I wholeheartedly accept the need to rationalise our Policy and Fire Services and feel that the Scottish Government's proposals are a step in the right direction. I do, however, feel that it is imperative that local input and control is retained and that the current power of local Police Boards etc. and their overseeing function is not diluted any way. I am no expert on legislation or the inner workings of the police or fire services, but I would hope that those who are will take local accountability seriously and that its needs are fully reflected in the bill which eventually receives royal assent.

On a separate matter, I would very much hope that both the Parliament and Government amend the bill so that the names of The Scottish Policy authority, the Police Service of Scotland and Scottish Fire and Rescue Service are included in English and Gaelic, as is the case for Creative Scotland. It is vital that new, nationwide bodies such as these embrace the Gaelic Language Act and the increasing place that Gaelic has in wider Scottish Society. I would expect branding for both of these new bodies to afford equal weight to Gaelic and English, including vehicle branding.

I also wholeheartedly support the location of the new service HQs outwith Edinburgh or Glasgow. It is important that all of Scotland benefits from the jobs and status that HQs bring. Tulliallan may be a good choice for the new police force, however a city like Inverness would be an excellent choice for the fire service HQ and would demonstrate the Government’s commitment to spreading the benefits for public jobs and services throughout Scotland.

I trust that my points will be taken into consideration.

David Baldwin
23 January 202
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Black and Ethnic Minority Infrastructure in Scotland

Background to BEMIS

BEMIS is the national Ethnic Minorities led umbrella body supporting the development of the Ethnic Minorities Voluntary Sector in Scotland. BEMIS was established in 2002 to promote the interest of minority ethnic voluntary organisations, develop capacity and support inclusion and integration of ethnic minorities’ communities. It is a member-led and managed organisation with an elected board of directors.

The major aims and objectives of BEMIS are to represent and support the development of the ethnic minority voluntary sector across Scotland, and to support the diverse communities and individuals that this sector represents, especially those who are under-represented and disadvantaged. BEMIS aims to address inequalities by empowering communities, working towards an inclusive society by establishing structures, which recognise diversity and empowers ethnic minorities, and ensuring that they are fully recognised and supported as a valued part of the Scottish multicultural civic society.

This submission reflects the position and views of BEMIS as has been provided to the Scottish Government in response to this legislative proposal.

BEMIS welcomes the opportunity to contribute to the consultation on the future shape of our Police, Fire & Rescue Services and has formulated this response in relation to the Equality Impact Statement contained as part of the Scottish Government consultation document and in particular question 27.

BEMIS welcomes the efforts the Government has made in relation to carrying out an EQIA on this legislative proposal.

However it is disappointing that only a partial EQIA has been carried out on such a major change to the way these services are delivered. We would welcome a commitment from the Government that it will undertake a full EQIA review of the Act which emerges from the consultation and subsequent Parliamentary scrutiny within twelve months of it having received Royal Assent. Bemis also believes that it is critical that such a review be carried out in the context of the Equality ACT 2010 and the general and specific public duties contained within the Act.

BEMIS believes that such a major structural change will almost inevitably have an impact on the relationship that Scotland’s cultural and ethnic minorities have with the Police, Fire & Rescue Services. Local community links that have been forged through no small effort by both sides may well see changes in personnel, contacts and procedures. This in turn could lead to deterioration in community relations as other
priorities take over during the structural change that must follow implementation of the proposed Act.

**BEMIS is concerned that one of the areas to which less attention may be given during any transition period is the issue of both ongoing staff training and, not withstanding the fact that these are substantially operational matters, we believe that it is incumbent upon us to raise these matters during the consultation process. In particular we seek responses and assurances from the Scottish Parliament in relation to the following:**

**What kind of training will be provided to Family Liaison Officers in relation to intercultural matters?** Isolating cultures in the training might be a dry and often risky way of going about it – and, of course, it is virtually impossible to ‘cover’ all different groups and culture throughout the training.

How much updating of intercultural communication training which enables officers to learn about the ways in which to relate to other cultures, to engage in communication beyond language and to also look at approach, behavior, will take place.

**What detailed training in the Equality Act and the public duties** (specifically what is direct and indirect unlawful discrimination in the Equalities and human rights acts) will be provided to FLOs and all other police officers. **ACPOS officers acknowledged that equalities training was poor in regards to the current laws, but that scenarios training did occur routinely.**

How will the issue of contracting and provision of interpreters be addressed. What safeguards will be put in place to ensure the professionalism and qualifications in this field. Translation and Interpreting has to go along with cultural awareness, ethical behavior and training in matters of health, victimology, etc.

Will the FLO handbook be rewritten to reflect changing patterns of culture and ethnicity in Scotland as part of any re-structuring of the services. The current handbook was written partly in response to the McPherson (Stephen Lawrence) and Jandoo (Surjit Singh Chhokar) inquiry recommendations.¹

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¹ Lawrence identified the need to improve the poor levels of communication of relevant information between families and police investigators
Jandoo identified the need to improve the poor levels of communication of relevant information between the COPFS and police
McPherson found that police investigators rode roughshod over the family, often ignored their wishes and failed to inform them of progress – including arrest of suspects
There was no dedicated officer exclusively or primarily responsible for communicating with the family
There was a lack of continuity in who was telling information and what was told to family
There was no formalised FLO training and FLO’s were usually involved actively in the investigation in contradiction to their role
Is it intended, following restructuring, that a definitive programme at Tulliallan Academy of training for officers will be established.

Will such a unified training programme recognize the need for cultural and social sensitivity in the matters of equalities, language barriers, burial and information.

We would also recommend that knowledge of the equalities laws are written into the training manual and form part of the training for all officers.

Hugh O’Donnell
Policy and Race Equality Officer
30 January 2012
Written submission from British Transport Police and British Transport Police Authority

This is a formal response by the British Transport Police ("the BTP") and the British Transport Police Authority ("BTPA") to the Justice Committee of the Scottish Parliament ("the Committee") call for evidence in relation to the Police & Fire Reform (Scotland) Bill 2012 ("the Bill").

The fundamental purpose of the Bill is to amalgamate the existing eight Scottish police forces into one force to be known as the Police Service of Scotland ("PSS").

BTP and BTPA have a number of concerns in relation to certain aspects of the Bill which may impact on their ability to discharge their duties and wider functions in Scotland. Those concerns are noted below.

In this response, references to a provision of or effect of the Bill are (save as expressly stated) to the terms of the Bill as introduced to the Scottish Parliament and as if the Bill were enacted in those terms.

History of BTP and BTPA

BTP is a national police force in Great Britain. That fact and the specialist nature of its policing activities, being focused upon railways and railway facilities and certain tram schemes make BTP a unique and specialist police force.

General provision was first made in 1858 for the appointment of constables to police the construction of canals and railways. Therefore, railway policing has been distinct from general policing arrangements throughout Great Britain for over 150 years.

The current legal basis for BTP’s existence is Section 20 of the Railways & Transport Safety Act 2003 ("the 2003 Act") which came into force on 1 July 2004. The 2003 Act at Section 31 gives BTP jurisdiction on the railway and purposes connected to, occurring on or in relation to a railway in Great Britain.

BTPA was established under Section 18 of the 2003 Act and is, by virtue of Section 20 of the 2003 Act, under a statutory obligation to secure the maintenance of an efficient and effective police force (a) to be known as the British Transport Police Force, and (b) to police the railways. The Authority is also under a statutory duty to defray the expenses of BTP.

Scotland Act

BTP understands that as rail transport safety is a reserved matter by virtue of Section E (II) of Schedule 5 to the Scotland Act 1998 ("the 1998 Act"), it may be that a Section 104 Order under the 1998 Act may be required.
An Act of the Scottish Parliament may require consequential provision to be made to the law relating to reserved matters or the law elsewhere in the UK. The legislative competence of the Scottish Parliament to make such consequential provision is extremely limited. Section 104 of the 1998 Act enables Her Majesty or a Minister of the Crown by subordinate legislation to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament or by subordinate legislation.

**BTP and BTPA concerns**

**Issue 1: Temporary Service and New Oath**

The Bill will, by virtue of Section 10, introduce a new oath which all PSS officers will be required to take before a Sheriff or Justice of the Peace. The Bill states that any officer (which would include an officer of the BTP) engaged in “temporary service” with the PSS must take the new oath. Section 15 of the Bill which makes provision for “temporary service” with the PSS, does not define “temporary service” nor is such defined elsewhere in the Bill.

BTP and BTPA are not clear on the implications this would have for their officers, for example officers of BTP Public Order Units based in England who may be called upon at short notice to render assistance to PSS officers. This is currently a regular occurrence with the Scottish forces. BTP are thus concerned about the lack of clarity regarding “temporary service” and how this will impact on their operations.

BTP and BTPA request that the Committee seeks clarification from the Scottish Government as to the intended meaning of “temporary service” and that the Bill is amended so that it is clear in exactly what circumstances a BTP constable will be considered to be engaged in “temporary service” with the PSS and required to take the new oath.

This issue is linked closely to issue 2 outlined below in relation to mutual aid and collaboration arrangements.

Section 24(4) of the 2003 Act currently refers to constables of the BTP in Scotland taking the oath provided for in Section 16 of the Police (Scotland) Act 1967 (“the 1967 Act”). Similarly, Section 25(4) of the 2003 Act refers to Special Constables of BTP taking the oath referred to in Section 16 of the 1967 Act. Section 16 of the 1967 Act will be repealed by the Bill.

BTP and BTPA would welcome clarification as to whether or not all BTP constables in Scotland (and not just officers engaged in “temporary service”) will be required to take the new oath in the Bill. The wording of the oath is different to the wording of the oath currently taken by BTP officers and thus may have implications for BTP officers engaged in “temporary service”.

It seems to BTP and BTPA that an amendment of the 2003 Act will be necessary to give effect to the Bill’s provision in relation to oaths to be taken by BTP constables/special constables.
Issue 2: Lack of Provisions re Mutual Aid and Collaboration

The Bill will repeal the existing mutual aid and collaboration provisions in the 1967 Act and (assuming a Section 104 Order is made) the 2003 Act.

The Bill does not cover how mutual aid and collaboration between BTP and PSS are to be provided for in the future. Otherwise it appears that a means of it establishing rules/regulations on mutual aid and collaboration between the PSS and BTP will be repealed. Accordingly, BTP and BTPA wish a formal undertaking from the Scottish Ministers that there will be provision for such, whether by way of a formal amendment to the Bill supplemented by a Section 104 Order or otherwise.

It appears to BTP and BTPA that the drafting of the Bill, being focussed on the amalgamation of Scottish forces, has overlooked the possibility of mutual aid being provided by or to BTP in the future. BTP and BTPA would suggest that existing mutual aid and collaboration provisions be retained subject to substitution of PSS for reference to existing Scottish police forces rather than repealed.

Issue 3: Consequences of amendment to the definition of constable

The Bill will change the definition of “constable” contained in the 1967 Act and in the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”) from “a constable of a police force” to “a constable of the Police Service of Scotland”.

BTP note that in terms of Section 31 of the 2003 Act a constable of BTP, where he has jurisdiction, has all the powers and privileges of a constable. In light of the terms of the Bill, provision will in future fall to be interpreted in Scotland as reference to the powers and privileges of a PSS constable.

The duties of a constable of the PSS are being re-stated in the Bill. As far as BTP and BTPA have been able to determine the duties are largely a restatement of the duties set out in the 1967 Act.

BTP and BTPA wish clarification as to whether the restating of duties will impact on the duties and privileges of a BTP constable and also as to whether or not there will be a definition of “privileges of a constable”. BTP and BTPA are uncertain as to exactly what it is intended a “privilege” includes.

Issue 4: Timing

In so far as a Section 104 Order may be required to amend the 2003 Act in consequences of the enactment of the Bill, BTPA and BTP wish to highlight that the new Act and consequential order should come into force at the same time.

David McCall
Assistant Chief Constable
For and on behalf of British Transport Police

Andrew Figgures
Chief Executive
For and on behalf of British Transport Police Authority
6 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Chartered Institute of Public Finance and Accountancy, the CIPFA Directors of Finance Section and the Scottish Local Authorities Chief Internal Auditors Group

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money.

CIPFA Local Government Directors of Finance Section is the professional forum which comprises the Section 95 Officers under the Local Government (Scotland) Act 1973 of all 32 local authorities in Scotland. The Section provides opinions on matters concerning the management and operation of Scottish local government finance and also serves as a learning forum for the exchange of experience and information on these issues.

SLACIAG (Scottish Local Authorities Chief Internal Auditors Group) is the professional networking group for Local Authority Heads of Audit. The purpose of the group is to develop and improve the practice of Internal Audit in Scottish local authorities, police, fire and public transport bodies. It achieves this by meeting to discuss issues of common concern, commissioning work to develop ideas, sharing good practice, working in partnership with other professions/governing bodies and promoting SLACIAG as the representative body for internal audit in public authorities.

1. Introduction

1.1 This submission specifically addresses some of the key financial management foundations which are essential if good corporate governance is to be in place for both the police and fire national boards.

1.2 The Scottish Government expect that savings of £130M each year will be achieved by the proposed reform of both police and fire. The relatively short period of consultation has not allowed us to conduct a detailed examination of the financial benefits claimed within the business cases for reform. Our approach has been to focus upon the risks associated with reform of this scale and we have recommended appropriate measures.

1.3 However, we recognise that the achievement of that level of savings of that magnitude, along with achievement of the wider operational benefits from reform will be of significant public interest. There is a clear role for both the Scottish Parliament

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1 Statement by K. MacAskill MSP, Minister for Justice 8th September 2011
and the Auditor General to both validate and to track the realisation of both financial and non-financial benefits claimed by the proposed reform.

1.4 "Financial management is an essential element of good corporate governance and forms part of the firm foundations of an organisation, underpinning service quality and improvement and is the basis of accountability to stakeholders for the stewardship and use of resources."

1.5 We share that view and reform in itself will present a series of risks to the financial management of the outgoing boards as well as to the incoming new bodies. Central to risk mitigation will be the maintenance of a sound control environment. Although, there is no prescribed timetable the 3 distinct risk periods in a hypothetical timescale could be:

- the period prior to reform – 2011/12,
- the ‘shadow’ period – 2012/13; and
- the post-reform/’go-live’ period – 2013/14.

1.6 We have identified actions which should be taken to mitigate the risks. A shadow board can begin to take responsibility for determining the nature and extent of the significant risks that it is willing to take to achieve its strategic objectives. The boards can develop sound risk management and internal controls systems. And clearly, the newly formed boards will take responsibility for the “go-live” risks.

1.7 In the absence however of any shadow period and shadow board, consideration needs to be given to how these risks are managed. Central to the mitigation of risk is the assurance work undertaken by the internal audit function and the need for independent assurance on risk mitigation to those charged with governance.

1.8 The Chief Financial Officer and the work undertaken by the finance function is at the heart of the achievement of world class financial management and we also comment on the role of the Chief financial Officer. We have used some of the recognised themes of world class financial management to structure our categorisation of risks:

- Financial planning;
- Financial monitoring and forecasting; and
- Financial Reporting.
- Financial governance and leadership

1.9 The consultation paper does not provide detail on a transition timetable or on ‘shadow’ period arrangements. A shadow period of operation would allow the new authorities to operate in parallel with the existing bodies while new governance arrangements are embedded and while resources are transferred and acquired.

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1.10 Prior to local government reorganisation in 1996, there was a shadow period of one year. There is however evidence that even with a one year shadow period, smooth transition proved to be challenging for local authorities\(^4\).

1.11 We recommend that a shadow period commensurate with the scale of the change should be introduced. The shadow period will be a critical period for the incoming boards with opportunity to design and develop:

- A detailed plan of implementation with clear deadlines and milestones;
- The control environment both nationally and locally;
- Clarity on the extent to which financial management will be devolved;
- Development of internal financial rules both nationally and locally; and
- Appointment of a head of internal audit.

1.12 Finally, we observe that the funding and financial management of police and fire bodies have been inextricably linked to local government finance. It is essential that the scale of the task that will be required to extract police and fire from the current arrangements is not underestimated.

1.13 Throughout the remainder of this submission it will be assumed that there will in fact be an appropriate shadow period and that a detailed plan of implementation will be developed. We further recommend that a clear and prescribed timetable is set to enable the appropriate governance and financial management arrangements to be set out

1.14 We begin our response with some commentary on the broader dimensions of corporate governance

2 CORPORATE GOVERNANCE

*Impact Upon Accountability*

2.1 We have tested the proposed governance arrangements and have recognised that there are characteristics from two recognised models of governance:

- the policy governance model\(^5\); and
- the constituency/representative model.

2.2 The creation of national boards is consistent with the Carver/Policy Model. The clarity in terms of roles and responsibilities and accountability offered by this model is confused by the proposal within the consultation to create structures within local government for police and fire. The consultation paper indicates a level of discretion on the role of local authorities including whether a specific local authority committee should be formed or whether joint arrangements should be made with other local authorities.

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\(^4\) Overview Report on 1996/97 and 1997/98 Audits of Local Authorities

\(^5\) Dr John Carver, Policy Governance Model
2.3 Our concern with the proposal is that it will result in ‘abdicating’ behaviour rather than ‘accountable’ behaviour. For example, in the case of police, with a local commander, a local committee as well as the national police authority it could be difficult to recognise where accountability actually lies. The result could be that there is local tension with the national police board for adverse outcomes as a result of resourcing decisions taken by the national police board.

2.4 The proposal could also result in significant duplication. For example, the consultation paper anticipates that the national board and the local structures will be concerned with examining local performance.

**Board Membership**

2.5 The composition of a recently introduced public body resulted in adverse comment by Audit Scotland and provides useful lessons for the proposed reforms, in particular the proposed membership of each board⁶.

2.6 Given the likely NDPB status of the two new boards we assume that the requirements for a designated accountable officer will be met by the Chief Constable and the Chief Fire Officer. The clear lesson learnt from this recent example is that the accountable officer should be a member of the board and we recommend that the proposed arrangements ensure board membership for the accountable officer.

2.7 We support the use of the Public appointments process to recruit non-executive members to the board but we acknowledge that this would be inappropriate for securing representative members.

2.8 Whilst diversity in board membership is important, this must be balanced against experience and expertise required at the early stages of both the police and fire boards. The capability and capacity of the board must be strong from the outset. The board will be required to make critical decisions which will determine its success. Critical experience and skills in this first round of board member appointment and nomination must be risk and change management. The audit committee will be vital in the early stages and therefore it will be essential to appoint board members with audit committee experience.

2.9 The role of the chair(s) of the boards and their relationships with accountable officers are both critical. We recommend the early appointment of the chair. Appointment of chairs with the required skills and experience of merger and reform will be essential. Membership of boards should include individuals who have been selected because they can display expert credentials and have experience of providing effective independent oversight and scrutiny of services.

**The Roles of Management and Governance**

2.10 A clear risk in any new governance arrangement is a blurring of the functions of management with the functions of governance. With specific regard to police

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⁶ The Scottish Police Services Authority, Audit Scotland (2010)
reform, we note that the forensic service will report to, and be directly accountable to, the police authority and not to the Chief Constable. In practice, this will require the police authority board to take on managerial oversight.

2.11 Audit Scotland also commented on the governance SPSA and its relationship with SCDEA which was effectively independent of the Chief Executive\(^7\). We recommend that the adverse governance comments made by Audit Scotland are addressed and that they are not replicated within the new arrangements.

3. **FINANCIAL PLANNING**

**Prior to Reform**

**Capital Financial Plans**

3.1 Risk: Prior to the start of the new bodies, the existing bodies are likely to be required to continue to operate through up to two financial years. Investment decisions will be taken by these bodies but, will in turn be different from the bodies which will ultimately be responsible for the long term revenue repayment of that investment. The risk is that capital investment is undertaken which results in assets which do not fit with the requirements of the successor board(s). In the current context, this is particularly important given that subsequent revenue consequences will fall to be met by the shadow and successor body.

3.2 Control: One means to alleviate this risk is to require critical review of immediate capital expenditure with any major forward capital investment (other than immediate business critical purchases) deferred until the successor board(s) can have an input into the transaction.

3.3 Risk: The failure to properly manage the transfer of assets is a risk. An essential part of ongoing asset management is the maintenance of comprehensive asset records, usually in the form of an asset register. The recent experience of a new public body\(^8\) evidences the weaknesses in information held on assets used to deliver services.

3.4 Control: Each body will have to ensure that its asset records are capable of transfer (to the shadow body) at a predetermined and coordinated date. We recommend that a clear timetable for finalisation of assets for transfer is agreed.

**Revenue Financial Plans**

3.5 Risk: The resource allocation for police and fire is currently embedded within the local government finance settlement. The risk is that extraction of police and fire from the local government finance settlement could be protracted. This could be particularly challenging for Fife and Dumfries and Galloway forces where the arrangements are effectively integrated within each local authority.

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\(^7\) SPSA Audit Scotland Report (2010)

\(^8\) SPSA Report by Audit Scotland (2010)
3.6 Control: There is a need for an early and close working arrangement between the local government directors of finance, COSLA, ACPOS and CFOA to ensure an early focus on the implications.

3.7 Risk: The significant task that is faced in the practical dismantling of the current financial arrangements is brought further into focus when the likely budget timetable and the approach to budgeting are considered. There is a risk that, because of the potentially tight timescale, the first budget of the new boards could merely be an aggregation of historic budget approaches based on historic plans and are not keyed in to the objectives of the new board.

3.8 Control: We recommend that there is a realistic lead-in time and clear timetable for initial budget preparation by the new boards and that consideration is to adopting an outcome approach to budget development

**VAT**

3.9 Risk: The Scottish Police Services Authority (SPSA) was introduced in 2007, it was later established that the body was not in fact registered as a VAT exempt body\(^9\). It is understood that this was an oversight of legislative drafting and that there was subsequent financial and administrative consequences to the Scottish Government, the SPSA and to HMRC.

3.10 Examination of the outline business cases indicate that the impact of VAT is being considered and with an estimated annual transfer value of £26M this is a significant matter for early resolution.\(^{10}\)

3.11 Control: We recommend that, prior to commencement of the shadow period, the appropriate direction and confirmation from HMRC is finalised to enable the new police and fire authorities to properly account for VAT and that VAT status is properly reflected in legislation governing the reforms. We would further recommend that the specific asset transfer issue\(^{11}\) which recently faced a new public body are addressed in discussions with HMRC

**Balance Transfer**

3.12 The successor boards will need to have a clear view of all available resources. The balance sheets will ordinarily recognise the balances which, under normal circumstances, would be carried forward into the next financial year.

3.13 These balances will have been funded from local taxation. While the base premise of the consultation paper is that all assets (and liabilities) will transfer to the successor board(s) both local authorities and the Scottish government, will require to

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\(^9\) Value Added Tax Act 1994 Sections 33 and 96.
\(^{10}\) Outline Business Cases Fire page 60 £4M and Police page 89 £22.1M (Total £4M + £22.1m = £26.1M)
\(^{11}\) Scottish Police Services Authority, Report by Audit Scotland (2010)
establish the legal basis to enable balance transfer to new bodies or whether balances have legally to be returned to constituent authorities.

3.14 Risk: There is evidence from previous reorganisation that negotiations on closing balances continued after successor authorities had been formed\footnote{Overview Report on the 1996/97 Audits of Local Authorities para 7.1} with consequences for financial planning.

3.15 Control: We recommend that the necessary deliberations on balance transfer takes place at the earliest possible stage.

3.16 Risk: Outgoing bodies could seek to wind down balances in order to utilise funds with a risk that value for money is not obtained from short-term spending decisions which, in turn would have a direct impact upon the decision-making by the successor boards.

3.17 Control: In the meantime, existing Boards should have a clear strategy and policy position regarding the application of reserves as part of sound financial management and good corporate governance.

**Shared Resources**

3.18 It is likely that currently, between boards and local authorities there will be some evidence of shared staff resources. An early decision will be required for staff on whether their duties are to be transferred directly to the successor boards. Where contract termination is required an early decision will require to be made on whether any liability falls to be funded by the local authority (if it is the employer).

3.19 Risk: The police and fire forces which are financially administered within both Fife and Dumfries and Galloway Councils will present similar but separate issues for staffing and balance transfer. It is likely that these forces will have some element of shared services and/or shared resources. Practically, some local authorities will host historic loans fund debt.

3.20 Control: Early liaison will be required between the councils and the existing constabularies and fire services. Fundamental to this is ensuring that there is a consistency of approach in how all bodies are treated in the disaggregation process.

**The Shadow Period**

**Revenue and Capital Financial Plans**

3.21 Risk: The level of capital investment going forward can only become apparent when the new business objectives have been set out by the new board(s) to enable achievement of the policing plan. This will have to be supported by a comprehensive asset assessment as part of the new asset management strategy. This means that at an early stage the Board(s) will have to consider and approve the proposed level of investment. Similarly, for revenue expenditure plans, the boards will have to be in a
position to approve the first year’s revenue budget prior to the commencement of 2013/14. To enable all of this, the forward financial plans, both capital and revenue will have to have been developed in order that the board can approve it formally prior to commencement of financial year 2013/14. The risk is that within a constrained shadow period, the budgets are merely an aggregation of the previous financial plans of the outgoing bodies and are not in a finalised position to allow board approval.

3.22 Control: This can be avoided by early appointment of an executive lead with responsibility for the development of revenue and capital financial plans accompanied by an asset management strategy.

The Post-Reform Period

The Continuing Cost of Police and Fire to Local Authorities

3.23 The requirement (or opportunity) for local authorities to consider whether there should be a police and/or fire committee (or to introduce other arrangements) means that some costs of uniformed services will continue to be borne by local authorities. Those costs will be in the form of staffing and other central costs required to govern committees. The present costs of administrative delivery will be met in part by the general revenue grant received from the Scottish Government. This is a funding source which will be ultimately withdrawn. This means that, after reform and in practice, costs will continue to be borne by local authorities without any associated funding. The risk is that, local authorities could elect not to maintain committees without an appropriate funding stream to meet the expectation within the consultation paper.

3.24 Control: Possible mitigating action could be the continued payment of an appropriate portion of general revenue grant to local authorities.

Capital Investment

3.25 Capital expenditure by the current boards and forces is undertaken under the Local Government (Scotland) Act 2003. That Act together with accompanying regulation, requires the application of the Prudential Code for Capital Finance in Local Authorities. Separate legislation provides the legal power to borrow. Although not specified, it is anticipated that the new Scottish Police Authority will no longer be a body defined by S.106 of the Local Government Scotland Act 1973 and will become either an agency or a non-departmental public body. Consequently, the Prudential Code will not apply and the police and fire services in Scotland will have lost access to borrowing to support capital investment.

3.26 Risk: The risk is that in the absence of the right to borrow to fund capital investment, there will be insufficient capital resources available to finance the new board’s capital plans.

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13 The Local Government (Scotland) Act 1975
3.27 Control: A robust asset management strategy should be developed which prioritises investment and sets out the forward costs of maintenance and includes a developed long term plan for disposal.

4. FINANCIAL MONITORING AND FORECASTING

The Shadow Period

4.1 Risk: Presently each board will have its own system of budgetary control in place which budget holders will be familiar with. For example, budget holders will receive budgetary control statements, will be required to review expenditure and will have access to business support personnel who help them to understand the control statements. The risk is that budgetary control fails during the transition period.

4.2 Control: the shadow period will be essential in finalising the design of the system of budgetary control (based on the desired level of devolved financial management) and it will be vital that the chief financial officer can communicate to all budget holders their responsibilities as well as what budget holders can expect from the finance function.

4.3 The system of budgetary control will therefore have to be embedded at an early stage to enable the successor boards to function effectively and to enable close monitoring of the use of resources. Any system will have to be carefully designed to support the board and any devolved system should adhere to the following core principles:

- the provision of high quality accurate information on a timely basis;
- coverage of appropriate financial and non-financial indicators; and
- use of integrated systems to both record and produce information.

The Post Reform Period/Go Live

4.4 Risk: We have already noted in this submission that the Scottish Government expect that savings of £130M each year will be achieved by reform of both police and fire. The successor boards are expected to deliver a high level of savings. Realisation of these savings will of course be a key success factor. A significant risk they face is not only the failure to achieve the savings anticipated within the outline business case but that without independent verification of the robustness of the business cases that unrealistic savings will be budgeted for.

4.5 Control: It is essential that the savings projections made in the outline business cases are robust and independent verification of the business cases along with Parliamentary committee challenge is recommended. It is also essential that a clear and transparent financial plan which itemises where savings are to be made is set out. This should be supported by management and governance attention which regularly focuses upon the realisation of savings.

14 World Class Financial Management. Audit Commission, 2005, page 36
5. FINANCIAL REPORTING

Prior to Reform

Annual Financial Statements

5.1 At present, each police and fire force prepare and publish financial statements as required by the Local Government Scotland Act 1973 and as further directed by specific regulation. As a consequence of the statutory framework, each force adheres to the CIPFA/LASAAC Code of Practice on Local Authority Accounting. (the Code).

5.2 The financial statements are prepared against a timetable which requires that the statements are finalised and submitted to the Accounts Commission by 30th June each year. This is followed by a period of statutory audit which is concluded by 30th September each year (although this is not a statutorily driven date).

5.3 Risk: Depending upon the date of transition and the implementation timetable, the final financial statements will be undertaken and signed by the chief Financial Officer after each force has in fact been abolished and preparation will be undertaken by staff of the successor board(s). As evidenced during local government reorganisation in 1996, there could be significant delay with the production of the annual financial statements and an increased risk of qualification to the financial statements.\(^\text{15}\).

5.4 Control: Each body will have to plan appropriately to ensure that there is smooth transition and handover of final financial statements along with clear accounting policies and all supporting working papers are properly scheduled for transfer to the successor board(s). As part of the existing accounting standard setter organisation for these bodies, we would be prepared to assist with development of a detailed year-end schedule with clear trigger points to ensure that financial statements are completed on time.

Audit

5.5 Risk: The audit of the financial statements is largely undertaken in the period following 30th June. Depending on the implementation timetable this will result in audit after each body has in fact been abolished. The practical risk is that staff will not be available to address issues that arise as a result of audit.

5.6 Control: Each body will have to plan to ensure that there is a continuity in responsibility and accountability with specific staff designated for this purpose.

5.7 Risk: The preparation and audit of the financial statements will be undertaken by officer and auditors with no clear governance framework of accountability.

\(^{15}\) Accounts Commission for Scotland, Overview Report on the 1996/97 Audits of Local Authorities, Section 5.
5.8 Control: There is a clear role for the outgoing audit committees to be retained to allow them to exercise governance responsibility for the financial statements of the outgoing bodies.

The Shadow Period

Annual Financial Statements

5.9 Although not specified within the consultation, the successor board(s) is likely to be a ‘sponsored body’ and therefore subsequently governed by the requirements of the Scottish Public Finance Manual rather than the requirements of the local authority accounting code.\textsuperscript{16} The timetable for preparation and laying of accounts and accountability arrangements will be different to that under the present local authority framework.

5.10 Risk: Inadequate consideration is given to the implications of migrating to the Scottish Public Finance Manual and the requirements of the FREM with possible risk of non-compliance and subsequent qualification to the initial financial statements (2013/14) of the new boards.

5.11 Control: During the shadow year, work needs to be undertaken which examines the differences between the financial reporting requirements of the SPFM and the local authority code in order that policies and in turn practices can be adapted to ensure compliance and that these are in place.

The Post Reform Period/Go Live

Timetable of Accountability

5.12 As indicated above, the present date for preparation of the annual financial statements is 30\textsuperscript{th} June. The SPFM requires sponsored bodies to prepare annual financial statements by 30\textsuperscript{th} September.\textsuperscript{17} Clearly this means that an immediate effect of the proposed modernised governance and accountability arrangements will be to ‘design in’ delay to publication of the annual financial statements.

5.13 The spirit of the consultation paper is that of modernisation and simplification. It is an unfortunate by-product that annual financial statements will be produced three months later than under the present arrangements.

5.14 We recommend that consideration is given to maintaining the present timetable for production of the annual financial statements.

\textsuperscript{16} Scottish Public Finance Manual, Scottish Government, para 23
\textsuperscript{17} Scottish Public Finance Manual, Scottish Government, para 29
6. **FINANCIAL GOVERNANCE**

The Period Prior to Reform

*Control Environment*

6.1 Risk: There is a risk that the existing bodies commit the new boards to levels of expenditure which would otherwise not have been committed or is unsustainable.

6.2 Control: A delegated authority structure is required supported by strategic procurement controls in order to that there is clarity on who has ‘authority’ to commit expenditure. It would also be advisable to have focused procurement delegation with clarity on procurement practices to be followed. There is a key role for internal audit to continue to provide independent assurance on the control environment. ¹⁸

The Shadow Period

*Organisational Culture with a strong focus on Financial Accountability*

6.3 Risk: In the development of a new single organisation, the necessary focus on maintaining operational delivery could result in a low profile for financial accountability.

6.4 Control: A scheme of delegation which clearly sets out financial accountability from board level will have to be developed. Central to this will be the extent financial accountability to be devolved to area commanders and to senior officers or to staff below that level. The arrangements must enable the creation of a culture where individual and collective responsibility for stewardship and use of resources are given a high priority.

*Financial Skills*

6.5 Risk: A high degree of financial literacy is required from board members, managers and all those through the organisation with a role in or an interest in finance. There is a risk that the basic financial literacy outwith the finance department is not part of the competencies for service delivery.

6.6 Control: A structured assessment is required of the competencies required for board members and management and which, somewhat crucially identifies where gaps need to be filled. ¹⁹

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¹⁸ The Role of The Head of Internal Audit in Public Sector Organisations (CIPFA)
¹⁹ Improving Financial Literacy in Public Service Organisations, A Good Resource Pack, (CIPFA)
The Post Reform Period/Go Live

The System of Financial Management

6.7 Risk: The design and implementation of a strong system of financial management will be necessary. The system should foster a culture which enables continuing challenge on financial matters at board as well as at operational level. A failure to design that system appropriately could mean that the necessary financial foundations are not in place.

6.8 Control: Assessment of what requires to be considered for the design of the new system of financial management should be undertaken in a structured environment20.

7. FINANCIAL MANAGEMENT GENERAL COMMENTS

Financial Timetable

7.1 The reform necessitates some significant alterations to the financial management cycle which existing bodies adhere to. Whilst a significant element of the cycle is routine, the scale of the task of implementation should not be underestimated. We would highlight the following observations

- the system of financial planning is currently aligned to the local government budget setting timeline with funding announcements in November/December each year setting the basis for the forward year’s budget. The successor boards will now have to be aligned to the Scottish Government financial planning timescale;
- a range of financial returns are currently made by boards to the Scottish Government at prescribed periods throughout the financial year. Alignment to the financial returns that are required from agencies/NDPB’s will have to be made;
- the present date for preparation of the annual financial statements is 30th June each year. The SPFM requires sponsored bodies to prepare annual financial statements by 30th September each year21. An immediate effect of the proposed modernised and governance and accountability arrangements will be to ‘design in’ delay to publication of the annual financial statements.

Don Peebles
Policy & Technical Manager
CIPFA in Scotland

Marjory Stewart
Chair, Directors of Finance Section

Janine Wilson
Chair, SLACIAG

20 CIPFA Financial Management Model
21 Scottish Public Finance Manual, Scottish Government, para 29
CFOAS has agreed to focus its written evidence on the following areas:

- Composition and skills set of the Scottish Fire and Rescue Board
- Functions of the Scottish Fire and Rescue Service
- HMI – roles and accountabilities
- National and Local structures – roles and accountabilities
- Financial Assumptions
- Employment Issues

**Composition and skills set of the Scottish Fire and Rescue Service Board**

1. The Bill provides that members of the Board will be appointed by Ministers on the basis of relevant skills and expertise. The correct blend of skills and expertise is critical in establishing the organisation's strategic direction and empowering it to properly scrutinise risk and take decisions on resource allocation within tight budgetary constraints. The role of the Board is to ensure the effective delivery of Fire and Rescue Services across Scotland and the Policy Memorandum makes clear that such members are not attending meetings as representatives but to act in the best interests of the Service. CFOAS agrees with this assertion. The Existing Joint Board structure has met with some criticism in the past however, the very challenges that Joint Boards have had to deal with will continue in the context of a pan Scottish Board. As the Audit Scotland Review of the “Role of Boards” concluded – it is important that Boards demonstrate collective responsibility and ownership of decisions. “Collective responsibility is essential and will be increasingly tested as boards have to make challenging decisions about how best to implement Government priorities, how to reduce costs and what services need to change or stop being delivered”

2. The specific skills that members will need to bring include the ability to properly scrutinise Service performance, clearly ensure the management of risk within the Fire and Rescue service context, demonstrate sound financial management, lead the development of a national strategic plan for the service and hold the Chief Officer to account for its delivery. These skills can be found from across stakeholder interests including local government, business and commerce, education and research, fire and rescue sector.

**Functions of the Scottish Fire and Rescue service**

3. The functions of the Scottish Fire and Rescue service remain as set out in the Fire (Scotland) Act 2005. It is understood that additional functions e.g. CBRN response and response to serious flooding will be transferred by means of secondary legislation and a new Fire and Rescue Framework will place these statutory functions within the context of prevention, community engagement and partnership working. It is unfortunate that primacy has not been given to the prevention agenda and that the opportunity has not been taken in the context of the
primary legislation to provide a meaningful context within the areas of protection and prevention for all Fire and Rescue activity. It has been acknowledged through Community Fire Safety work and research including the study examining fire deaths and injuries in Scotland “Scotland Together” that the only demonstrative way to drive down fire death and injury and to reduce demand on already heavily burdened public services is through the adoption of a holistic, structured and joined up approach with partner agencies to focus on prevention activity and target “at risk” groups. Expanding on this theme, the now well developed role of the service in the context of road safety with the service leading the way on a number of initiatives (particularly aimed at young drivers) across the Country is not reflected in the Bill. The opportunity to clarify the role of the service in co-ordinating water rescue activity across Scotland has also been missed.

4. CFOAS has also consistently raised a number of issues that affect the legality of our Services’ cross border operational activity in England. We have been advised that these matters would be clarified in the Bill, however, the opportunity to do so does not appear to have been taken.

HMI role and accountabilities

5. The Bill establishes the role of Chief Inspector and Inspectors of the Fire and Rescue service as non-Ministerial office holders within the Scottish Administration. The Inspectorate may independently initiate inquiries as well as inspect on direction by Scottish Ministers. This clearly presents a potential conflict of interest in relation to determining inspections that remain risk based, proportionate and complimentary. Primacy will clearly rest with a Ministerial request for any one off inspection that may not be seen in the context of broader audit and inspection criteria or indeed will pull resource away from planned work programmes. Depending on the direction given by Ministers, this could also potentially place undue political pressure on Inspectors in terms of timescale and conclusions.

National and local structures – roles and accountabilities

6. In addition to establishing the single national service governed by the Scottish Fire and Rescue Board, the Bill seeks to establish a formal statutory relationship between the service and each of the 32 local authorities. The Bill provides for a local senior officer to be designated for each local authority area and he/ she will be the first point of contact for the local authority and other partners locally and the lead officer for the services in community planning. The relationship will be built around the development of a local plan setting out the shared priorities and outcomes to which fire and rescue services are to be directed.

7. After approval of the national strategic plan, the SFRS must prepare and submit a plan for approval to the local authority for the area to which the plan relates.

8. In the context of the development of a 3 year national strategic plan prepared on the basis of a national integrated risk management plan and developed in the context of a national budget set for the SFRS, it is entirely possible that conflict could arise if any given local authority does not feel that the local plan is sufficient for its
purposes in terms of resource allocation, engagement in local initiatives or indeed the role of the local senior officer.

9. There is a broad duty on the SFRS to ensure adequate local service provision but national and local views on the extent and detailed application of that provision could differ. The Bill states that the SFRS must submit a plan prepared for approval to the local authority and if approved the SFRS must publish it. As it stands, the Bill offers no recourse for any dispute arising between the national service and the local authority, which could seriously hamper the ability of the service to engage effectively at a local level. We need to be clear on whether the service is a national service delivered locally or 32 local services delivered within the context of a national framework. It cannot be both.

10. This point is also critical in terms of the role of the Local Senior Officer (LSO). In order for the LSO to work effectively, it must be clear that the development of local plans stem from agreed local priorities sitting within the context of the national strategic plan and that the LSO’s accountability for delivery is to the Chief Officer. The LSO is carrying out delegated functions on behalf of the SFRS and although the relationship with the local authority is crucial in terms of the joint development of the local plan, reporting lines and accountabilities must be clear.

11. Local scrutiny and engagement arrangements are currently being piloted to test a range of mechanisms e.g. blue light committees through which elected members may play a direct and formal role in shaping local priorities and scrutinising performance however we need to guard against drawing the FRS away from the multi-agency approach which has been proven to work. In terms of Community Planning and Engagement there is a need to remove duplication, build capacity and integrate services; this is best achieved through CPP arrangements. It seems that a number of reform strands now exist and there must be a connection between reform of Police and Fire and Rescue Services and the refresh of the SOA, CPP and SCG arrangements. If this were to provide a more robust legal duty and partners were bound by joint plans and performance as a result, then the need for separate police and fire committees would be obsolete.

12. The development of local plans influenced by the National Fire Strategy but driven by local priorities would seem an appropriate process for guiding and setting local arrangements. The SOA would allow this and could also present a means to challenge performance and measure outcomes. However, as referenced in paragraphs 6 and 7 there needs to be a clear understanding of the parameters within which local plans are developed and agreed.

Financial Assumptions

13. The Financial Memorandum attached to the Police and Fire Reform (Scotland) Bill highlights that ongoing net savings of £25.1m per annum could be achieved by the Scottish Fire and Rescue Service following a period of transition during which time one-off set up costs of £27.475m and one-off savings of £15m could arise.
14. It should be noted that these ongoing savings are net of increased costs resulting from expenditure such as VAT (£4m), Publicity (£0.33m), Remuneration of the Board (£0.242m) and Pay harmonisation (£1m). The most significant areas where savings have been identified are Corporate Services (£8.03m) and Response (£13.5m).

15. In presenting evidence to the Finance Committee, CFOAS has highlighted concerns in relation to the level of costs and savings to be achieved and the time frame for delivery, albeit that we agree that the removal of duplication will result in a level of efficiencies being generated over time. In particular, CFOAS has questioned the assumptions that significant reductions in the number of senior uniformed officers across all areas of service delivery can be achieved whilst at the same time ensuring that effective Incident Command management systems can be delivered. In relation to reductions in support staff and Control Room staff, CFOAS would question the assumption that these can be achieved through natural turnover rather than significant numbers of staff being made redundant, albeit on a voluntary basis. Costs for redundancy have been assumed to be £4m within the Financial Memorandum whilst the equivalent figure for Police is some £80m and we therefore contend that this is significantly under estimated.

16. CFOAS would wish to highlight that since the Business Case has been prepared, expenditure levels within the Service have already reduced by some £10m and therefore some of the savings highlighted are now being delivered across Scotland. The Business Case was prepared from a baseline set in 2010/11 and these savings need to be credited to the service as part of the Government’s financial projections for reform.

17. Finally, the legal status of the new Scottish Fire and Rescue Service results in the potential loss of VAT recovery, which CFOAS estimates to be £10m per annum and not £4m as, outlined. Additionally, the new Service is not permitted to hold Reserves, something which is recognised as sound financial management practice. These detrimental impacts on the Service when compared to current practices are matters which we would ask Scottish Government to consider when reviewing the proposed legislation and legal standing of the new single Service.

Employment Issues

18. The Policy Memorandum attached to the Bill reflects that there are no plans to change national negotiating arrangements during transition to a single service. Whilst the memorandum also explains that future arrangements will be a matter for the new Fire and Rescue Service we assume it is intended that current arrangements will continue. It should be noted however that COSLA may continue to represent Employer interests in the negotiating framework until 31 March 2013 but as the Service will cease to be a local government service on 1 April 2013 (if that is indeed the date on which the new legal entity is established) there could potentially be a void thereafter until any new negotiating structure is established. CFOAS is urging Scottish Government to hold talks with the Employers Secretariat in London and COSLA to ensure a smooth transition.
19. The absence of any shadow arrangements and definitive commencement date for the new service as a legal entity (as existed during local government reorganisation) does mean that many transfer issues cannot be planned definitively prior to vesting date and must therefore be for the new service to resolve. Although there is a commitment that all staff will transfer and terms and conditions will be protected at the point of transfer, the lack of proper shadow arrangements will undoubtedly have an effect on employee morale and hampers the ability of current employers to provide meaningful information to staff on their future. CFOAS has urged Scottish Government to bring forward some aspects of the Bill in relation to the appointment of the CFO to at least allow for a degree of critical decision making in advance of 1 April.

Chief Fire Officers Association Scotland
2 March 2012
CFOAS welcomes the opportunity to provide further clarity around functions, and associated costs, that the Association believes requires further consideration in drafting a renewed purpose and vision for a modern 21st Century Fire and Rescue Service in Scotland which, in turn, provides a proper statutory basis to these critical functions within the Police and Fire (Reform) Bill:

1. **Marine Incident Response**

   1.1 Marine Incident Response references teams trained to be transported offshore to ships at sea that are on fire should a request be made from a vessel to the coastguard for fire teams. There is, currently, no statutory duty on any Fire and Rescue Services to undertake these operations.

   1.2 Until recently (Autumn last year) there were 15 Maritime Incident Response Group teams provided by Fire and Rescue Services around the coast line of the United Kingdom. In Scotland these were Lothian & Borders, Strathclyde, Highlands & Islands and Grampian. Last Autumn, Lothian & Borders took the decision to stand down the Maritime Incident Response Group teams as a result of funding that was provided for the MIRG team and response being withdrawn by the Maritime Coastguard Agency. In reality, funding associated with the cost of providing equipment and training has never been fully provided but all funding has now ceased as a result of Coastguard Agency cuts from UK central government.

2. **Rope Rescue**

   2.1 Although there is no statutory requirement for Fire and Rescue Services to carry out rope rescue activities within the Act or draft Bill, the outcomes of local Integrated Risk Management Plans has, in some services, highlighted that a community risk exists. On this basis some Services have funded, trained and provided rope rescue teams. It may be worth noting that just because the IRMP has highlighted a community risk this, in itself, does not confer a statutory requirement to provide a rope rescue response. The Scottish Government has recognised the rope rescue response provided by some Fire and Rescue Services, and have financially supported a project within Lothian and Borders to build a rope rescue facility for training for open structures rescues, such as scaffold and tower cranes etc, that can be used both locally and nationally to help train rope rescue operators. This is under construction now and is due to complete in late summer 2012. Work is in hand with the Scottish Fire Services College to include rope rescue training in Scotland within their syllabus.

   2.2 The provision, equipment and maintenance of rope rescue teams within FRS is carried out by individual FRSSs from within their budget settlements, with no associated central funding.
2.3 The draft Bill provides an opportunity to define rope rescue as a statutory function of FRS, to make necessary funding provision and work to provide a pan Scotland response. Alternatively, Ministers may wish to take the opportunity to clarify which alternative Services or agencies should hold that statutory responsibility.

2.4 Of interest is a recent Sheriff’s determination following a Fatal Accident Inquiry where he determined that entering mine shafts is the responsibility of FRS for rescue purposes. However, without the requisite rope rescue equipment and training it is highly probable that it will not be possible for Firefighters to be lowered into shafts etc unless they are trained appropriately.

3. Inland Water Rescue

3.1 Inland Water Rescue is not a statutory function of FRS within the current act or draft Bill.

3.2 Responding to flooding is a statutory duty of the FRS which is generally cited as standing water although many commentators on hydrodynamics would argue that even flood water is moving and presents the same or similar dangers and risks. Whilst flood response is generally considered within the Department for Environment, Food and Rural Affairs (DEFRA) documents, and is taught on flood response courses as wading no higher than generally knee-depth in standing water, this in no way provides the appropriate level of response to inland water rescue such as rescue from rivers, lochs or extensive flooding of areas as seen in recent events across the UK.

3.3 In relation to overall costs, within some Services all of these activities are considered to be outwith the scope of the defined role of a firefighter as set out within their role maps and, on that basis, an additional responsibility/ availability allowance is paid to all participating firefighters.

3.4 An approximate estimate of overall costs for these rescue activities across Scotland would be:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inland water rescue/ co-ordination of assets</td>
<td>£1.5m</td>
</tr>
<tr>
<td>Rope or Line Rescue</td>
<td>£300/400k</td>
</tr>
<tr>
<td>Maritime rescue</td>
<td>£300k</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£2-£3 million</strong></td>
</tr>
</tbody>
</table>

4. Community Safety Engagement

4.1 Commencement of the Fire (Scotland) Act 2005 introduced a requirement for the Scottish Fire and Rescue Services (SFRS) to promote fire safety and to make appropriate arrangements for the provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire.
4.2 Additionally, the SFRS are required to give advice, on request, about how to prevent fires and restrict their spread in buildings and other property. Also, Services must give advice in relation to the means of escape from buildings and other property in the event of fire.

4.3 The SFRS approach to Community Safety Engagement (CSE) is predicated on partnerships; this position has been developing since the introduction of Community Planning in 2003 and was confirmed in the Scottish Government’s report ‘Scotland Together’, published in 2009. (Scotland Together is available at: http://www.strathclydefire.org/news--campaigns/features/july-2010/scotland-together.aspx)

4.4 CSE is a central aspect of SFRS service delivery; a position that is reflected within Integrated Risk Management Plans.

4.5 The SFRS are involved in a range of public safety engagement initiatives including Home Fire Safety Visits, fire and rescue education programmes for children and young people, road safety projects and the provision of information in relation to water safety.

4.6 A blended approach is employed with local fire crews delivering the bulk of mainstream Services, including Home Fire Safety Visits and some youth engagement programmes. When dealing with the public, complex cases such as those involving dementia or addictions are managed using bespoke teams of specially trained staff.

4.7 Working closely with Community Planning Partners there is an emphasis on targeting at-risk individuals and families through the development of referral pathways with public and third sector colleagues. Also, the Tasking and Coordinating process is used to identify trends and inform the deployment of resources in an integrated and focused manner.

4.8 In reality, our expanded CSE activity has taken the Service beyond the parameters of fire safety to engaging with young people on the cusp of offending, contributing to broader community wellbeing initiatives, such as road safety, and working with a range of vulnerable and at risk groups to improve their overall life circumstances.

4.9 CSE funding is provided from core budgets, augmented by external funding; in the main, external funds are received from Community Planning Partnerships. Again, an approximate estimate of costs for CSE for the current year is: £4.9M made up of £3.9M from core budgets and £1M from external funding

5. Cross Border Working

5.1 This matter has been raised, specifically, with Lothian and Borders Fire and Rescue Service by SG officials and relates to the legality of Scottish Fire and Rescue Services crossing the border to operate in England. The issues apply equally to Dumfries and Galloway and any other Service in Scotland involved in UK mutual aid arrangements.
5.2 The exact nature of the illegality has not been shared with the FRSs concerned, which we understand is normal protocol in relation to the provision of legal advice. We understand from correspondence that the opportunity to resolve the matter was to be taken in the drafting of the Bill; however, we are advised that it is a technical matter which needs to be resolved by the UK and Scottish Governments. While the matter remains outstanding, the Committee can be assured that mutual aid arrangements do operate satisfactorily – it is the legality of these arrangements which is in question.

6. Summary

6.1 As outlined in the oral evidence given to the Justice Committee, the current range of rescue services provided across Scotland lack consistency as a number of functions are not appropriately defined within current legislation. The opportunity to bring clarity to these functions should be taken and in doing so, the financial impact of around £2m-£3m should be considered against the overall budget of £388m i.e. it represents a value of less than 1% of spending.

Chief Fire Officers Association Scotland
21 March 2012
Introduction

1. I currently perform two roles within Scottish Government. My primary function is as an adviser to Ministers where, as a consequence of my fire and rescue service background, I am able to advise Ministers and officials on fire and rescue service matters. I provided advice to Ministers throughout the development of the Bill and the work leading up to that.

2. My secondary role is as Chief Inspector of Fire and Rescue Authorities – where I act independently of Ministers (but am subject to their direction in certain circumstances).

Response

3. My position is that reform of the Scottish fire and rescue services is both appropriate, and necessary, if the quality of the Service is to be protected during what is, for the modern fire and rescue service, an unprecedented period of financial pressure. I also believe that reform offers the Scottish Government and fire and rescue service managers the opportunity to build on the best that the Service has to offer, and design a high quality, locally engaged organisation which will benefit the people of Scotland. I am certain that Service managers are willing and able to rise to that challenge.

4. The Committee will note that the Bill proposes what might effectively be described as a reinvigoration of the Inspectorate function. I have begun the process of exploring the practical implications of that and am engaging, or planning to engage, with stakeholders on the future shape and operation of the Inspectorate.

5. I anticipate that a new Inspectorate will be built on:

   1. A principle that scrutiny will be proportionate and risk-based;
   2. A complementary relationship with the Auditor General and Audit Scotland;
   3. A partnership between the Service, the Scottish Ministers and the Inspectorate; and
   4. An ongoing requirement to provide professional advice to Ministers.

6. I would be happy to take questions from the Committee on the thinking behind these matters.

7. Beyond that, I would be happy to respond to the Committee, to the best of my ability, on any matter relating to its consideration of the Bill.
Justice Committee
Police and Fire Reform (Scotland) Bill

Written submission from the Convention of Scottish Local Authorities

Introduction

1. COSLA, the Convention of Scottish Local Authorities, is the representative voice of Scottish Local Government. We welcome the opportunity to provide written evidence to the Justice Committee on the Police and Fire (Reform) Scotland Bill. Evidence has also been provided to the Local Government and Regeneration, and Finance, Committees, and this evidence should be read alongside that provided for them.

2. COSLA’s position has been informed by the work of a cross-party Task Group, our Community Safety, and Community Well-being and Safety Executive Groups, and agreed by COSLA Leaders.

3. COSLA would welcome the opportunity to provide the Committee with oral evidence or any further written evidence that it would find helpful to inform its conclusions.

4. For ease of reference, the following submission broadly follows the structure of the Bill.

Overall Position

5. COSLA is fully committed to working with the Scottish Parliament, the Scottish Government and other stakeholders to ensure that the best possible police and fire services are developed and implemented for our local communities. COSLA Leaders have previously agreed policy positions specifically in relation to Police and Fire Reform as well as wider Public Sector Reform. These positions were clearly reflected in the COSLA submissions to both Scottish Government consultation exercises on police and fire reform, and were reflected to Scottish Government Ministers and civil servants as the Bill was being developed.

6. The theme of our response is the need to continue the principle of policing by consent, while retaining meaningful local democratic accountability in future arrangements, but also agreeing that there must be strong national accountability. The reform of police and fire must not be seen as distinct from broader reform of public services and the ongoing development and enhancement of community planning and single outcome agreements.
7. As a practical suggestion, COSLA suggests that the Bill is revised at Stage 2 so that there is consistency on the face of the Bill in terms of how the SPA and SFRS are to be formed, their membership, etc.

National Board

8. At national board level, there must be structures to maintain the operational independence of the Police and Fire Services from Ministers, as well as foster a meaningful and sustainable relationship between local committees and the national boards.

9. Strong Local Government representation on each of the national boards is of fundamental importance to COSLA to ensure there are the diverse skills, experience and expertise required to perform their roles effectively, represent the geographical diversity of Scotland and to meaningfully link the national to the local and vice versa.

10. For both police and fire, COSLA wants to see a Board of larger than 11, of at least 15 members, with a set, majority of elected members. Of these we would argue that at least eight be serving elected members, appointed by COSLA, but having received the appropriate security clearance. This reflects the history of both police and fire, which have always been locally democratically run since their establishment. Even with a single police or fire service, the vast majority of crime, and any particular fire, will take place in a local community – local and national are inextricably linked. A larger Board with a majority of elected members would retain that strong link to local accountability while also allowing the geographical diversity of Scotland to be reflected.

11. COSLA recognises the hesitation that Ministers and Scottish Government officials have here. But given the seniority and experience of those likely to be nominated, plus the security checking and fact that once appointed they will be obliged to act in the Board’s best interests, COSLA believes that there is nothing to be concerned about here.

12. We have concerns that if the SPA and SFRS are as busy in time terms as suggested to us by civil servants, then eleven is not a large number should there be a couple of illnesses and couple of board members with other unavoidable appointments, and problems with a quorum could arise.

13. Also, more members of the Board would allow a bigger pool from which to select the core of necessary sub-committees. In the Bill there is the possibility of co-opting members to sub-committees, but if as suggested they have no vote even though functions may have been delegated to those sub-committees, then there has to be a question as to why potential volunteers would want to be involved. Or, if we assume that those co-opted are brought in for their specialist expertise, it would seem counter-intuitive then to give them no real input into decision-making.
14. Further, we believe that strong local elected member representation on the national Boards, albeit of course acting in the interests of the Board on which they would be sitting, would send a real message of the partnership that will be required between national and local accountability to ensure the best possible service for all our communities.

15. There is no detail as to how the new Boards will conduct their business but we would assume as a minimum, as with existing Police and Fire Boards, that they will meet in public.

**Borrowing, Reserves and VAT**

16. We support the fact that the SPA and SFRS will be able to borrow money (albeit only with Ministerial approval), and note that, unlike now, they will not be able to hold reserves. We are disappointed at the financial implications of these single services both being subject to VAT. We understand that Scottish Government officials are in discussion with HMRC in relation to a dispensation and are confident that this will be achieved, but as yet we have seen no evidence of this. Indeed, as many others have said, SPSA has never fully resolved this problem. This is a sizeable sum annually being transferred from one arm of Government to another and we urge the Parliament to seek resolution of this matter. Failure to do so will require the Government to find the money – likely over £20m - and thus have a knock on effect either on the police or other public sector budgets.

17. COSLA’s position is that, rather than forming a NDPB which is subject to VAT and has various financial limitations on it, there are other alternatives, one of which, for example, could be a single shared Local Government service, which would have allowed more financial flexibility such as the holding of reserves and exemption from VAT.

**Ministerial Direction**

18. Finally on the opening Chapters for Police and Fire, COSLA seeks to clarify the wording of 5(1) and 5(2), which appears to be contradictory in that the former says the SPA “must comply with any direction……by Ministers”, whereas the latter suggests that a direction “may not be given” on operational matters. Each is a statement in its own right and it is difficult to determine which might actually take precedence. We note that this is a new duty and that ACPOS, among others, has questioned the need for it.

19. Further, assuming there is to be a duty and there is an exception for “operational” matters, there is no definition of what that might constitute.

**Police Service**

20. Para 13 seems to suggest the possibility of performance related pay or bonuses, which is surprising given the current economic climate and apparent public opinion.
21. In terms of the Chief Constable’s accountability and where that lies, and local police planning, we have covered that below in our section on local arrangements and accountability.

22. COSLA welcomes the policing principles. In terms of Ministers setting strategic priorities relating to the “policing of Scotland”, we support that but we seek clarification on how that might avoid relating to operational matters. Similarly, the SPA must prepare a strategic police plan, and we question how we avoid that relating to operational matters.

23. At 33(3)(b) COSLA, as the representative voice of Local Government would seek replacement of the wording to say “the Convention of Scottish Local Authorities, and”. 33(3)(c) then covers, among others, any relevant local government professional bodies.

24. We welcome the involvement of local authorities in preparing the strategic police plan.

**Best Value and Community Planning**

25. COSLA has an agreed position that the Duty of Best Value and Community Planning should be extended to all in the public sector. The Bill provides for the new bodies to secure Best Value. Given COSLA’s stated position and an indication from the Minister for Local Government that he intends reviewing community planning arrangements, we will want to ensure that the Bill reflects a duty to participate meaningfully in community planning at a local level and achieves what is intended. The pathfinders’ exercise may provide some early indications of how this relationship might work in practice.

26. Ideally we would have preferred if it was formally the Chief Constable to whom the duty to participate in community planning applied locally, rather than the Local Commander, particularly as earlier in the Bill it is clear that s/he can delegate powers to other officers. The Local Commander is accountable to the Chief Constable and so the formal duty should lie there.

27. For Fire, we would like far more explicit reference to the duty for the Chief Fire Officer, or if we accept the Bill as it stands for Police, the Local Senior Officer, to participate in community planning. We believe that this is essential to maintain the excellent community safety outcomes recently achieved across Scotland through joint working.

**Local Arrangements**

28. The future local arrangements, including the development of local plans and associated budgets for Police and Fire and Rescue, is of fundamental importance to COSLA both in terms of the rights and duties of councils and in how these services link to wider community planning arrangements and single outcome agreements. The role and powers of the new local arrangements must be clearly defined to ensure that they have real impact, and can deliver effective and sustainable local accountability.
Setting Local Priorities

29. We welcome the appointment of a Local Commander/Senior Fire Officer for each council area and the clarification in Scottish Government civil servants’ evidence to the Local Government and Regeneration Committee that the rank of the Local Commander will be worked out between the individual council and the relevant service. Further, we welcome the clarity of the Bill that a Local Commander must involve the local authority in the setting of priorities. Particularly, we are delighted to see the Government’s acknowledgement in the Bill that councils will have the right to approve a local police plan, and we would assume that this includes all local activity.

30. It is unclear from the Bill, however, what arbitration process exists in the very unlikely event that local negotiations do not suffice and agreement cannot be reached.

Local Budgets

31. For COSLA, true local accountability requires a local budget being set and forming part of the arrangement. We believe decision making and financial responsibility cannot be separated. If local accountability and subsidiarity are really to be enhanced, budgets must be aligned to where the decisions are being taken. Each local plan should be costed and resourced so that progress can be reported on. It would form a basis on which additional local expenditure by councils could be set against. An alternative would be to establish a scheme of delegation to the Local Chief Officers so that they have powers to hold budgets, direct these and officers under their command, and enter into agreement with the local committees. Either would achieve the same end, although the latter would be preferable if the Christie Commission recommendation on “Forging a new concordat between the Scottish Government and Local Government to develop joined-up services, backed by funding arrangements requiring integrated provision” is to be acted on.

32. COSLA would like to see changes to the Bill to achieve this alignment of plans and resources. For example, councils already directly fund an additional 600 – 800 police officers (who are part of the current force of over 17,234 officers), and we need to be sure in future that the resources we are allocating to Community Safety are in fact still delivering the desired additionality. A budget would make this process transparent.

Local Committees

33. In terms of “local committee” arrangements COSLA accepts and supports the need for reasonable local flexibility, and we support strongly the work ongoing across Scotland with pathfinders. However, the feedback from that will not be available until later in the year, particularly given the Local Government Elections will create a break period of possibly a couple of months. By that time, it will be too late to amend the Bill. We believe that there would be an advantage for the legislation to more clearly frame the role of the local committee arrangements and particularly to identify how a local committee would have their concerns heard by members of the National Board.
34. By reducing the degree of variation in their form and remit it may make it easier for the Chief Fire Officer/Chief Constable to manage relations with individual local authorities and to ensure a consistent level of scrutiny across the country. There must be the ability to scrutinise all local activities and this must complement national scrutiny.

35. COSLA members have been asked about the additional burdens of establishing these. Initial estimates suggest that there would be a requirement of something in the order of £3-4m to have administrative roles in place with some policy and analytical capacity. The policy and analytical capacity is likely to be a significant factor to assist elected members to improve the level of scrutiny carried out locally on what exists already.

Local Accountability

36. Further, Council Leaders are keen to maximise their role in holding chief officers to account. When last discussed, Leaders made clear the need for legislation to define the relationship between the Chief Constable/Chief Fire Officer and local authorities to ensure any agreement is workable, including the right to receive a response, in a similar way as is currently available with existing Chief Constables. We are arguing that a number of key issues on which a local committee would have the right to receive a response should be defined, eg resource allocation.

37. Without these guarantees set out in statute, potentially the local committee could simply become information sharing meetings dependent on the data that the Local Commander is prepared to provide. And key local issues are unlikely to be given any thorough consideration by national boards (even if they were to have Local Government representation). We cannot end up with structures that end up facing the same types of criticism on accountability that we have recently seen from Audit Scotland on Boards.

Appointment of Chief Constable/Chief Fire Officer

38. Acknowledging the benefits of having both services up and running on 1 April 2013, COSLA has suggested an alternative means by which initial appointments might be made, speeding up the process, particularly for the Chief Constable, and allowing management teams to be in place well before the proposed start date.

39. Ideally, we would have liked to see the full recruitment process, interview panel and appointment made independently, by the national boards. However the commitment to the start date does not seem to allow for this. Even allowing for the recruitment of the Chair to sit on the interview panel limits the time the Chief Constable will have to recruit his command team and shape his/her service to 3 or 4 months at best. Further, this will be an attractive, comparatively well paid post and is likely to attract a range of candidates from outwith Scotland who, if successful, might require a notice period after appointment before they could take up the job.

40. COSLA suggests ideally that a means be found to fast track at least the appointment of the Chair, but if at all possible other Board members also, to allow an
earlier appointment of chief officers to take place than December 2012/January 2013.

41. Alternatively, there may be a workable proposal based around the current eight Conveners, or a group of senior elected members from COSLA, and the HMIC making up a pool from which an interview panel would be drawn. This would provide three key advantages:
   (i) speed up the process, giving the Chief Constable as much time as possible to shape the new service;
   (ii) retain the separation from Ministers; and
   (iii) bring the required breadth of skills and experience and democratic accountability, desired in the Bill for membership of the SPA and required to appoint a Chief Constable.

42. There seems no reason why amendments could not be brought forward at Stage 2 of the Bill to allow such an appointments process or similar for the first Chief Constable. After this, it would revert to the process detailed in the Bill for future appointments.

43. The alternative in the Bill is an appointment made essentially by civil servants and/or local government officials or similar, together with a newly appointed Chair.

44. According to a presentation to the Scottish Policing Board, adverts for the Chief Constable will be issued on 7 May 2012. Current Police Regulation requires a minimum 3 week advertisement period for senior officer posts. But this could be extended, albeit in our view not necessary given that most of those interested in the post will already be looking out for it, to five weeks. This would allow for the consideration of applications and short-listing to take place in late June and interviews to take place in late July 2012. Depending on the amount of notice required the Chief Constable would be in post between early August and October 2012. Compared to the current proposed method of recruitment this option could provide the new Chief Constable with potentially an additional 5 months in post. This would still mean the interview process itself taking place after parliamentary consideration was complete.

45. COSLA would support a parallel process for the appointment of the new Chief Fire Officer.

46. As said above, our preferred option is for the fast-tracking of the public appointments process to get the SPA and SFRS in place. But, if our alternative option is supported, COSLA officers would be happy to work with Scottish Government officials to develop the thinking around this option further, including any Bill amendments that were required.

**Independent Custody Visiting**

47. Sections 90 and 91 introduce the purpose and arrangements for Independent Custody Visiting. While fully supportive of this becoming a statutory obligation in Scotland, there is no detail available as to how a small, centralised Authority will undertake the practical recruitment, training, management and co-ordination of
Custody Visiting as currently exists across Scotland. The earlier consultation indicated a willingness to build upon ‘existing skills and experience’ and further information is currently awaited as to how this will be facilitated in practice in the future and what the financial implications might be, particularly for local authorities should its implementation be delayed.

**Matter Not Covered By Bill**

**Riotous Assembly**

48. Under the 1824 Act police authorities have the responsibility to compensate the public and businesses for damage caused by riot. While this has not been a common problem in the recent past, the disturbances of 2011 and the need for councils to secure insurance cover for high profile events mean that this is a continuing and real burden for some authorities. As the current policing role is transferring to the new national service so should the liability for policing riotous assemblies.

49. COSLA has approached the Scottish Government over this to resolve the matter, particularly as councils have no practical or theoretical ways of actively mitigating the risk.

50. COSLA would like to see this matter addressed in this piece of primary legislation, or a formal agreement being reached with the Scottish Government that this is included among all of the liabilities that will transfer from local authorities to the SPA.

**Lay Diversity Advisers**

51. Lothian and Borders Police Board (and potentially others) has a Lay Diversity Advisers Scheme. The Advisers are volunteers and are independent of the Force but work closely with officers to provide advice on equalities matters and scrutinise a variety of diverse police activities. The breadth of skills used by lay advisers have informed and helped to shape police policies and procedures, as well as continuing to contribute to the scrutiny of hate crimes. They have a developing role in critical incidents. It is not clear how such a scheme might continue in a national structure. The new Authority should consider the benefits of the scheme in a national context. If it is felt that such a scheme might be of value in all or some parts of Scotland, the Authority should consider how the advisers should be appointed so as to make clear that they are independent of the Force. Having councils run the appointment process would confirm that independence. These appointment functions would have resource implications for the councils involved.

**Conclusion**

52. COSLA supports a Bill that protects and improves local services, keeps our communities safer with more equitable access to specialist support and national capacity when and where it is needed across Scotland. We want to see the connection strengthened between services and the communities they serve, enabling closer integration with community planning partners and delivering greater
local democratic scrutiny and engagement, and achieving better outcomes for communities. We acknowledge that the Bill is intended to achieve this and it is on that basis that we make the above comments and suggestions as to how the Bill might be further improved.

COSLA
28 February 2012
Annexe A

COSLA Submission to Local Government and Regeneration Committee

Background

COSLA has been invited to provide a submission to the Scottish Parliament’s Local Government and Regeneration Committee on the Bill reforming Police and Fire and Rescue Services in Scotland. This submission concentrates on the proposed local policing and fire arrangements.

This submission is based on the policy memorandum and the broad intention of the Bill rather than the detailed provisions. COSLA’s position has been informed by the work of a cross-party Task Group, our Community Safety, and Community Well-being and Safety Executive Groups, and by COSLA Leaders.

The COSLA position repeats some of the concerns expressed in response to the earlier consultations. While we concentrate on the outstanding matters, the previous ones (while wholly or partly resolved) are briefly repeated to provide the overall thrust of Local Government’s position. There are also a number of points that so far remain unresolved. COSLA staff continue to be in active dialogue with Scottish Government officials and hope that further progress can be made prior to stage two. In the response, the term ‘Board’ ‘Local Chief Officer’ and similar, apply equally to both the proposed Fire or Police arrangements, unless specifically indicated otherwise.

National Board Arrangements

Role of local elected members

For COSLA, councillor representation on the National Boards is fundamental to ensure there are the diverse skills, experience and expertise required for the two national boards to perform their roles effectively. As long as the new local arrangements retain responsibility for ensuring the delivery of local police and fire outcomes, it is a prerequisite that there should be strong representation from local authorities through membership of locally elected members on the two national boards. It is difficult for members to feel anything else would be as meaningful in directly linking national and local accountability given the desired outcome of continuing, and improving, local fire and police services in the context of local community safety. Councillors, through community planning have a strong background in strategic planning across a range of public services.

Strong representation at the national level would help maintain a meaningful and influential Local Government interest in the top levels of the new structures. This would help ensure the success of the local governance and accountability arrangements. It would also maintain relations between the local committees and the national Board and between local elected members and the Chief Constable and Chief Fire Officer.
From press coverage there appears to be an assumption that the maximum number to be appointed as serving councillors would be 4 – although there is no indication as to whether this might be added to the face of the Bill. COSLA believes that we should directly nominate the local authority members to the board in a way that explicitly recognises the cross party and geographical nature of local government’s representative voice (whatever the number of places being made available) without going through the OCPAS process, but still with relevant security clearance being undertaken.

COSLA recognises the hesitation that the Minister and Scottish Government officials have here. But given the seniority and experience of those likely to be nominated, plus the security checking and fact that once appointed they will be obliged to act in the Board’s best interests, COSLA believes that there is nothing to be concerned about here.

\textit{COSLA continues to want to see either the majority or all of the Boards being elected local government members. If this doesn’t gain support from the Committee, COSLA would want to nominate directly, or at least commend applications, to a set number of places on the Board.}

We support that the Boards will be able to borrow money (albeit only with Ministerial approval), and note that, unlike now, they will not be able to hold reserves. We are also disappointed at the financial implications of these single services both being subject to VAT. We understand that Scottish Government officials are in discussion with HMRC in relation to a dispensation and are confident that this will be achieved, but as yet we have seen no evidence of this. This is a sizeable sum annually being transferred from one arm of Government to another and we urge the Parliament to seek resolution of this matter. Failure to do so will require the Government to find the money – likely over £20m - and thus have a knock on effect either on the police or other public sector budgets.

COSLA’s position was that, rather than forming a NDPB which is subject to VAT and has various financial limitations on it, there were other alternatives, one of which could have been a single shared Local Government service, which would have allowed more financial flexibility.

\textbf{Size of Board}

The magnitude of other tasks and roles currently undertaken by current police authorities to ensure effective, necessary day to day 'business' has been highlighted, as a reason for having the right numbers and skills available to the board. Examples, though not exhaustive, were: Police Appeals Tribunals; monitoring of ill-health retirements and injury awards; police staff appeals; approval of legal expenses for police officers in certain instances; Best Value, Audit and other specific oversight groups for budgetary control etc; Equality Schemes and other such duties; Climate Change duties as a public body plus monitoring arrangements of the force; what are the actual monitoring arrangements now going to be for national policing functions; Authority training; and, the monitoring of Health and Safety responsibilities specifically assigned to police authorities.
The proposal is that the two boards would have between 7 to 11 members. The Bill doesn’t state what the sub-committee arrangements will be to meet the responsibilities highlighted above. Given the small number of members, it has been suggested that a series of sub-committees be established with non-voting co-opted members to advise. However the small board numbers will also make it difficult to ensure a reasonable balance of geographical spread, gender, skills and expertise, and that the effectiveness of the arbitrarily small board could be easily compromised with three or four people being unable to attend.

Our members have said that a better size would be in the order of 15 with at least 8 being councillors, appointed by COSLA. This would allow a larger quorum to be set to reduce the chances of what could be a very small number of people making significant decisions over Scottish policing. This is closer to the number that could be appointed to the reformed National Library (14), and would help re-enforce the traditional tripartite approach to policing in Scotland, and assure the public that the boards and services were able to exercise their independence and accountability with a separation from Ministers.

The Chief Constable and Chief Fire Officer

As the Committee know it is proposed that there be different service specific approaches. To emphasise the independence of the Chief Constable from influence of Ministers, the Bill will require the Scottish Police Authority Chairperson be involved in appointing the first Chief Constable and the SPA more generally thereafter. The Chief Constable will need then to be approved by Ministers. However, given the lesser political sensitivity over the appointment of Chief Fire Officer, the intention is for Ministers to appoint him or her directly.

There is considerable pressure with the April 2013 provisional start date for the two new services to make progress to recruitment as quickly as possible, so that both Chief Officers can start recruiting their senior teams, and develop their initial strategic proposals to the SFRS and SPA. COSLA’s members are very concerned that the tight timeframes involved, combined with the proposed appointment processes will undermine accountability at a time when increased accountability is given as a reason for reform. Members were keen that shadow arrangements were in place quickly following the Bill’s enactment.

COSLA suggests ideally that a means be found to fast track at least the appointment of the Chairman, but if at all possible other Board members also, to allow an earlier appointment of chief officers to take place than December 2012/January 2013. As an alternative suggestion, there may be a workable proposal based around using experienced current Board members in the selection of the chief officers. In recent discussion COSLA’s Community Safety Spokesperson has suggested to the Scottish Government that the appointment process could be brought forward if the existing Board Chairs of both Police and Fire & Rescue Services were used as a pool from which to interview applicants once the Bill has gained assent allowing the new Chief Officers to be in place possibly by early September.
Strategic Priorities and Plan, consultation, laying before Parliament etc

The Police Priorities will be set by the Cabinet Secretary after consultation with interested parties, including COSLA and member authorities. For the SFRS it seems likely that the minister will set the priorities and objectives directly. With both services the Strategic Plans will be set by the Board / Authority after consultation with local authorities and COSLA (amongst others). The 3 year plans, once approved by ministers, will be laid before Parliament who will be able to take a view on these and annual reports, questioning both the Board / Authority and their employees as necessary.

*COSLA has welcomed some of the clarity achieved here since the initial proposals were put forward. The next significant issue will be the timeframe over which the first draft local plans will be prepared and by who, and the extent to which they tie in with community planning arrangements.*

Local Arrangements

Local Committees

During the consultation process COSLA made clear its position that Councils should be in the driving seat over the monitoring of the local plan and overviewing its delivery. COSLA was concerned about the status of its members councils in the process of drafting the plan. The ambiguity in the consultation document over whether Councils were simply being consulted or something more has been removed. Members welcome this being firmed up with such plans requiring to have the approval of the council.

Separately, in earlier responses, COSLA argued for a formal arrangement which places in statute a right of local authorities to hold to account local chief officers and their right to receive a response, in a similar way as currently available with the existing Chief Constables and Chief Fire Officers. Members are content that this now appears to be adequately covered in the wording of the Bill.

By reducing the degree of variation in their form and remit it may make it easier for the Scottish Chief Fire Officer/Chief Constable to manage relations with individual local authorities and to ensure a consistent level of scrutiny across the country.

*COSLA’s members would like to see as much detail as practical on the form the local ‘committee’ should take being on the face of the Bill, in part to provide a safeguard for local accountability to prevent it being reduced or removed through secondary legislation by a future government.*

Local Senior Officers

The Chief Constable and the SFRS will be required to have adequate arrangements in each local authority area, with a local commander/senior fire officer being designated for each local authority area, although the local lead officer may have responsibility for more than one area. They will be responsible for involving the local authority in determining the priorities and objectives for the services in the area.
The local Chief Officer will have the duties of participating in community planning of the current Chief Constables/Chief Fire Officers placed on them. They will also have the responsibility of preparing and submitting the local plan for agreement with the local authority. In both cases the local senior officers will be subject to the direction and control of the Chief Constable or the SFRS as appropriate in the carrying out of their duties.

*COSLA had been concerned that there was insufficient detail over where local elected members could go to if they had concerns about the delivery of the local services. This has largely been sorted out with clearer drafting in the Bill.*

**Local plans**

The local plans, to be revised at least every three years, are to set out the main priorities and objectives for the local area, state what the arrangements for the delivery of these will be, identify the measurable outcomes, and be tied in with other relevant outcomes from the community planning partnership. The format for the plans will be specified by the SFRS/SPA and these will require the plans to address the issues raised in the relevant national strategic plans. Modification to the plans will be subject to the agreement of the local authority.

*COSLA has previously stated that we believe decision making and financial responsibility cannot be separated. If local accountability and subsidiarity are really to be enhanced, budgets must be aligned to where the decisions are being taken. Each local plan should be costed and resourced so that progress can be reported on. It would form a basis on which additional local expenditure could be set against. An alternative would be to establish a scheme of delegation to the local chief officers so that they have powers to hold budgets, direct these and officers under their command, and enter into agreement with the local committees. Either would achieve the same end, although the latter would be preferable if the Christie Commission recommendation on “Forging a new concordat between the Scottish Government and Local Government to develop joined-up services, backed by funding arrangements requiring integrated provision” is to be acted on.*

*COSLA would like to see changes to the Bill to achieve this alignment of plans and resources. For example, councils already directly fund an additional 600 – 800 police officers (who are part of the current force of over 17,234 officers), and we need to be sure in future that the resources we are allocating to Community Safety are in fact still delivering the desired additionality. A budget would make this process transparent.*

**Regional arrangements**

At present there is little information about what the regional arrangements will be between local authority members and national board members or between the local chief officers and the Chief Fire Officer/Chief Constable. The Government maintains a position that much of this will be at the discretion of the new board/authority or the chief officers to arrive at.
While deferring operational decisions over territorial arrangements within the two services may seem reasonable, ideas will need to be developed to manage regionalised work such as Strategic Co-ordination Groups, Community Justice Authorities and Regional Transport Planning.

COSLA also raised the issue of how relatively junior local officers would hold their own against their more senior graded ‘peers’. This is something that may be resolved if the Government officials’ view that smaller population areas could be grouped together under more senior commanders/local senior fire officers is acted on.

Similarly it may be useful to arrive at some early idea for arrangements with members of the SFRS or the SPA acting as liaison members with given authorities/areas, to ensure a smooth flow on information and knowledge about regional matters.

It has been suggested that liaison responsibilities could be placed on members of the relevant boards to ensure that the awareness of local concerns is maintained at a local committee/board level, rather than solely being managed through the command structure.

The Committee is asked to satisfy itself that such an approach will be actively considered in the new arrangements.

Other matters

Resourcing local authority arrangements

As one of the intentions of the Bill is “to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships' the Local authority Fire and Police committees have a serious workload. They will be expected to: formally comment upon the Local Plan; monitor, scrutinise performance and offer improvements; seek reports, answers and explanations regarding the local plan and raise issues with the Chief Constable, Authority and the SFRS as necessary.

COSLA members have been asked about the additional burdens of establishing these. Initial estimates suggest that there would be a requirement of something in the order of £3-4m to have simple administrative roles in place with some policy and analytical capacity. This is an area in need of attention given earlier concerns raised by Audit Scotland and the Scottish Parliament reports regarding instances of apparently 'flawed' police authority scrutiny, and lack of professional officer support.

COSLA are not clear where informed independent professional advice on policing and fire will come from to inform the local committees. This still needs to be dealt with. Amongst the options on the police side are the establishment of a national resource providing support locally or by gaining access to the resources of the SPA - with its Chief Executive having a duty to meet reasonable requests for support. There will be obvious additional on-costs in providing informed local arrangements.
The Committee is asked to satisfy itself that these matters are addressed either on the face of the Bill or managed through agreement with the Scottish Government.

**Riotous Assembly**

Under the 1824 Act police authorities have responsibility to compensate the public and businesses for damage caused by riot. While this has not been a common problem in the recent past, the disturbances of 2011 and the need for councils to secure insurance cover for high profile events mean that this is a continuing and real burden for some authorities. As the current policing role is transferring to the new national service so should the liability for policing riotous assemblies.

COSLA has approached the Scottish Government over this to resolve the matter, particularly as councils they have no practical or theoretical ways of actively mitigating the risk.

*COSLA would like to see this matter addressed in this piece of primary legislation, or a formal agreement being reached with the Scottish Government that the new Police Authority would cover all the liabilities that remain with Scottish councils.*

COSLA
14 February 2012
Annexe B

Police and Fire Reform (Scotland) Bill – Financial Memorandum
COSLA Submission to the Finance Committee

Background

COSLA welcomes the opportunity to provide a submission to the Finance Committee on the Police and Fire Reform (Scotland) Bill. The Committee should note that our submission focuses on the high level financial implications as a result of moving to a single Police and Fire service, rather than concentrating on the detailed questions as outlined by the Committee.

The Committee should also be aware that COSLA is also submitting evidence as part of the scrutiny of the Police and Fire Reform Bill to the Scottish Parliament’s Justice and Local Government and Regeneration Committee. These submissions provide the Parliamentary Committees with more detail around COSLA’s position on some of the wider areas associated with the Police and Fire Reform (Scotland) Bill, however we would be more than happy to share these submissions with the Finance Committee should members consider this helpful.

Financing Principles

COSLA would wish to ensure that in moving to a single Police and Fire Authority that there are essentially two overarching principles that are applied:

i. The first of these is to ensure that there is as smooth a transition process in transferring to a single Police and Fire authority as possible, and this involves appropriate engagement with all key stakeholders to work through this process.

ii. The second is to ensure that the single Police and Fire Authorities remain properly resourced to ensure that they can deliver the necessary services to support the safety and wellbeing of communities in Scotland.

Transition to a Single Police and Fire Service

As highlighted above, COSLA would wish to ensure that there is as smooth a transition process in transferring to single Police and Fire authorities as possible, and this involves appropriate engagement with all key stakeholders to work through this process. COSLA acknowledges that various groups have or are in the process of being set up by the Scottish Government to work through many of the issues which have been highlighted within this submission, and we will work with the Scottish Government to ensure that there is appropriate stakeholder representation and consideration of the issues which are necessary to ensure that the transition to a single Police and Fire service is delivered in as smooth a way as possible.

COSLA is currently in discussions with the Scottish Government and respective stakeholders through a wide range of working groups which have or are in the process of being set up to consider the issues associated with moving to a single
Police and Fire service. Particularly, throughout these discussions, COSLA would wish to ensure that there is appropriate consideration around:

i. The actual funding which will be required to deliver the single Police and Fire service and ensuring that this is at an appropriate level in order to provide the services required to support the local communities. This will include discussions around the current funding which is provided as part of the Local Government Finance settlement, both revenue and capital.

ii. The assets and liabilities that are currently held and used by the existing Police and Fire Boards and consideration around what will transfer as part of the new arrangements.

iii. Wider workforce issues associated with the creation of a new single Police and Fire service including transfer of staff and any wider pension’s implications. Given the risk around Police and Fire pensions is currently transferred and met by the Scottish Government, COSLA would wish reassurances that the current arrangements will remain when moving to a single Police and Fire service.

iv. Clear accountability for control of costs and delivery of savings during transition to the new National arrangements. Given the April 2013 provisional start date and the likely timescale for appointments to SFRS, SPA and Chief Officer posts, it will be extremely challenging to establish clear accountability for financial management for the financial year 2013-14.

**Properly Resourced Single Police and Fire Authority**

The Financial Memorandum which is being presented to Parliament includes a range of costs and anticipated savings arising from the move to the single Police and Fire service. Many of these costs have previously been included as part of the Outline Business Case for moving to a single Police and Fire Service. COSLA welcomes the Committee’s scrutiny of the costs to ensure that these are based on robust evidence and that any anticipated savings are realistic and can be realised particularly within the timescales identified.

In general terms, COSLA believes that the estimated costs and savings set out in the Financial Memorandum are not supported by robust evidence. For example, there are particular concerns regarding the reasonableness and accuracy of the following key estimates:

- The Fire and Rescue Outline Business Case includes estimated savings of £8m pa through “risk assessing and applying consistent crewing practice which could involve some redistribution. This includes reviewing risk-based thresholds for crewing appliances.” The timing and level of savings assumed in this area is not supported by evidence. This is likely to be a highly sensitive political matter and delivery of this saving should be considered as high risk both in terms of achievement of estimated savings and maintenance of service outcomes.
• Voluntary Redundancy (VR) costs for Police Staff are estimated at £81m over 5 years including £73m over the 3 years from 2013-14. This estimate implies a voluntary reduction in Police Staff numbers of around 2,000 FTE (30%) over a three-year period. No robust evidence is available to support this estimate and the timing and level of costs does not seem plausible. In addition the estimated VR costs for Police (£81m) are 20 times greater than the estimate of £4m which is included for VR within the Fire & Rescue Service – a ratio of around 5:1 for Police costs relative to Fire and Rescue costs would be expected given relative staffing and budget levels.

Financial Implications arising from the proposed model of Governance

COSLA has previously expressed wider concerns around the proposed NDPB model of governance and the impact on overall national and local accountability; however there are also a number of financial implications in moving to this model which we would wish to highlight to the Committee, and these are outlined in more detail within the paragraphs below.

Members of the Committee will be aware that under the current structures for Police and Fire, the forces are able (under section 33 of the Value Added Tax Act 1994) to recover VAT costs incurred. The Financial Memorandum which has been presented to Parliament recognises that the proposed service delivery model will mean that forces will no longer be able to recover VAT and as such there will be an additional cost to both Police and Fire services, and ultimately from overall public finances. We do have concerns around the need for this additional cost to be incurred, particularly given the scale of the financial impact on the available public finances. We recognise that the Scottish Government is in discussions with HM Treasury and HMRC to ascertain whether there can be any exemptions to this and this is welcomed. Nevertheless there remain some concerns from professional associations around the estimated additional costs which would be incurred, with indications suggesting that this could be significantly more than the current estimated costs. Given the significance of this additional recurring cost, we urge the Committee to seek resolution of this matter. The Committee is asked to scrutinise the robustness of the current estimated costs, the potential service implications of this additional expenditure, and the likelihood that HM Treasury and HMRC will grant exemptions to the SPS and the SFRS.

In addition to the VAT implications, the proposed governance structure will not allow the new single Police and Fire Services to be able to hold reserves. The holding of reserves is regarded as good financial management practice as they provide a contingency to cushion against the impact of unexpected events or emergencies. Given the nature of the services which Police and Fire deliver, expenditure within an emergency service can often be volatile, and reserves are often utilised to smooth the impact of such events including; above budgeted pay awards or inflationary pressures, protracted emergency or major incidents or other exceptional circumstances. Given this flexibility would no longer exist; the Committee may wish to seek reassurance from the Scottish Government how it intends to deal with any such fluctuations or major incidents from within their overall resources.
Resourcing Local Authority Arrangements

In addition, the Committee will be aware that one of the intentions of the Bill is ‘to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships’. There still remains uncertainty around the wider establishment and arrangements of these Committees, however given there is likely to still remain a role for local authority Fire and Police Committees, there needs to be consideration around the financial cost to local authorities in delivering this local arrangements, particularly given the funding to deliver the single Police and Fire service will be removed from the Local Government settlement.

The Financial Memorandum provides some initial estimates in the order of £3-4m which has been provided by COSLA around the anticipated cost to local authorities in establishing and administering these Committees. This may be an area which the Committee may wish to consider in more detail to ensure that there is an appropriate level of remuneration provided to Councils to meet these on-going costs required to deliver the appropriate local scrutiny, particularly given earlier concerns which have been raised by Audit Scotland and indeed previous Scottish Parliamentary reports regarding appropriate scrutiny.

In addition, there still remains uncertainty as to where any informed independent professional advice on policing and fire will come from to inform the local committees. There are a number of options which are currently being considered including examples for police to establish a national resource providing support locally or by gaining access to the resources of the SPA. Clearly there may be additional on-costs in providing informed local arrangements which has not been separately identified within the Financial Memorandum, and again this may be an area which the Committee may wish to explore in more detail in order to tease out any anticipated cost.

Conclusion

COSLA has highlighted a number of areas which they hope that the Committee will consider as part of its scrutiny process of the Police and Fire Reform (Scotland) Bill. We are however more than happy to provide the Committee with any further clarification around any of these issues which are outlined within this submission.

COSLA
14 February 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Supplementary written submission from the Convention of Scottish Local Authorities

Having reflected on the evidence, Cllr Grant asked that I clarify a couple of points that she and Cllr Watters raised. She felt that there was the possibility they could have been misinterpreted by the Committee.

You will recall that Cllr Watters spoke on the 600-800 additional police officer posts funded by local authorities for various reasons. TUPE was mentioned during that discussion. Cllr Grant wanted it to be clear that these posts are held within the existing forces’ establishment – ie while councils pay for them from funds additional to the grant to the relevant police force, councils are not the employer. TUPE would undoubtedly apply to these postholders the same as any other police force employee on 31 March 2013. However, Cllr Watters’ point was that the Government’s current assumption was that all 600-800 would actually still be in post on that date. He questioned whether councils would continue to fund these posts in 2012/13, given that the additional funding being provided would likely transfer with the posts out of Local Government and into the new single service budget to subsidise the commitment to 1000 extra police officers in the new single service. The reason for the additional funding will vary in each case but primarily it will be for specific local community safety benefit, or for preventative work. Even had the existing regional structure continued, such funding of posts should not be assumed to be a commitment by a council for ever. And the simplest way for a council to avoid losing the funding on 31 March 2013 is not to be funding a post at that time. Cllr Watters was not suggesting that this would necessarily happen, just that the fact that this additional funding would automatically transfer with the service was another assumption that the Government seemed to be making.

Further Cllr Watters had concerns that, in future, councils might be less likely to fund ‘additional’ posts in their local area, unless they were absolutely sure that this was not actually substituting for previously existing posts in their area that the Chief Constable had chosen to move elsewhere in the country. The only way that COSLA can see to avoid this is to have local budgets, approved alongside the local plan.

One final point that Cllr Grant thought had not been clear enough in our evidence was around the local and regional accountability of the police force in future. Everyone accepts that this works well at the moment and the police are committed to community planning. That works because the police is a Local Government service and, ultimately, it is local elected members who are accountable to the electorate for it – every local authority being a police authority. However in future, while a commander (or for us, the Chief Constable) will have a duty to participate in community planning, there will be no accountability locally. Elected members will not have the same relationship with the police at any level, as they are no longer their employers. While this may not mean much difference in the short term, our concern is that in the longer term as personalities change the culture will be to prioritise reporting and responding upward and centrally to those that run the service, rather
than outward to councils and communities across the country. That is why we feel that there must remain some genuine local accountability into the future. Local “committees” must provide the opportunity for more than just the reporting of statistics.

One final point which was not raised with us by the Committee, but was asked of Conveners. COSLA is keen that the new SPA and SFRS and their sub-committees meet transparently in public, on the same basis as boards and council committees do now. Accordingly they must be sited somewhere that is easily accessible and should consider regular meetings around the country, council chambers being an obvious possibility.

I hope this is helpful to you in clarifying the points that Cllrs Grant and Watters were making.

James Fowlie
Team Development Manager, COSLA
23 March 2012
Introduction

The Council’s response to the Justice Committee is based on its submissions to the Scottish Government’s consultations on police and fire reform and public service reform (Christie Commission). The Council has also provided written evidence to the Finance Committee on the Financial Memorandum accompanying the Bill.

A measured and comprehensive approach must be taken to ensure that police and fire and rescue services (and other public services) are fit for purpose for the long term.

However, it is essential that arrangements are in place by 1 April 2013 to deal with key issues such as complaints and conduct.

The Council supports the undernoted Principles of Public Service Reform:

- reform should be framed in terms of the improvement of outcomes
- reform should look at the whole of the public sector not just one element
- reform should be based on robust evidence and a business case that generates community benefit - and this implies local integration rather than central aggregation
- reform should not focus on structures and boundaries to the exclusion of other issues relating to finance, policy, systems and governance
- local democracy and accountability should be at the heart of the reform process and should be enhanced by reform rather than diminished

1. General

1.1 New statutory principles for policing

These are welcomed and a similar statutory purpose for the fire and rescue service to be included in a new Fire and Rescue Framework under the Fire (Scotland) Act 2005 is also welcomed.

1.2 Accountability

The Chief Constable and Chief Officer should be accountable not only to the Scottish Police Authority (SPA) and Scottish Fire and Rescue Service Board (SFRSB), but also to Councils. It is recognised that the detailed arrangements for performance against local plans, budgets and staffing levels are yet to be defined.
1.3 Budgets

Budget details require urgent clarification as the relatively short time available does not allow for confidence and rigour in the projections for financial savings.

2. SPA and SFRSB

2.1 National Boards - size and composition

Councillors must be the foundation of the SPA and the SFRSB. The Authority/Board should have at least 15 members - including 8 Councillors nominated by COSLA - based on expertise, experience and skills and ensuring a geographic spread.

2.2 Strategic Plans

The statutory duties on Scottish Ministers to consult local authority representative bodies before determining strategic police priorities and for the SPA and SFRSB to consult local authorities on their strategic plans are welcomed.

2.3 Status of the new SPA and SFRS

The status of the new services requires urgent consideration to avoid an undesirable position of inability to borrow money (without Ministerial approval); hold reserves; avoid VAT liability; and address the perception of policing and fire and rescue being part of political government.

3. Community Planning

3.1 There should be a statutory duty on the Chief Constable and the Chief Officer - in addition to the Local Commander and Local Senior Officer - to participate in local community planning activity. The statutory duty to include community planning information in the police and fire and rescue local plans is welcomed. The outcome of the national review of Community Planning and Single Outcome Agreements (SOAs) might further inform future community planning arrangements.

3.2 Police and fire and rescue services make a significant contribution to community safety and public protection through involvement at strategic, thematic and local levels and there should be no detriment in local arrangements as a result of reform.

3.3 All inter-agency/multi-agency partnerships will need to be re-examined as the new policing and fire and rescue structures and policies are put in place, including Community Planning Partnerships (CPPs) - and local representation is key. This requires sufficient capacity and capability across police and fire and rescue services at local level for the arrangements to be effective.
3.4 There must be regular and meaningful communication and engagement across partners and communities as the single services are developed and put in place.

4. **Local Arrangements**

4.1 There should be Local Government Elected Member representation in the selection process for the appointment of Local Commanders and Local Senior Officers.

4.2 We welcome the statutory duty on the Local Commander and Local Senior Officer to prepare local plans - for approval by the local authority - that meet the needs of the local area. Local plans should include budget arrangements. In the highly unlikely event that a local authority cannot agree a plan then there must be clear mechanisms to address this.

4.3 Each Local Commander and Local Senior Officer must be provided with a suitable level of budget and decision making autonomy to allow genuine flexibility to engage with the CPP and associated SOA. This should be included in the Bill. The arrangements for local service delivery must contribute to the commitments in SOAs.

4.4 Local accountability is crucial (necessitating an agreed local budget) together with clarity of responsibility and roles.

4.5 Existing local high quality and responsive service delivery and problem solving must continue. If there is any detriment to current service provision, Councils may find themselves having to consider funding additional services e.g. extra police or adding to their own services e.g. to tackle antisocial behaviour.

4.6 Local decision making about police and fire and rescue services should be evidence-based.

4.7 Local employment opportunities must be considered, particularly in rural areas where police and fire and rescue personnel have a key contribution to local fiscal and social economies, and this must be taken into account when decisions are made about the future numbers and location of posts and services.

4.8 A statutory basis for Councils in relation to local committee arrangements for police and fire and rescue services would be helpful, perhaps in the form of a framework setting out the role of committees but avoiding being prescriptive given that best practice and guidance might come from the Pathfinder projects.

4.9 The clarity provided in the Bill for the transfer of staff and property is welcomed. However, it is imperative that the TUPE transfer of police support staff is comprehensive, will not result in any liabilities on employer Councils and will demonstrate the value we place on these staff, their skills and contribution. Further clarity is also required about the detail of assets and liabilities to be transferred.
Introduction

The Equality and Human Rights Commission (the Commission) was established in statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society. We promote equality across the seven ‘protected’ grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

The Commission welcomes the opportunity to comment on the Bill at Stage 1, in relation to Equality law and regulation in Scotland, and embedding equality and human rights and equality principles into the structures and ways of working of the new national services.

Equality Obligations on Public Authorities in Scotland

Our interest in the reform of the Police and Fire Service stems our role as the Regulator for the Equality Act and Public Sector Equality Duty (PSED). The PSED requires public authorities, in the exercise of its functions, to pay ‘due regard’ to the need to:

- Eliminate discrimination, harassment, victimisation, or other unlawful conduct;
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.

The new duty applies across the ‘protected characteristics’ of age; disability; gender; gender reassignment; pregnancy and maternity; race; religion and belief and sexual orientation. The protected characteristic of marriage and civil partnership is covered by the elimination of discrimination requirement only.

The general duty encourages the mainstreaming of equality into authorities’ core business so it is not a marginal activity but a key component of what authorities do.

In addition, Scottish Ministers have the power to introduce ‘specific duties’ which set out the particular steps that authorities in Scotland should take to help meet the general duty. The Scottish Government will shortly lay regulation in Parliament outlining what these duties will contain, but we anticipate that, among other provisions, there will be an emphasis on setting outcomes, equality impact
assessment of strategic and budgetary decisions, and the involvement and engagement of protected groups.

Given that the new police and fire service will be required to meet the PSED it will be important for the equality challenges that these are considered from the outset. Many police forces have made considerable progress in developing good practice in, for example, addressing hate crime or domestic violence, and are members of effective local partnerships which deliver responsive and multi-disciplinary services to victims. It is very important that local successes, best practice and learning is not lost.

There is clearly an opportunity to embed good equality practice from the outset of the new Services and it will be important to address some of the long term challenges that have been problematic for the Police and Fire Service in the past. For example:

- How will the national police and fire services’ workforces better reflect the communities they serve?
- How can equality monitoring of staff and service users be established and used effectively to improve representation and service delivery? We support comments made by the Association of Chief Police Officers in Scotland (ACPOS) in its written evidence on the Bill in the regard.

Embedding learning and human rights and equality principles

The Commission has positive relations with current Scottish police forces and fire services, engaging through, for example the community planning partnership structures across Scotland. We also meet regularly with leadership organisations such as ACPOS. This is particularly important in working together to embed recommendations from EHRC enforcement work, for example from our two recent inquiries into disability-related harassment, and human trafficking. Both these inquiries make findings and recommendations in relation to issues such as information sharing, inter-agency working, data gathering and analysis, and consistency in approach to the needs of victims and service users across the country.

Moving to national structures for police and fire services does of course present opportunities for driving strategic change and ensuring consistency of approach. But

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1 There are a number of issues. The national board will be a very important part of the new structure. The one thing that has been missing from the discussion so far and is missing from the bill is the part that the citizen plays in it. There is no reference to the connectivity between the national authority and the citizen, nor is there any direct reflection in the bill of the relationship with the citizen and the local authority. To ensure that the process is democratic, there must be some form of compulsion on the police authority to have a consultation process with the citizen so that it is informed by what the people of Scotland think….There absolutely must be a link between the local and the national; the bill is currently silent on that and must clearly define the link. It must also set out the requirement for consultation with citizens, to ensure that citizens’ voices are heard. Evidence to the Justice Committee, 28 February 2012, http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx

it also presents challenges, for example, in relation to how national structures will engage with local strategic or delivery networks and partnerships, either current (Community Planning Partnerships, Community Safety Partnerships, adult and child protection committees) or planned (for example Health and Social Care Partnerships).

Conclusion

The Commission has no argument in principle with the introduction of national police and fore and rescue services in Scotland, but shares concerns with a number of other organisations as to how changes on structure can be managed so as to preserve existing expertise, good practice, local networks and links to the public.

Equality and Human Rights Commission
6 March 2012
Introduction

The Fire Brigades Union (FBU) welcomes the introduction of the Police and Fire Reform Bill as an opportunity to further define the establishment of the new single Scottish Fire & Rescue Service (SFRS), but also to improve on the provisions of the existing Fire (Scotland) Act 2005.

The fire service changed from being a UK wide National Fire Service during the years of World War II to a local authority service with the introduction of the Fire Services Act 1947. This legislation served well for almost 60 years. It was replaced, along with many of its supporting bodies and advisory structures with the Fire (Scotland) Act 2005. The latter legislation crucially changed fire brigades into fire and rescue services, which did recognise the role of firefighters in dealing with road traffic accidents (RTAs). What the Act did not anticipate was that the public understanding of the definition of “rescue” would mean a much wider and altogether more onerous role for the service.

FBU members the length and breadth of our country are now involved in a wide range of specialist rescue roles, with capabilities in a number of disciplines, from water rescue to mass decontamination. Our members have taken on this expanded role with professionalism and determination. We believe there are further opportunities for both the enhanced deployment of specialist rescue skills and the co-ordination of these capabilities, but this will rely on the legislative foundation being set in such a way as to allow for the service to adapt to meet public expectation. We do recognise that with a shrinking financial settlement this will prove to be a challenge but believe the structural changes to a single service will allow for development of Scotland wide strategic specialist skills, however our fear remains that a new Board may retreat back to providing just those functions that are statutory.

We are of the view that the fire and rescue service sits fully within and is integral to the community safety family. We believe that even in this time of financial constraint the role of the service in making our communities safer can be enhanced. The existing Fire and Rescue Services (FRS) have for many years led the way in developing fire prevention. There remains considerable work to be done in this area but by fully integrating prevention with the response capability the service can further reduce the cost, both social and economic of the impact of fire. By utilising such expertise we believe that the service has a role to play in the wider community safety environment and we call for a parallel approach that provides for a preventative aspect, complimentary to each intervention role the service develops. For example, as the ability to deliver water rescue increases so should the ability to provide water safety advice.
During the Independent Review of Open Water and Flood Rescue in Scotland\(^1\) ordered by the Minister for Community Safety and conducted by Mr Paddy Tomkins, a recommendation was made that the fire services should hold a register of water rescue assets. We view this as a model that can be developed for a wider range of rescue and community safety assets and that the new legislation should establish the new Scottish FRS (SFRS) as the Primary Rescue Service.

The fire service has a range of industrial relations practices that reflect the individual circumstances within the current 8 FRS. The FBU are keen to ensure that the development of the new single SFRS provides an opportunity for a more inclusive, collaborative approach to such matters. A great deal of effort has already taken place and the development of relationships between Scottish Government officials, current employers, senior managers and the FBU that has allowed progress on transitional arrangements. This also gives reason for optimism that such an approach might be carried forward into the new service.

The FBU are keen that the new SFRS is not blighted by poor industrial relations but does recognise that much of the current progress relies on relationships that are currently in place. We are of the view that these positive developments are vulnerable and should be protected wherever possible by the determination of Government attitude and policy. We therefore believe that the positive tone adopted by Scottish Government in the consultation document should form the basis of future procedures with the service and that this will be best secured by direct reference within the new Act.

Another major item in relation to the new service and the Bill is scrutiny and governance. We have long held the view that the current arrangements are sub-optimal and that a significant benefit of the new service will be an opportunity to improve the governance arrangements of the service. The foremost item will be the ability for the new SFRS board to access opinion other than that of the Chief Fire Officer (CFO). This does not mean that the CFO is wrong, but it does give an opportunity for other views and options to be considered.

It should also be recognised that the Board are governing the service on behalf of the people of Scotland and should therefore ultimately be answerable to the people of Scotland. We hold the opinion that the best way to do that is through the democratically elected representatives of the people, that being the members of the Scottish Parliament. We would welcome the robust scrutiny and oversight that parliamentarians would bring to the process and which brings together the national outcomes, established by Parliament, the SFRS Framework, approved by Parliament and the budget that is set by Parliament.

The FBU remains committed to the creation of a world-class fire and rescue service in Scotland and our officials are available should further information be required.

**Specific Areas of Consideration**

**Functions of the SFRS**

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\(^1\) [http://www.floodrescueuk.com/0091079.pdf](http://www.floodrescueuk.com/0091079.pdf)
Chapter 2 currently details the Functions – Fire safety, fire fighting, road traffic accidents.

Whilst this seems clear it does not reflect the current range of services provided, nor does it indicate the public perception in relation to the capabilities of the service.

This should be broadened out to reflect the wider role and range of operations?

There is currently an opportunity to merge the Additional Functions Order\(^2\) into the revised Fire (Scotland) Act

Should make reference to additional functions, wider scope being deliverable in terms of funding for equipment, personnel and training.

The service must publicly declare its capabilities and limitations based on Integrated Risk Management Planning (IRMP).

References to “other eventualities” should be removed and incorporated through IRMP

We have firefighting and safety but not RTA safety. The function should balance the need for prevention with the delivery of intervention.

The current legislation is a cluttered landscape with specific function, general or catch-all clauses and additional functions orders. These do not reflect the fact that the public in Scotland now have an expectation of the service, thanks to the renaming of the service in the 2005 Act to include “rescue”. This results in a belief that the service can actually provide a rescue service. Something it has not fully come to terms with, nor in fact does it have the legislative basis on which to carry out some of these functions.

We believe that the legislation should place the underpinning ethos of the service as the basis from which all else is derived. We suggest;

1. Save Life
2. Protect Property
3. Render Humanitarian Services

The revised Act should make clear direction that the activities of the service should be derived from the Framework document and based on the Integrated Risk Management Plan. This would allow for the service to develop a range of services that could provide local solutions to local needs, supported by a national capability to react across the country.

- There should be a wider community safety role.
- We should promote safety in relation to each other element of the services scope of operations. Water, Road Traffic Collisions for example?
- Powers to co-ordinate other agencies in emergency events should be added in line with Tomkins recommendations re water rescue.
- General powers as the primary rescue service.
- A direct reference to the services obligations under the Civil Contingencies Act 2004 and the Civil Contingencies (Scotland) Act 2005 should be included.
- The requirements under these Acts should be included in any IRMP.

Other considerations should include:

- Firefighting at sea. This has seen its funding recently withdrawn by the Maritime and Coastguard Agency\(^3\). The Scottish Government should consider the provision of a maritime safety provision within the Act.
- The relationship with Climate Change legislation and obligations under that legislation should be incorporated into the Act.
- Both in terms of the service corporate responsibilities and in terms of prevention and response including their obligations to minimise environmental damage etc.

**Employment**

- Establish the principle of a partnership approach

In the consultation on reform in February 2011 at paragraph 4.30 Organisational Structure, the Government described the following as one of the key principals and desired benefits: A new and active social partnership approach should sit at the heart of future industrial relations, based on shared recognition of common interests and common ownership of the resolution of problems.

Whilst the FBU applaud the efforts of the Government and its Civil Servants so far to promote this approach, as far as the FBU can determine there is nothing in the Bill to ensure such an approach to industrial relations shall prevail. In fact, with the deletion of Chapter 9, paragraph 49 of the Fire (Scotland) Act 2005, a safety net, as the FBU saw it, that indicated that Ministers could order the provision of a body ‘for the purposes of negotiation the conditions of service of employees . . . . ’ will be lost.

By reinstating this provision the FBU believes a clear signal shall be sent to both the Board and the Chief of the new Service that they should be endeavouring to promote the industrial relations platform described in the consultation.

- There should be primary reference to employee representation through the partnership approach at all levels within the service.
- Agreed procedures for interaction – including the availability of recognised trade union officials with agreed facility time to undertake these duties.
- Negotiating arrangements – We strongly believe that any negotiating arrangements for the new board should be approved by Scottish Ministers.
- Negotiations to extend to pensions, replacing the current arrangements under the 1947 Act – section 26 (6) Any order under this section shall be made with the approval of the [Minister for the Civil Service], and after consultation with the Central Fire Brigades Advisory Council.
- Given the powers currently outlined in the Act empowering firefighters to enter premises etc, there is an enhanced level of public trust required
- The status of firefighters employment rights should reflect this.
- Improved discipline code, above current ACAS Code of Practise to take account of this employment status with similarities to the Police.
- Section 25 of the 2005 Act should be revised to;

o take account of the wider role of the firefighter
o protect the status of the firefighter by issuing of a warrant

- Final appeal over discipline and grievance to the employer and not a delegated power to management.
- Improved, agreed grievance procedure

**Scrutiny**

The basis of scrutiny is the ability to bring both internal and external information to bear on a subject and to ensure through robust challenge that the best options are being selected. This is singularly the weakest point of the current FRS arrangements and the FBU welcomes proposals to strengthen the oversight of the service and its provisions. Over and above the selection of the new board of the SFRS we view it as crucial that they have access to external expert opinion, advice and resources and that they in turn are held to account on behalf of the people of Scotland.

- We believe there is a need for a high level of scrutiny in order to maintain public confidence in the service
- We believe the Scottish Parliament must take a role in this process
- We suggest the Justice Committee is best placed to act in this way.
- We suggest that on a regular basis the activities of the service are called before the Justice Committee for scrutiny, including oral evidence from;
  - The Chief Officer
  - The Chair of SFRS
  - The Chief Inspector of Fire & Rescue Service
  - Representatives of the workforce
  - Such other witnesses as determined by the Committee.

**Strategic Plan**

- We believe the strategic plan should indicate how the SFRS will contribute to the Scottish Government National Outcomes, by carrying out its functions.
- All SFRS activity should be developed in order to maximise the impact on the National Outcomes.
- We consider it essential that the strategic planning of the SFRS be scrutinised at the highest level.
- We suggest that the Justice Committee should scrutinise that plan and should report its finings to Scottish Ministers.
- We suggest an amendment to section 41, after (4) to read,
  - (a)“SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Parliament Justice Committee for scrutiny.”
  - (b) The Justice Committee shall make a report on its findings and submit that report to the Scottish Minister for consideration.

The strategic plan is a vital element of the SFRS. It must be based on the principles of Integrated Risk Management Planning (IRMP) but must avoid the fundamental flaw in the way that IRMP is currently utilised. That is the ability for the process to run in reverse. By this we mean that IRMP should measure the risk and establish the FRS response that mitigates that risk. Clearly the overall budget will determine how
much of the risk can be mitigated but it does not in itself remove the underlying risk. It must also – as its founding principle – ensure firefighter safety by the provision of sufficient personnel, equipment, training and supervision, to ensure a successful outcome of SFRS activities. IRMP has been a much-misused tool and it is important therefore that strategic planning on the new SFRS uses a process that all parties believe to be fair, resilient and transparent.

It is our view that the Scotland wide IRMP should establish the deployment of resources across the country and that local plans should determine how best to utilise the allocated resources in order to have the maximum impact on community safety within each area. This process should be the subject of external scrutiny.

The strategic plan, through IRMP should establish how the FRS will deliver its service, in line with the Framework and our legislative function. It must do so in such a way as to meet the aspirations set in the National Outcomes. This should form the basis for the funding of the SFRS in order that the service, the SFRS Board, Parliament and the people of Scotland are content that the service is suitably resourced to deliver on its commitments.

General Points on the Fire Reform (Scotland) Bill

- **Membership – section 2**
  - We believe that at least one member of the board should be appointed with a particular portfolio including the representation of the employees of the service, as afforded to the workforce employed by Scottish Water and firefighters in Northern Ireland.

- **The Chief Officer – section 8**
  - This section could include reference to the Chief Officer holding the principles of partnership

- **SFRS’s employees – section 9 (3)**
  - The Bill states that SFRS “may pay or make arrangements for the payment of pensions, ...” This should allow the SFRS to negotiate arrangements for pensions without the external interference of UK Govt.

- **Procedure - section 11**
  - We believe that this section should specify the minimum number of time the Board of the SFRS should meet in a year, and should ensure that these meetings are accessible by the public.

- **SFRS’s general powers – section 12 (2) (e)**
  - The FBU are concerned that this power could be utilised in the future to privatise all or part of the service.

- **Delegation of functions – section 13 (3)**
  - The Bill highlights the fact that whilst SFRS has the ability to delegate its functions it does maintain the responsibility for those delegated functions. Our concern stems from experience of similar powers within previous Fire Authorities. This situation can lead to a lack of scrutiny as the person reporting on the success of delegated powers is the person to whom they have been delegated. We suggest a specific report to Scottish Ministers and/or Justice Committee on the impact of this section.
• Grants – section 15
  o The basis for funding the service is not clearly defined. Historically this was based on the ability of services to comply with national standards of fire cover. More recently this link has been broken and the result has been cuts to frontline provision and an increase in support functions. The Bill should clarify the basis on which the level of funding for the service will be determined.
• Provision of centres for education and training
  o Amend from current “may” to “will”
• Charging – section 16 of 2005 Act
  o Allows for charging for incidents at sea – “only in respect of action taken by the authority at sea (or, if the authority's area extends to the low water mark, action taken at sea outwith its area.” There is a proposal to amend this in terms of SFRS. Consideration needs to be given to;
    ▪ The low water mark was relevant to the boundary of local authority responsibility. Is this the same for Scottish Government?
    ▪ This also related to the person injury insurance cover of employees. A major obstacle to FBU members support for these activities.
    ▪ The ability of the SFRS to deliver this service at all, if the firefighting at sea capability is lost due to MCA funding cuts.
• Assistance – section 35 of the 2005 Act
  o In line with the Tomkins recommendation relating to water rescue, a duty should be placed on the SFRS to maintain a register of all third party rescue assets.
  o The SFRS should be identifies at the primary rescue service and should co-ordinate the deployment of third party assets to an incident.
  o A duty should be placed on the SFRS to ensure interoperability between third party providers and other agencies.
• Delegation – section 36 of the 2005 Act
  o (2a) SFRS entering into arrangements to delegate firefighting. This should be clarified to ensure that specialist firefighters such as airport fire services are covered by assistance arrangements and this is not open to privatisation of the service.
• Assaulting or impeding – Section 38 and 39 of the 2005 Act
  o Relationship with Emergency Workers Act (EWA) requires clarification
    ▪ Currently penalties are different between the two Acts
    ▪ Should this be reduced to a reference to the EWA?
• Best Value – section 39B (3)(b)
  o Consultation. After “such other persons as they think appropriate”, add, including trade unions.
• Adherence – section 41(1) of the 2005 Act
  o Suggested amendment to read, “In carrying out their functions, relevant authorities will adhere to the document prepared under section 40(1).”
• Inspectors of the SFRS 43A (1) (b)
  o Consideration must be given to where inspectors are recruited from, and where they will go having completed their role.
Self-inspection by the service raises concerns over the veracity of reporting, when individuals who as part of the service and who must seek promotion from within that service, conduct this.

- Inquiries by inspectors 43B
  - (1) Suggest removal of “may inquire” and replace with “will inquire”
  - (3)(b) Whilst the requirement to undertake consideration of best value arrangements, it may be that inspectors recruited from the service may not have the required knowledge to undertake this aspect of an inquiry.

- Payments in respect of advisory bodies – section 83 of the 2005 Act
  - Should be removed.

Summary

1. The revised Act should clarify the statutory functions by reference to the overarching ethos of the service;
   a. Save Life
   b. Protect Property
   c. Render Humanitarian Services

2. The Act should direct the Framework to be more detailed in defining the duties, responsibilities and how the above functions are conducted, by reference to IRMP.

3. Industrial relations should be based on a partnership approach.

4. Negotiating arrangements should be approved by the Scottish Ministers and should include all the pensions schemes of employees.

5. We believe the Scottish Parliament must take an active role in both the scrutiny and in setting the direction of the service. We suggest this is done principally on the basis of;
   a. Scrutiny of SFRS strategic plans
   b. Annual scrutiny of service by Justice Committee
   c. Influence/direction on the Framework process

6. The basis, formula or other method, for determining the funding of the service should be established.

John Duffy
Scottish Secretary
2 March 2012
This memorandum is submitted to the Justice Committee to assist their scrutiny of the police provisions of the Police and Fire Reform (Scotland) Bill.

Background

This evidence is based, in part, on long experience of working with the Scottish Police Service. In various roles I have worked with Scottish Forces since 1977. I was for four years Head of the Scottish Justice Department, and am also a non-executive member of the management team of Lothian and Borders Police.

Overall Approach

I have been one of those who have expressed concern about having only a single police force in Scotland. It is clear however that a majority in the Scottish Parliament support it, and so I regard that decision as in effect now taken. This memorandum therefore accepts that there is to be one force and concentrates on how the Bill might be improved.

The Governance of Scottish Policing

The governance of policing is unusually important, because of the nature of the powers which the police have and the discretion which they exercise when using them. The police wield the domestic coercive power of the State over citizens. This must be held to account (as it is in various ways), and be subject to democratic scrutiny and influence, but care must be taken that this coercive power cannot be directed for political purposes.

In Britain this has been secured in a number of ways. The police are answerable to the courts, and operate under the supervision and in some matters the direction of the public prosecution authorities. Police constables are officers of the law, and have powers and discretion legally vested in them; they hold an office, rather than an employment. Britain also has a tradition that policing is a local service, enforcing the law of the land, and not a national agency enforcing the will of government.

When policing developed in Britain in the nineteenth century, it was consciously and deliberately contrasted with the models of policing on mainland Europe – notably France. British policing was to be decentralised, a servant of the law and not a tool of central state power. Of course it is possible to exaggerate this difference, which is as much presentational as real – police forces discharge very similar functions in most countries, and their forms share many characteristics as a result. British central government has always taken an interest in policing, and that has increased markedly in recent decades.
Nevertheless Scottish policing does rest on a tripartite model, in which power and responsibility are distributed between central and local government and Chief Constables. The Bill will abolish that. Are we about to lose something valuable without realising it?

It is very easy to see the problems of the tripartite system. Power is distributed, and it is not therefore easy to see who is in charge. Change is difficult to push through: too many people can exercise a veto. There may be a perception that Chief Constables are allowed to do whatever they want, with little accountability. Police Boards – comprising members from up to a dozen local councils – have not always been strong supervisors of forces.

But these problems are precisely the signs that power is indeed effectively distributed. The relative weakness of police boards is a problem, but it is one that is capable of being rectified – and recent audit work has shown that measurable progress is being made in doing so. Abolishing the tripartite system may well give greater clarity and make it easier to push through change; and may subject a Chief Constable to greater control. The converse is a big risk - concentration of power. This memorandum therefore goes on to consider amendments which might be made to the Bill to mitigate this risk.

The role of local government

At the moment local authorities are all police authorities and policing is a local government function, in relation to which Scottish Ministers have certain statutory powers. The SCDEA is the only national policing body in Scotland. Local councils also have lead statutory responsibility in relation to community planning, in which police forces are required to participate. Under the Bill policing will no longer be a local government function, but councils will still lead community planning.

Clauses 45 - 48 of the Bill give councils some replacement powers. The Police Service must have a local commander for each council area; that officer must participate in community planning and must additionally submit a local policing plan to the council. If they do not like the plan the council have the power to ensure it is not published. These are obviously much weaker powers than councils have at present over policing, and it is very hard to see them as greater local accountability. A number of options exist to strengthen that relationship:

- There is no reason in principle why a single force could not be part of local government. Rather than a quango appointed by Ministers, the SPA could be a local government body, consistent of elected councilors, perhaps with appointed members added. There would need to be rules about how the councillors were chosen, perhaps by a form of indirect election. Police finance would remain within the local government finance system, with 50% grant as now, and Ministers could have powers of appointment etc similar to those they have now. If the objective of the Bill is indeed to cut costs by reducing the overhead of 8 forces, this approach could meet it as well as what is proposed.

- Financial responsibility is an important aspect of control over a body. Under the Bill this will be centralised with Scottish Ministers. I understand that it is
the policy of Ministers that local councils will be able to supplement local police budgets from their own resources, so as for example to ensure that additional officers are deployed in their area. They will not however be able to take the view that community planning objectives would be better met if, say, fewer police officers were deployed and more youth workers, and transfer resources accordingly. The Bill could alternatively be amended to give councils to power to transfer resources into or out of policing in their local area in accordance with the community plan, with consequent changes to the local policing plan. There is absolutely no technical reason why this would be impossible.

- At present, the duty to participate in community planning falls on Chief Constables. Under the Bill this will devolve to local commanders. This is in practice where it will be discharged for the most part, but it is anomalous that although the Chief Constable is under a duty to provide local policing, no community planning duty falls on him or her or the SPA. Other statutory bodies do have such legal obligations under the Local Government in Scotland Act 2003.

Safeguarding Independence

All bodies connected with the investigation, prosecution and conviction and sentencing of criminals require, and have by law, appropriate independence. Courts and judges are wholly independent of the executive. This is required to meet Convention Rights. Courts are now administered by a Board chaired by the Lord President. Judges cannot be dismissed by Ministers. Indeed the first successful ECHR challenge of the actions of Scottish Ministers concerned the illegality of appointing of sheriffs on a temporary basis. Prosecution decisions by the Lord Advocate must under the Scotland Act be taken “independently of any other person”.

The operational independence of Chief Constables has until now been secured by the governance framework: legal powers are vested in them, and the local authority which employs them has no power to direct them; Ministers have no power to direct the local authority, nor the Chief Constable. The Bill attempts to create a framework of legal powers in this respect:

- The Chief Constable is “responsible” for the policing of Scotland
- He or she must “account to” a new quango, the Scottish Police Authority (SPA), for it
- This new quango must “maintain” the service
- There is a framework of plans to be approved, no doubt alongside budgets
- Scottish Ministers have a power to direct the SPA but not about a specific police operation or how to carry it out.

This is a valiant attempt to codify a difficult area. It does however need to be seen in the context of wider powers and relationships:

- The power of the purse is very considerable, and Ministers are not afraid to exercise it. At present Scottish Ministers have no legal power to determine the number of police officers in Scotland but have in effect required forces to
employ a set number by micromanagement of police grant. (The issue is not whether have a set number of officers is a good policy or a muddleheaded one; nor whether it was in election manifestos or not; but that the present legislative framework does not allocate to Ministers a specific power to determine it.)

- The power to appoint and dismiss is critical. The SPA is to appoint the Chief Constable, but only with Ministers’ agreement. The Bill also contains new powers for the Authority to require an officer to retire. In a rare example of draftsman’s humour, the clause is entitled “Senior officers: retirement for efficiency or effectiveness”. This form of dismissal from office need not be because the senior officer is inefficient or ineffective, but rather because the SPA think the senior officer’s removal would be in the interests of efficiency etc. There appears to be no reason why it could not be exercised in the event of a disagreement between the Board and the Chief Constable about how operational responsibilities should be exercised. This power can be exercised in relation to the Chief Constable with the agreement of Ministers.

- Scottish Ministers seek a power in the Bill to give specific or general directions to the SPA. Such powers exist in relation to many quangos, but not generally in relation to police authorities. The directions do not apply directly to the Chief Constable. There are no constraints on what purposes the directions may be issued for but could apply to classes of police operation, to numbers of staff or of officers, to the deployment of staff, or indeed to requiring senior officers to be dismissed from office.

This is a very wide set of Ministerial powers, and will give Scottish Ministers much more control over policing than they presently have. Increasing the powers of Ministers over public bodies, bringing such bodies closer into the centre or removing discretion from them, has been a characteristic of Scottish public life since devolution. It need not be assumed that this is always and automatically a bad thing.

A number of reasons have been advanced to justify it, of which the best is a desire to ensure that public services are ‘joined up’ in the pursuit of national outcomes. But the most pressing for Ministers (of all parties) is that they feel that they will be held accountable for what happens anyway, even if they have no control over the decision of an arms length body. There are both general and specific dangers in such an approach. The general danger is that if Ministers are in there micromanaging, they are not standing back and exercising a strategic, supervisory oversight of delivery. [The most successful of the public sector reforms of the 1990’s was to define such an arms length relationship for the delivery of public services, giving Ministers and managers the responsibility for doing what each of them does best.]

There are however specific dangers in relation to policing. I am sure that present Ministers want to have these powers so that they can make the police service run better: that is a proper ambition, but such a wide suite of powers might also be misused. Such misuse may be unlikely, but it would happen, if at all, only insidiously and gradually. It might be better to draw some rather firmer boundaries around
Ministers’ powers to affect operational policing to be as sure as possible that does not happen.

In order to safeguard the independence of the Chief Constable from political interference, the following amendments should be considered:

- **Appointment**: Ministers have had for many years the power to approve the appointment of Chief Constables by police authorities. This was against the background of many forces (including when there were many more than 8) and safeguarded against the risk of perverse or inappropriate local decisions. It was normally exercised however by the central government approving the shortlist from which the local police board made the choice. This emphasised that the police authority made the choice. *This practice should be made statutory in relation to the Scottish Police Service and followed, so that it is quite clear that Ministers are not appointing “their man” to police Scotland.*

- **Dismissal or removal from office**: The powers for the SPA and Ministers to require the Chief Constable to retire are far too broadly drawn and are capable of misuse. It is not clear that they are needed at all. The Chief Constable’s operational independence can be better secured by giving him or her security in appointment unless he or she is himself inefficient or ineffective. Such a decision should require the agreement of Parliament as well as Ministers, as in the case of a judge. They should also be redrafted to make clear that the “efficiency and effectiveness” do not relate to particular operational decisions or classes of decisions so that they cannot be used to influence operational decisions.

- **Powers of direction**: it is not clear why powers of specific and general direction over the SPA are needed at all. They are just ‘belt and braces’. They can be removed with no loss, and some gain to the status and standing of the SPA. If they are to remain then they must be given a defined purpose in the statute. It is obviously right that such powers, if they exist, should not extend to a specific police operation. But nor should they apply to classes of operation: policing protests against government policy would, for example, be a class of operation. It should also be made clear that they do not extend to directing the SPA to recruit or retire or dismiss individual staff members or constables. (Given the width of these powers, it is surely an otiose piece of micromanagement to take an additional specific power – see Schedule 1, Part 1, Para 13 – to determine where the Chief Constable’s Office is to be located.)

- **Operational Independence**: it has hitherto been possible to allow this to be defined negatively – given that there are no powers to direct Chief Constables, and given the deliberate separation of powers in police governance, this has proved adequate. Now however that a new and more centralised governance is to be imposed, there is a good case for making the independence of the Chief Constable explicit. There is an excellent precedent for this. When the Scottish Parliament was created, the Lord Advocate became accountable to it, but his independence was explicitly safeguarded in statute. This has worked well in practice and could work equally well for the Chief Constable. Clause 17 could be amended to require that the Chief
Constable should discharge his responsibility for policing Scotland (17(1)), or his power to direct constables (17(2)), “independently of any other person” (subject to 17(3)).

Professor J D Gallagher
Nuffield College, Oxford
14 February 2012
+ Justice Committee +

Police and Fire Reform (Scotland) Bill

Written submission from Her Majesty's Inspectorate of Constabulary

Navigating this document

For ease of reference this document is structured as follows;

1. Introduction and main considerations.
2. Key issue – The legislative changes have to provide an effective enabling framework.
3. Key issue - The process of implementation has to be built upon an empirically strong foundation and provide a clear, achievable route-map for change, between the current structures and the new service.
4. Police reform and HMICS.
5. Concluding comment.

Appendix A - detail supporting concerns around the current financial data and reasons why the Outline Business Case has attracted criticism.

Appendix B – a list of miscellaneous issues.

1. Introduction

1.1 Following the Cabinet Secretary for Justice’s announcement on 8\textsuperscript{th} September 2011, preparations in earnest began on the reform of policing in Scotland. HMICS recognise that this is the context within which our role of monitoring, improving and providing advice about policing, needs to take place.

1.2 We consider that police reform offers opportunities to:
   - simplify policing across Scotland
   - create the best affordable service
   - improve governance and accountability

1.3 For these to happen, two factors are important:

   1) The legislative changes have to provide an effective enabling framework; and

   2) The process of implementation has to be built upon an empirically strong foundation and provide a clear, achievable route-map for change, between the current structures and the new service.

1.4 Expectations for the timeframe and outcomes from police reform have to recognise wider experience of major public sector change programmes. Further, it is only as detailed implementation plans emerge, that the likely timeframe over which costs will be incurred and savings made, will become more certain.
1.5 Our submission to the Justice Committee provides commentary in the context of these key issues.

1.6 From the outset however, we would emphasise that policing in Scotland starts in a good place. As we have reported, there is much to be proud of and to have confidence in. Major changes to a country’s policing arrangements are, for good reason, an infrequent occurrence. In Scotland it will be important to ensure that not just the destination of change, but particularly the pace of getting there, balance affordability with the continuing provision of effective policing.

2. The legislative changes have to provide an effective enabling framework

2.1 The system of governance and accountability is central to the delivery of an effective police service that has the confidence of the public. Clarity enables rather than constrains good decision making.

2.2 In this regard, HMICS wishes to highlight the following areas:

2.3 Appropriate separation of powers - the powers of direction and influence from Scottish Ministers to the Scottish Police Authority (SPA) and then to the Chief Constable are key. These need to be considered, both individually and collectively, before reasoning whether the Bill achieves the correct balance between accountability and independence.

2.4 We understand that the ministerial power of direction has been placed within the Bill as this is standard practice across public bodies. Policing is not simply another public body. We absolutely recognise the need for policing to work within the law and the democratic will of Parliament however this not the same as being subject to ministerial direction, even if that direction is being channelled through the SPA.

2.5 As a practical example, under Section 5 as currently drafted, can Ministers give a direction as to the policy or approach that the Authority is to take in relation to public demonstrations or industrial disputes and their policing? Such issues resonate strongly within communities and indeed within policing.

2.6 Although the Bill currently requires Ministers to publish such a direction (Sec 5 (3) a) and lay a copy of it before Parliament (Sec 5 (3) b), by definition this is after the direction is given.

2.7 HMICS consider that a Ministerial direction to the Scottish Police Authority is likely to be of such significance that it warrants placing before Parliament for scrutiny before it is issued to the Scottish Police Authority.

2.8 Operational responsibility – linked to the above, the more clarity there is about what the chief constable is solely responsible for, the less scope there is for ambiguity and perceived or actual intrusion into these areas, in turn leading to more confidence around the scrutiny and governance of all other aspects of their work.
2.9 We consider that further clarity is still needed around the new chief constable’s operational responsibility relative to the roles of local and national governance arrangements, including those of Scottish Ministers.

2.10 For instance under section 17(4)(a)(ii) and section 5 highlighted above, does ‘due regard’ allow the chief constable not to follow a recommendation or guidance from the police authority in relation to the approach to the policing of demonstrations as in that example, or perhaps the policing approach to proceeds of crime legislation, or the response to anti social behaviour?

2.11 Or, if the chief constable decided that it was necessary to equip all police patrol cars with tasers, would the Authority and/or Ministers be able to prevent this or would the application of ‘due regard’ mentioned above, still leave the chief constable the latitude to proceed?

2.12 There are previous stated cases in relation to chief constables’ operational responsibility\(^1\) and there is the opportunity in the Bill to ensure that the new legislation takes full cognisance of them.

2.13 **Strategic Planning** – We think it is important that Ministers, prior to setting out their policing priorities, should specifically take due regard of the police service’s assessment of risk and need across communities in Scotland. Further, where there is a failure by Scottish Ministers to agree the strategic policing plan, we think this is sufficiently important within the context of a single national force, to seek resolution in Parliament.

2.14 **Local governance and accountability** – We think the Bill should be clearer about the involvement and roles of local elected members, officers and other relevant parties. We note that the local policing plan has to be ‘approved’ by the local governance structure and that it can make recommendations in relation to the local policing plan. We are not sure what the process is where these matters are not agreed.

2.15 **National Governance and accountability** – One of the key changes in the Bill is the proposed establishment of the SPA. The SPA has significant oversight responsibilities not just in constitutional terms, but in the governance of a large and complex organisation.

2.16 The appointment and regulatory framework for members to fulfil this role should be consistent with Nolan principles\(^2\) and the combined code of conduct for company directors\(^3\). It will also be of vital importance that members of the Authority and the chief executive have the requisite capability and capacity.

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\(^1\)The ruling by Lord Denning in 1968 in the case of *R v Metropolitan Police Commissioner ex parte Blackburn*, centering on the responsibility of the chief constable for the detection of crime and protection of public peace, concluded that the chief constable was ‘not the servant of anyone, save the law itself’. And in the case of *R v the chief constable of Sussex ex parte International Traders’ Ferry Ltd (ITF)*, 1998, the argument was made that ‘it is for the chief constable to decide on the disposition of his Force’ and that ‘no court can or should give him direction on that matter’.


2.17 **Forensic services** - The Bill provides for a separate body falling under the aegis of the SPA, but outside of the direction and control of the chief constable. Whilst this is similar to the status quo, the creation of a single service provides the opportunity to consider whether this is the best arrangement.

2.18 There are well rehearsed arguments for keeping forensic databases and the analysis of forensic samples separate from the police. The arguments are less clear however in relation to the day-to-day operations of attending and examining crime scenes.

2.19 It should be recognised that whilst some forensic evidence is gathered by forensic services staff (scenes of crime officers), police officers and other professionals (such as police appointed medical practitioners) add forensic evidence into the legal process for many cases. Whilst it is important to recognise the role of the Crown and the independence this brings in directing investigations, including the gathering of forensic evidence, it is important then to recognise the need for the service to be dynamic in responding to emerging crime trends and to be able to control and direct resources including scenes of crime officers.

2.20 In addition, the use of forensic intelligence is a growing component of successful policing.

2.21 The police service would wish to ensure that an enhanced forensic response was able to be directed accordingly without negotiating through a service level agreement or extended management arrangements with another agency.

2.22 It is important that the new legislation enables the chief constable to have clear operational direction over forensic crime scene examination. Operational direction by a third party (i.e. a separate forensic service) precludes this. In addition this appears to commensurately reduce the chief constable’s accountability in relation to the prevention and detection of crime. The corollary of this being that this element of accountability for delivering a policing outcome is pushed back to the SPA and by extension closer to Ministers. This could create unhealthy tension and conflict.

3. **The process of implementation has to be built upon an empirically strong foundation and provide a clear, achievable route-map for change, between the current structures and the new service.**

3.1 There needs to be an acknowledgement that, irrespective of the process thus far, a realistic and achievable programme of change is now required.

3.2 Experience from some other large public sector change programmes, including the formation of the Scottish Police Services Authority, suggests that expectations of delivered benefits can at times exceed that which the underpinning data and context might support. In other words the history of major public sector change programmes has not always been hugely positive and expectations must be
managed accordingly. In this regard we consider that some flexibility around time, costs and savings will be required.

3.3 This programme of change has already been set however within the context of the time and funding profile established by the Comprehensive Spending Review budget settlement for policing.

3.4 Accordingly we would highlight that we have yet to see a clear plan for this programme of change that matches the scale of the task of police reform against the time and financial constraints set out in the Comprehensive Spending Review. We do, however, have some confidence that this work is being advanced and that the risks of delays are recognised.

3.5 In the current absence of this plan it is incumbent upon us to highlight risks of police reform including those to:

- service delivery
- public confidence
- staff confidence

3.6 Implementation is perhaps an unusual matter to raise in a Parliamentary scrutiny procedure, However we consider that it is important that we separate out the issues of how a single police service could offer a more effective way of delivering policing in Scotland, from the secondary question of whether the scale and pace of financial savings attributed to the new structure, can be relied upon from the calculations presented within the financial memorandum and supporting documentation.

3.7 If Parliament considers that part of its rationale for deciding to change the policing arrangements in Scotland include financial reasons, and there is some suggestion that this may be the case\(^5\), then the soundness of the figures that it has been provided with becomes key.

3.8 Whilst the financial data provided may have represented the best available figures at the point that they were collected, this has not been and has not historically required to have been, an area of strength for policing. Further, the strength of these data was further impacted by the sophistication of the accompanying modelling of future service options and related savings, carried out some time ago.

3.9 Together these factors have had a compounding impact on the strength of the data within the Financial Memorandum.

3.10 We also think the rationale for change could have been better articulated had Treasury Green book guidance in relation to providing a ‘do minimum’ or status quo

\(^5\)Finance Committee, 22 February 2012, agenda item 2, Annex A, SPICe, page 9
option\textsuperscript{6} been followed and had the early research used in the Outline Business Case been developed and then used to complete a full business case.

3.11 Importantly, we would reiterate at this point that police reform provides opportunities to:

- simplify policing across Scotland
- create the best affordable service
- improve governance and accountability

3.12 However, in light of the issues we raise at paragraphs 3.1-3.10 above, HMICS considers that Parliament might wish to either:

   see a more developed set of financial savings and costs of change figures, based upon a clear model of how the new service will look post-reform; or

   be assured that there is work underway within the reform programme structure that is likely to create and deliver an agreed plan that balances the time and cost constraints, whilst appropriately mitigating any risks to performance and confidence in policing.

3.13 In the absence of the above, we would advise that Parliament may wish to view with an element of caution, the current projections for costs and savings attributed to police reform, whilst recognising the ongoing work and commitment of the service to deliver the necessary changes within the financial and time challenges.

3.14 At appendix A to this submission we have provided further detail supporting our concerns around the current financial data and outlining some of the potential reasons that the Outline Business Case has attracted some criticism.

4. Police reform and HMICS

4.1 Finally it would be unusual, if not remiss in these circumstances were we not to comment upon the impact of the Bill on HMICS.

4.2 Many of the features of the Bill and much of the discussion about police reform centre on concerns around the relationship between central government, a single police authority, a single chief constable and a single police force.

4.3 This structure is one of the material differences brought about by police reform and will disturb the current relationships between local and national government and policing. In relation to scrutiny, part of the balancing changes are to the handling of complaints with the changes from the current Police Complaints Commissioner for Scotland to a Police Investigation and Review Commissioner, which in its new guise will continue to be a Non Departmental Public Body.

\footnote{\textsuperscript{6}The ‘do minimum’ option should always be carried forward in the shortlist, to act as a check against more interventionist action” - http://www.hm-treasury.gov.uk/d/green_book_complete.pdf, page 5, para. 2.8.}
Auditor General, again fully independent from government, will have statutory powers to review Best Value in both the SPA and the Police Service of Scotland. This is an extension from the current situation where the Accounts Commission only reviews Best Value in relation to police authorities.

4.4 HMICS supports this strengthening of independent scrutiny and consistent with these changes considers that now is equally the time for it to emphasise its independence from government and importantly the external appearance of this independence.

4.5 Whilst we envisage continuing to deliver independent professional advice to Scottish Ministers and the new police service, we see a key role in our provision of independent professional advice to the emerging SPA.

4.6 There will be much for the SPA to grasp in its early months and years to enable it to provide governance and support to match the scale, complexity and importance of organisation represented by the new police service of Scotland.

4.7 We envisage that the Authority will particularly need advice that is clearly independent of the various positions and viewpoints on policing and police reform. Such advice will be crucial to their successful navigation between national and local interests.

4.8 We also note the concerns raised in submissions to Finance Committee from COSLA and the Scottish Police Authorities Conveners Forum in relation to the requirement for independent advice and support to local arrangements. We have built the provision of such advice and support into our outline plans for HMICS.

4.9 We consider that these and other factors emphasise the need for HMICS to be able to operate from a position of increased independence and to be seen to be doing so. Key to this will be the ability to directly employ staff. Accordingly we consider that a change in organisational status to that of being a body corporate is important. We think that this change should be clearly reflected in the Bill.

4.10 Continuing with the Bill’s provisions, although it is very clear about the powers of ministerial direction towards HMICS, it is less clear that HMICS will retain its full powers of self-directed inquiry into any matter relevant to policing in Scotland. We consider it important to have both of these provisions set ‘side-by-side’ in the legislation. Again this is a key element of balance within the new structure.

4.11 Equally the Bill does not preserve the current arrangements whereby the HMI provides advice to the appointment process for chief constables, deputy chief constables and assistant chief constables. We consider that both public and service confidence would be increased were a fully independent HMI to continue to provide advice on these appointments.

4.12 The Bill in a number of sections, lists those parties that should be consulted in relation to establishing or changing arrangements or preparing plans (e.g. sections 11(6), 33(3), 34(3), 39(3), 55(2a) and 67(3)). We can think of no matter relating to
policing in Scotland where HMICS should not be a statutory consultee and accordingly we seek our specific inclusion in all such lists.

4.13 Finally and consistent with the above, we consider that the responsibility for the independent strategic assessment of police performance should be assigned to HMICS. We are currently leading work to define high level performance indicators that will assist the public and governance structures to understand how the police are performing both locally and nationally. Under the new policing arrangements, we think that there will be increased confidence in this information if it is provided by a fully independent police inspectorate. We therefore seek to have this position established within the Bill.

5. Conclusion

5.1 HMICS will continue to focus upon working with all stakeholders to ensure that changes to policing in Scotland build upon its sound foundation.

5.2 At Appendix B to this document and for completeness, we have listed a number of individual matters which although not related to the primary issues raised above, may be of wider interest to the committee.

5.3 HMICS would welcome the opportunity to discuss police reform with the Justice Committee.

Appendix A

As indicated at paragraph 3.14 the following text outlines potential reasons why the OBC and related work has attracted some criticism.

The purpose of and benefits to be derived from police reform have evolved over time rather than being consistent from the outset

The fact that different reform criteria have been used within the

- Sustainable Policing phase two report
- The two consultation exercises (and even within their forewords)
- The Outline Business Case

leads to concerns from some that criteria were evolving to support the chosen decision rather than to inform it.

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7 Sustainable Policing Project - Phase 2 Report: Options for Reform, March 2011
8 A Consultation on the Future of Policing in Scotland, February 2011
9 Police Reform Programme - Outline Business Case, Scottish Government, September 2011
For example in early documentation one of the three reform factors was:

‘delivering efficiencies while protecting frontline services as far as possible’.

By the time the policy objective for the Bill had been written, the above had changed to:

To protect and improve local services despite financial cuts by stopping duplication of support services eight times over and not cutting frontline services.

In effect ‘delivering efficiencies’ is now contained within the single action of moving to one force. In doing so, the text implies that the simplification of support services alone will protect and improve local policing.

The Outline Business Case

Treasury guidance provides that an Outline Business Base should include a ‘do minimum’ or status quo option. The status quo was rejected early in the reform debate but this was following financial modelling based on a hypothetical budget forecast significantly more pessimistic than proved to be necessary.

The Target Operating Model upon which the Outline Business Case is heavily predicated, was produced at some speed and was considered by the service to be illustrative rather than predictive.

The financial element of the business case had its foundations built upon the service’s first usage of ‘police objective analysis’ as a costing model. There was and remains an inevitable margin of error in the early use of such a costing model.

The Outline Business Case describes its calculations as being based upon applying ‘well tested levers’, ‘process changes’ and similar methods. When tested, we have not yet seen the level of underpinning detail that would demonstrate what these mean. For example we would like to have seen what ‘process changes’ have been included that subsequently allow costs to be reduced.

The Outline Business Case uses (as it is required to do) optimism bias but we are not always clear as to the rationale for the level at which it is being applied. For instance in relation to ICT changes, Treasury guidance is for a 200% weighting. The weighting applied in the business case is 100% which in light of the residual police ICT infrastructure and the recent pace of change, seems to underestimate the difficulties.

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10"The ‘do minimum’ option should always be carried forward in the shortlist, to act as a check against more interventionist action” - http://www.hm-treasury.gov.uk/d/green_book_complete.pdf, page 5, para. 2.8.

11"24% budget reductions are anticipated over the period and projections have been made - £230m in savings requires to be realised” – Scottish Policing Board 09/10, paper 5, para. 2.4.

12Outline Business Case, page 50, para. 5.21
Finally, police reform rightly has to take place within the context of political commitments towards the public sector, in this case the maintenance of 17,234 police officers and avoiding the use of compulsory redundancies. We are yet to see a plan that manages these constraints whilst delivering the requisite savings within the required timescale.

Outline Business Case and apparent link with Comprehensive Spending Review

Flowing from the issues raised above, there are concerns about how the potential savings contained within the Outline Business Case, may have influenced budget settlements provided by the Comprehensive Spending Review.

The Outline Business Case indicates that an annual saving of £153m per annum may be possible. By year three of the Comprehensive Spending Review, the police service is predicted to be making annual savings of £88m en route to a recurring annual saving of £106m in 2016/17.

When the estimated VAT liability (£22m) and the non-cashable officer savings (£23m) are added to the £106m quoted above, we have in effect a reduced annual budget for policing of £151m. In effect therefore both the CSR and the anticipated recurring annual savings for policing, have cemented a series of figures that were suggested as only potentially achievable in earlier work.

Further, there appear to be differences between the reform budget figures in the Financial Memorandum and those provided to the Scottish Policing Board e.g. taking 2012-13 as an example, table 2.1 anticipates net savings of £9.11m in 2012-13, whilst table 2.2 quotes a net cost in 2012-13 of £3.23m, after allowing for optimism bias.

However, the analysis of the Police Central Government Budget provided to the Scottish Policing Board on 12 October 2012 includes £12m in 2012-13, described as the “net costs of police reform”.

Financial arrangements for the new service

Accepting that the new service will have greater critical mass and hence resilience in terms of finances, there are concerns that the projected inability to create and carry forward reserves will provide some difficulties. In particular the timeframes for managing cost reduction through voluntary redundancies, can require a level of flexibility not easily provided by the above constraint.

HMICS consider that, on balance, in light of the potential uncertainties surrounding costs and savings, that for the first three years post-reform, that the service should retain the facility to create and carry forward reserves. This matter could then be reviewed at the end of this period.

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13 Scottish Policing Board Meeting 9, 12/10/11, PCG level 4 detail.
### Appendix B – Miscellaneous issues

<table>
<thead>
<tr>
<th>Bill Ref.</th>
<th>Comment</th>
</tr>
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<tbody>
<tr>
<td>7</td>
<td><strong>Senior officers.</strong> Whilst appreciating that the term ‘Chief officer’ is not used in other UK legislation the reference to ‘Senior officer’ is misleading and consideration should be given to changing this to Chief officer. Additionally, this should be defined in the legislation.</td>
</tr>
<tr>
<td>13</td>
<td><strong>Rewards.</strong> Although this is in keeping with Police (Scotland) Act 1967 provisions, rewards for carrying out functions with exceptional diligence or in a specially meritorious manner will be potentially divisive and difficult to define and administrate.</td>
</tr>
<tr>
<td>14</td>
<td><strong>Senior officers: retirement for efficiency or effectiveness.</strong> See comment at section 7 above.</td>
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<tr>
<td>15(3)</td>
<td><strong>Constables: service outwith the Police Service of Scotland.</strong> It would be sensible for constables on temporary service to retain their powers and privileges, in relation to the Scottish Jurisdiction (as extended to any other force area, in accordance with the terms of the secondment – i.e. NCA). This would allow for them to be utilised in policing of major incidents and events etc. or to effectively deal with a spontaneous incident where they are present. There are few examples of ‘temporary service’ outwith the police service of Scotland where suspension of powers and privileges would be necessary.</td>
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<td>17(3)</td>
<td><strong>Chief constable’s responsibility for the policing of Scotland – directing constables, and police cadets.</strong> There is an opportunity here to address operational independence with the following suggested text; ‘The office of constable attracts an independent responsibility for appropriate application of the law. Save for the following conditions, they cannot be directed, other than on lawful order of a more senior ranking officer, in such application of the law. Whilst the Chief Constable holds vicarious responsibility for the lawful actions of all constables under his or her command, he or she must when directing constables, police cadets ……………’ etc.</td>
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<tr>
<td>22(1)</td>
<td><strong>Criminal offence to be absent from duty without reasonable excuse.</strong> This appears to have been brought forward from the Police (Scotland) Act 1967, however it is considered to be disproportionate and could be more appropriately dealt with through conduct regulations.</td>
</tr>
<tr>
<td>22(3)</td>
<td><strong>Criminal offence to neglect or violate the constable’s duty.</strong> As above. Any neglect of duty of a severity which would merit criminal investigation is already provided for at common law and a lesser neglect by conduct regulations.</td>
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<tr>
<td>23(1)</td>
<td><strong>Failure to return equipment.</strong> As above. This could be dealt with through conduct regulations and common law crime of theft.</td>
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<td>31</td>
<td><strong>Forensic services.</strong> Clarification is required that that the forensic service (as a service provided by SPA) can be inspected by HMICS.</td>
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<td><strong>46(3)</strong></td>
<td><strong>Local Authority role in Policing – provision of reports and statistical information etc.</strong> Servicing 32 Local Authorities with reports, plans, statistics and other information about policing could become overly bureaucratic – a cost that will not have been incorporated in the overall balance of efficiencies.</td>
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<tr>
<td><strong>48</strong></td>
<td><strong>Local police plans.</strong> As per comment at 46 (3) above.</td>
</tr>
<tr>
<td><strong>62</strong></td>
<td><strong>PIRC.</strong> In conferring additional powers on the PCCS and renaming it as PIRC, there should be no inference that the broad functions are the same, nor should there be an inference that the PCCS has the capacity, capability or infrastructure to undertake the broader responsibilities.</td>
</tr>
<tr>
<td><strong>79(1)</strong></td>
<td><strong>HMICS Annual Report.</strong> Although section 74 sets out the functions of HMICS, (which include inspecting the state and efficiency of the Authority and the police service), the main function of the HMICS annual report is to provide Ministers with a report on the state and efficiency of policing in Scotland, which should be clearly articulated (similar to the provisions of The Police (Scotland) Act 1967, section 33(4)).</td>
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<tr>
<td><strong>3</strong></td>
<td><strong>Disqualification from appointment and holding office as a member of the Authority.</strong> Whilst the disqualification at 3(b) includes various aspects of criminality, consideration should be given to disqualification based on whether that person is fit and proper. This would allow for instances where significant intelligence, (below conviction) is held.</td>
</tr>
<tr>
<td><strong>5(4)</strong></td>
<td><strong>Chairing member and deputy.</strong> The deputy should also be appointed by Ministers. They hold the same responsibility as the chair, when the chair is absent.</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>Removal from office.</strong> As at 3 above. This should extend to fit and proper (i.e. where significant intelligence, below conviction is held).</td>
</tr>
<tr>
<td><strong>4(2)</strong></td>
<td><strong>Senior Officers – chief constables.</strong> Chief constables appointed to the office of deputy chief constable should not continue to ‘hold the rank of chief constable’ as this will conflict with the newly appointed chief constable’s primacy.</td>
</tr>
<tr>
<td><strong>4(4)</strong></td>
<td><strong>Senior Officers – deputy chief constables.</strong> As above but for deputy chief constables.</td>
</tr>
<tr>
<td><strong>9(2)</strong></td>
<td><strong>Limitation on mobility of transferred constables.</strong> This may be untenable if applied strictly. Some officers already live outwith their Force areas. In addition, there will be a need to centralise some functions with a resultant requirement to move constables – the provision should be made to accommodate costs where such a move is necessary and by mutual agreement.</td>
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</table>
I am writing to you for two purposes:

1) Following your request that panel members should write if they felt that there further were matters that they wished to draw to the committee’s attention and

2) To specifically deal more completely with Mr Finnie’s question (at col 1094 of the Committee’s report) on the Bill’s proposals about the Police Appeals Tribunal.

Early appointment of the Chief Constable and Executive Team

Firstly, can I deal with an emerging priority for police reform and one which I believe is so critical to the reform agenda, that failure to address it now is likely to present a significant barrier to progress in the interim period and, indeed, to delivery of the stated aims in the mid and longer-term within the context of the Comprehensive Spending Review.

A variety of views have been expressed on the most appropriate timescales for appointing the Chief Constable and Executive Team to date. However, as a consequence of the pressing nature of reform and the risks associated with a delay in appointment of those key posts, the emerging position is one of universal agreement from within the service (and from a number of other key stakeholders) that appointment of the Chief Constable should be progressed at the earliest possible opportunity.

The current position is based largely around the perceived need for the first Chair of the new Scottish Police Authority to be appointed as a precursor to appointment of the Chief Constable. The supporting logic is twofold: firstly, it safeguards against a ‘Ministerial’ appointment and the conflict that is, rightly, perceived to bring; secondly, that this approach will provide a close and early working relationship between the Chair and the Chief.

Whilst laudable, the time delay inherent in this approach presents far more serious risks than has been articulated to date.

- the current approach will preclude appointment of the Chief Constable until the last months of this year, with subsequent appointment of the Executive Team being realised only weeks before the ‘go-live’ date;

- whilst the reform team are keen to commit to decisions, there is an understandable hesitance around significant matters which they believe the ‘new’ Chief Constable should determine – that will slow (and is slowing) down progress;
• as a consequence of the above, it is highly unlikely that there will be a unanimously agreed and definitive implementation plan in place prior to appointment of the Chief Constable. With the subsequent delay in appointing the Executive team, there is unlikely to be sufficient time for those strategic leads to make the necessary decisions and adjustments to ensure cohesive functionality from 1st April 2013, far less adherence to the broader aims of reform;

• there is a significant, real and growing appetite within the service (and, importantly, across the staff associations) to secure clarity of leadership at an early juncture.

I believe that collectively these factors present a compelling argument for the earliest possible appointment of the Chief Constable and subsequently the Executive Team.

Returning then to the arguments for the proposed senior appointments process,

Firstly there is an inevitable level of ‘inheritance’ that comes with police reform and in the context of this issue, it is more usual for Conveners and Chairs to fall ‘heir’ to ‘sitting’ Chief Constables than it is for them to appoint them (the forthcoming local government elections and consequential changes to police boards and authorities alone provide evidence of this).

Secondly, I do recognise the need to ensure a fair, transparent and open process of appointment and one which provides a level of protection from the potential accusations of Ministerial intervention and the enduring consequences that this may bring. In those terms, I would strongly advocate that work to determine a bespoke process which provides the necessary safeguards, but within a timescale that meets the needs of reform, is commenced as soon as possible. Indeed, I see no reason why an independent panel, supported by HMICS in an advisory capacity, could not make such an appointment and in my professional opinion the risks of delay now far outweigh the avoidable risks arising from an early appointment.

The strength of feeling on this matter is gaining such momentum, that I understand a number of parties intend to raise it with the Committee. In considering those submissions, I would strongly encourage the Justice Committee to express their position on the matter in a clear statement to the Cabinet Secretary for Justice, in the hope that an early and incisive response can be provided.

Turning then to the matter raised by Mr Finnie:

Police Appeals Tribunal (PAT)

Section 57 et seq of the Bill detail the changes to the PAT including the proposal to appoint three members who are either solicitors or members of the Faculty of Advocates. I mentioned in the course of my response to Mr Finnie (col 1095) that I had commissioned some work to assess how misconduct cases overall were being handled and where there were might be avoidable delays or potential wider improvements.
That work is not yet complete but I can say that in general, moves to increase further the quasi-judicial nature of misconduct cases, have the potential to increase delays to the detriment of respondent officers, the police service, public confidence and of course public expenditure.

There is evidence and intuitive rationale, that the early and appropriate dealing with misconduct cases is greatly increased if from the outset or as soon as is possible, objective and pragmatic discussions take place involving all parties as to the seriousness of the matter and likely outcome should the allegation be found proven. In too many cases, the absence of such calibration causes unnecessary delays and escalation to a process involving levels of legal representation inconsistent with the likely or eventual outcome.

In this regard and I hope I am now turning to the core of Mr Finnie’s question, the removal of tribunal members who have direct experience of the context of policing and the replacement of them with solicitors, is likely to be perceived by some as a further increase in the quasi-legal backdrop for misconduct cases at a time when practice elsewhere is indicating that a de-escalation is likely to be more effective for all parties.

Consistent with the above and as I raised in Appendix B of my earlier written submission, the provisions at Sections 22 and 23 of the Bill whereby officers commit for example, a criminal offence of being absent from duty, again seems wholly inconsistent with a culture of resolving issues at the lowest appropriate level.

From experience, examples of such incidences are inevitably underpinned by difficult personal circumstances reducing even further, if this were possible, the likelihood of the Crown seeking or gaining a criminal conviction for such an offence.

Perhaps the Justice Committee with its broader view of the criminal justice system has similar views on this matter.

**Police Investigations and Review Commissioner (PIRC)**

You may recall that there was some detailed questioning in relation to this key provision within the Bill. Whilst clearly the report of the committee proceedings of the 6th March represents a subset of all the written evidence that you will have received, on reviewing the text I consider it important to emphasise a few points:

1) Mr Finnie’s question leading into this subject (col 1069) highlighted in the responses it drew, the importance of not only a deep and fundamental understanding of how to deal concurrently with criminal, complaints and serious misconduct issues, but that there is an absolute requirement to have that appreciation and experience in those charged with setting up the new body that will deal with such issues.

2) Although (at col 1070) I am quite sure that Mr Todd did not mean that ‘what the bill proposes (is) to rename the current Police Complaints Commissioner for Scotland’ nevertheless he may have unintentionally perpetuated a misconception held in some quarters that this is what is proposed, ie simply a renaming of the current body. The scale and nature of these changes are such that whilst legislatively it may be
convenient to draft the Bill in terms that indicate a simple flow from one structure to the next, the constitutional and criminal investigatory changes are as fundamental as any, if indeed not most, of the Bill’s other provisions.

3) Finally and perhaps implicit in the above, I would support Professor McNeill’s call for early appointments of the new commissioner and director of investigations. Although in his response to Mr Pearson’s question on sufficiency of time (col 1072) Professor McNeill considered six months lead-in was ‘doable’, it may be that this issue of key early appointments is so crucial, that it is again a matter that the Justice Committee may wish to consider raising with the Cabinet Secretary directly.

Parliamentary scrutiny

Finally I wish to reinforce a few of the points raised in the exchanges about the role of Parliament and the Scottish Police Authority in holding the new service to account. I mentioned that I had published a report on this issue and for ease I have added a hyperlink to it here should you or your committee members wish to access it. http://www.scotland.gov.uk/Resource/Doc/925/0117807.pdf

Mr Black eloquently differentiated between democratic accountability and proper governance as the Scottish Police Authority (SPA) needs to provide. Our joint work has identified the difficulties some current police board and authority members have in separating their local elected responsibilities from their governance responsibilities as members of a board or an authority. This provides an unconvincing rationale to select local members for the SPA with its increased scale of responsibility. There is also the issue of capability and capacity for this strategic role which represents a material change from the majority of current arrangements.

Put simply there is no reason why the proposed 7-11 members of the SPA cannot be recruited with the skills and experience to oversee the service. As detailed on the 6th March 2012, the new service and authority have to demonstrate how they are assessing and providing services appropriate to local and national need. Future joint work between Audit Scotland and HMICS will systematically report on this issue.

Accordingly Parliament is the entirely appropriate and logical institution within which to lodge democratic oversight. I understand fully Convener, your concerns about the capacity of your committee to take on this role. If you accept the principle however, there are options being suggested by Audit Scotland and no doubt others which merit serious consideration.

On that note I shall end this supplementary letter pausing only to offer that if in any way I can be of further assistance to you and your committee, I should be happy to do so.

Andrew Laing
HM Inspector of Constabulary
13 March 2012
The Highland and Islands Fire Board welcomes the opportunity to provide written evidence to the Justice Committee on the Police and Fire Reform (Scotland) Bill. The Board is keen to contribute to the legislation to ensure the new arrangements for single services work effectively from their inception. The Board seeks continuity in the performance of police and fire and rescue services in the Highlands and Islands. The constituent authorities of the Highland and Islands Fire Board intend to be pathfinders to aid the transition to the new single services.

1. **Part 2, Section 99 and Schedule 1A, 2005 Act, Paragraph 2: The Scottish Fire and Rescue Service**

Schedule 1A provides that the Scottish Fire and Rescue Service (SFRS) will have between 7 and 11 members, all to be appointed by Scottish Ministers, with appointments held for no more than 4 years. The Highland and Islands Fire Board (HIFB) is concerned that this size of membership is too small to allow adequate regional or local input to Scottish fire and rescue arrangements. The HIFB seeks the size of the Board to increase to 15 members. It also seeks reassurance in the Bill that membership of the Service makes provision for Scottish rural, island and urban community safety interests. The HIFB sees the inclusion of local elected members beneficial in this respect, and seeks that they comprise at least 8 of 15 members on the SFRS. This would bring a breadth of experience and knowledge of fire and rescue across Scotland. The HIFB supports the appointment of Service members through the Public Appointments process.

The use of sub committees may be useful, but if the maximum number of Board members remains at 11, this would be too small for proper consideration of rural, island and urban issues at sub-committee level.

2. **Part 2, Section 99 (Schedule 1A, 2005 Act, Paragraph 8): The Chief Officer**

The HIFB notes that the first Chief Fire Officer is to be appointed by the Scottish Ministers and thereafter by the SFRS. The HIFB recognises the advantages of early recruitment of the Chief Fire Officer, to enable transitional arrangements to be put in place earlier; however, the HIFB would have welcomed the involvement of the SFRS from the outset. If appointments to the Scottish Fire and Rescue Service cannot be fast-tracked, the HIFB requests that local governance have a role in the crucial first appointment process and suggests that this be drawn from among the new chairs of joint boards, to enable recruitment by September 2012.

The nature of the relationship between the Chief Fire Officer and local elected members or the new local committees is not clear. The HIFB seeks assurance that this matter will be considered in the Bill process.
3. **Part 2, Section 99 (Schedule 1A, 2005 Act, Paragraph 9): SFRS Employees; and Amendments relating to Part 2**

It may be helpful in remote rural and island communities for there to be an ‘emergency first responder’ capability, where skills found in the separate emergency services (police, fire and rescue and ambulance) could be developed across staff with these roles and deployed more quickly to deal with emergencies arising.

The Bill does not make reference to any statutory bar on employment within the Scottish Fire and Rescue Service. However, there appears to be no amendment among the Amendments relating to Part 2 of the Bill (Schedule 6, Part 2) to the prohibition in Section 51 of the Fire (Scotland) Act 2005 on employment of police. The HIFB is unsure why this prohibition needs to remain and presses for it to be repealed.

By making provision for paid and voluntary employment in more than one emergency service, some recruitment difficulties in remote rural and island authorities may be overcome.

4. **Part 2, Section 99 (Schedule 1A, 2005 Act, Paragraph 12): SFRS General Powers**

The HIFB notes the provision for the Scottish Fire and Rescue Service to provide and maintain various assets to carry out its functions. It seeks the inclusion in this section of a reference to sharing public assets with other public bodies where that would enable best value for the public purse. This could be detailed further in guidance, with reference for example made to shared buildings, shared vehicles or shared maintenance of them, shared land or partnership arrangements for land disposal for best community benefit, shared ICT provision and shared procurement where appropriate.

5. **Part 2, Section 99 (Schedule 1A, 2005 Act, Paragraph 16): Accounts**

Although the Financial Memorandum for the Bill is being considered by the Finance Committee, the HIFB is concerned that the proposed delivery model means that the new single forces will not be able to recover Value Added Tax (VAT). This will incur additional cost to the public purse and reduce resources for the new services. The HIFB acknowledges that the Scottish Government is in discussion with HM Treasury and the HMRC seeking exemptions, but the HIFB seeks assurance that this will be resolved before the legislation is passed.

6. **Part 2, Sections 100-108: Functions of the Scottish Fire and Rescue Service**

The HIFB notes the list of functions to be the responsibility of the SFRS. The HIFB seeks assurance that the legislation and/or accompanying guidance will ensure that:

- the future delivery of the service in the Highlands and Islands will equate to that in other areas of Scotland or for Scotland as a whole; and
- appropriate local governance arrangements are made for the area, which includes mainland and island communities; community representation in these
areas should have no less weight than community representation in other areas of Scotland.

The HIFB seeks clarity on the nature of the relationship between the members of the Scottish Fire and Rescue Service and the members of the local committees and with other regional bodies such as the Regional Transport Partnerships.

7. **Part 2, Section 111: Best Value**

The HIFB welcomes the duty of the Scottish Fire and Rescue Service to make arrangements to secure Best Value. It may be worth noting that arrangements for auditing Best Value may change, as the approach to external scrutiny of community planning partners and partnerships in the achievement of outcomes is currently under review. This may be dealt with in the future in accompanying guidance to the legislation (under reference in new section 39B, 2005 Act).

8. **Part 2, Section 112: Scottish Fire and Rescue Service Strategic Plan**

The HIFB recommends that, in preparing the strategic plan, the Scottish Police Authority is named as a mandatory consultee.

9. **Part 2, Section 113 (new Section 41D, 2005 Act): Provision of Local Services**

The HIFB welcomes the provisions in section 41D of the 2005 Act requiring SFRS to ensure that adequate arrangements are in place for each local authority area and to involve each local authority in determining the priorities and objectives for its area.

10. **Part 2, Section 113 (new Section 41E, 2005 Act): Local Fire and Rescue Plans**

The HIFB notes the provisions in the Bill for the SFRS to prepare and submit a local fire and rescue plan to the relevant local authority for approval. However, it is not clear what the process would be if approval were not given. Some positive process of resolving any lack of agreement would be required.

To reduce the risk of such a situation arising, HIFB is of the view that it would be helpful if, in addition to requiring the SFRS to involve the local authority in determining the priorities and objectives for the area, the Bill were to specify that the local fire and rescue plan be developed jointly with the local authority and be subject to public consultation. The HIFB believes that the successful achievement of public protection and community safety outcomes requires partnership or integrated working with other relevant partners, rather than the development of a plan by one organisation for consultation with others.

The HIFB notes that the Bill requires the SFRS to “consult such persons as the SFRS thinks fit”. The HIFB would prefer to see clear acknowledgement in the Bill that successful outcomes mean the involvement of other partners, notably the local police commander, the Health Board, Scottish Ambulance Service locally and the third sector. Having a joint public protection and community safety plan could be
achieved within a framework of national outcomes, national fire and rescue priorities and the fit with local outcomes and local resources. All of this can be supported by the development of the Single Outcome Agreement, especially in relation to partnership performance. This joint approach would enable local solutions to be developed for integrated and preventative services, two of the Government’s four pillars of public service reform.

11. **Part 2, Section 113 (new Section 41E, 2005 Act): Local Fire and Rescue Plan**

The HIFB recommends that the local police commander is at least included as a mandatory consultee for the local fire and rescue plan. In keeping with the written evidence provided at paragraph 10 above, the HIFB seeks provisions in the Bill for the production of a joint public protection and community safety plan involving not only fire and rescue, police and local authorities, but also the local ambulance service and NHS Boards.

12. **Part 2, Section 113 (new Section 41J, 2005 Act): Local Senior Officers**

The HIFB welcomes the provision at section 41J that a Local Senior Officer must be designated for each local authority area. It does not however specify the rank for that officer. If this is to vary across local authorities, there is a concern that, in smaller local authorities (e.g. island authorities), a less senior officer will be appointed. This is of concern because he/she would have a lower level of authority within the Scottish Fire and Rescue Service, potentially limiting his/her capacity to influence the national strategic plan and the resources required for the local fire and rescue plan. The HIFB seeks provision in the Bill or accompanying guidance that, if seniority is to vary, the position of local senior officer is in itself afforded a particular status that, when considering matters affecting local service in the Highlands and Islands and the resources for it, would not be superseded by higher seniority in other local areas.

Under sub paragraph (4) the Bill provides that a local senior officer could cover more than one local authority area. This is more likely to be the case where the local authority has a relatively small population or covers a relatively small geography. With the population factor more likely to apply in the Highlands and Islands, the HIFB is concerned that it may not be as well served as other areas with a dedicated local senior officer. This is of even more concern if the officer’s seniority is likely to be lower than in other areas. Assurance is sought in the provisions of the Bill, or in the accompanying guidance, that service delivery, performance and resources will be fairly distributed, with no reduction for the local Service areas currently served by Highlands and Islands Fire and Rescue Service.

13. **Part 2, Section 113 (new Section 41K, 2005 Act): Monitoring by local authority**

The Bill provides for monitoring of the local fire and rescue plan by the local authority and has a similar provision for local policing (Part 1, Chapter 7, Section 46(2)). It would be more effective, if separate plans are to be produced, for them to be monitored together or simultaneously, given the connections and dependencies across both emergency services.
However, if the Bill is amended to enable the production of a joint public protection and community safety plan for each local authority area, then each contributing partner would need to be accountable for its performance against the plan. This can be facilitated locally through joint scrutiny arrangements (the pathfinder committees), and it can be reported nationally through the arrangements for the Single Outcome Agreement.

14. **Part 2, Section 116: Directions**

The HIFB would be keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of fire and rescue services to ensure either:

- minimising the loss of front-line or back office services currently based in the Highlands and Islands; or
- for new central services to be moved to the Highlands and Islands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements.

15. **Part 2, Section 117 (new Sections 43A-43F, 2005 Act): Her Majesty’s Inspectors of the Scottish Fire and Rescue Service**

It is not clear how the Bill makes provision for reducing external scrutiny and making it risk based and proportionate, as required following the Crerar Review. In addition, it does not take into account the current review of external scrutiny of community planning partnerships. The HIFB emphasises this point given the provisions in the Bill for a separate Chief Inspector of Constabulary in Scotland (Sections 71 & 74).

16. **Part 2, Section 118 and Schedule 5: Transfer of staff, property etc.**

The HIFB will consider the potential impact of a staff transfer scheme for staff who are to be treated as fire and rescue employees but are employees of the local authorities involved in the HIFB. It would be helpful to have further guidance available on this matter in advance of the appointed day.

This is important because the Highland Council provides services to the Joint Board in terms, for example, of clerking, administration, finance and procurement services. The Council therefore needs to understand the implications, if any, for staff involved.

**Other issues of concern:**

**A. Accountability, Scrutiny and Governance**

The Bill provides limited assurance on local accountability, scrutiny and governance for local fire and rescue delivery. While arrangements for proper local scrutiny of fire and rescue delivery and for community engagement are to be trialled through pathfinders, these will not be evaluated until after the Bill is enacted, so the Bill should at least make reference to the principle and value of local scrutiny of fire and
rescue delivery in its area or explicitly state the role of local committees in scrutiny of performance.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The HIFB seeks assurance that these costs are netted against the transfer of grant from local to central government.

In addition it would be helpful if the accompanying guidance could refer to:
- the support for joint strategic assessment with the local authority to understand needs and priorities for fire and rescue delivery
- the performance standards and performance framework to be used for reporting on how fire and rescue functions are being carried out

This would support one of the Government’s four pillars of public service reform: strengthening the performance culture of public bodies.

B. Community Planning and Joint Working

The HIFB is concerned that the Bill does not make clear the alignment of arrangements for local fire and rescue delivery with community planning arrangements. Community planning should reduce the need for separate plans for local policing and fire and rescue services and instead support the production of a joint public protection and community safety plan for each area, as agreed with other partners, especially local authorities, local health boards and the Scottish Ambulance Service locally. The HIFB accepts that some CPPs may be more able to proceed with this joint planning than others, but it seeks provision in the Bill for those partnerships to proceed in this way if they are ready to do so.

Community planning is also the process for agreeing joint operational working and tasking. More explicit reference to building on current community planning arrangements at the planning and operational levels would support the integration and prevention agendas better, as well as finding potential efficiencies in service planning.

The HIFB notes that there is no explicit requirement made in the Bill for the Local Senior Officer for the Fire and Rescue Service to participate in community planning. The HIFB seeks the same duty to apply for that officer as for the local police commander. In addition, there are four further provisions or assurances requested by the HIFB:

i. The HIFB seeks greater clarity either in the Bill or in its accompanying guidance on the extent of local joint working expected of the new Scottish Fire and Rescue Service. This is required because the HIFB fears that current effective joint working in key community safety areas will be undermined if current fire and rescue input is reduced. Joint working is effective if those taking part have authority to task resources decisively, quickly and within the local area. Delegated authority for local senior officers in deploying their local resources needs to be assured for effective fire and rescue participation in community planning.
ii. The HIFB seeks clarity on how protocols for joint working can be maintained and improved in the change to a Scottish Fire and Rescue Service.

iii. The HIFB seeks provision to be made for the continuation of joint working to support fire and rescue service performance (including the sharing of resources across partnerships). The three island authorities (Orkney, Shetland and Western isles) are working with the Scottish Government to develop a model for integrated service provision in island communities which could see much closer integration of services within the public sector in each island group.

iv. The HIFB seeks to extend the provisions for the duty to apply also to the Scottish Ambulance Service, given the need to align its resources with other emergency services and local partnership arrangements.

The HIFB is aware of the current detailed review of community planning and any implications arising from that for the Scottish Fire and Rescue Service will need to be reflected in the Bill or in accompanying guidance.

Highland and Islands Fire Board
6 March 2012
The Highland Council welcomes the opportunity to provide written evidence to the Justice Committee on the Police and Fire Reform (Scotland) Bill. The Council is keen to contribute to the legislation to ensure that new arrangements for the forces work effectively from their inception. The Council wishes to see continuity and enhancement in the performance of police and fire and rescue services operating in the Highlands. The Council is also to be a pathfinder authority to aid the transition to the new single services.

1. **Part 1, Chapter 1, Section 1 and Schedule 1 The Scottish Police Authority**

Schedule 1 provides that the Scottish Police Authority (SPA) will have between 7 and 11 members, all to be appointed by Scottish Ministers with appointments held for no more than 4 years. Highland Council is concerned that this membership does not allow adequate regional or local input to Scottish policing arrangements. This is particularly the case where the Bill does not make sufficient provision for local accountability for, or scrutiny of, local policing other than consultation and reporting.

The Council seeks the size of the SPA to increase to 15 members. It also seeks reassurance in the Bill that membership of the SPA makes provision for Scottish rural, island and urban community safety interests. The Council sees the inclusion of local elected members beneficial in this respect, and seeks that they comprise at least 8 of 15 members on the SPA. This would bring a breadth of experience and knowledge of policing across Scotland. The Council supports the appointment of the SPA members through the Public Appointments process.

The use of sub committees may be useful but if the maximum number of SPA members remains at 11, the Council views this as too small for proper consideration of rural, island and urban issues at sub-committee level.

2. **Part 1, Chapter 1, Section 2 Functions of the Scottish Police Authority**

Highland Council welcomes the inclusion of maintaining the Police Service, promoting and supporting continuous improvement in the policing of Scotland and the accountability of the chief constable and the need for proportionate, accountable and transparent governance in the main functions of the Scottish Police Authority. However the Council seeks assurance that these functions will have regard to the current standard of policing in the Northern Constabulary area. Specifically it seeks assurance that the legislation and/or accompanying guidance will ensure:

- the maintenance of the police service in the Highlands;
- that continuous improvement will be based on current performance in the Highlands and not based on a levelling of performance where that might be lower for other areas of Scotland or for Scotland as a whole; and
- that appropriate local governance arrangements are made for the area which includes mainland and island communities. Community
representation in these areas should have no less weight than community representation in other areas of Scotland.

Highland Council expects that there will be no reduction in service performance in the Highlands as a result of police reform.

3. **Part 1, Chapter 1, Section 3 Maintenance of the Police**

Highland Council notes the provision for the Scottish Police Authority to provide and maintain various assets to carry out its functions. It seeks the inclusion in this Section of a reference to sharing public assets with other public bodies where that would enable best value for the public purse. This could be detailed further in guidance, with reference for example made to shared buildings, shared vehicles or shared maintenance of them, shared land or partnership arrangements for land disposal for best community benefit, shared ICT provision and shared procurement where appropriate.

4. **Part 1, Chapter 1, Section 5 Directions**

Highland Council is keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of police services to ensure either:
- no loss of front-line or back office services currently based in the Highlands or
- for new central services to be moved to the Highlands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements. For example there are shared arrangements with Highland Council Service Points for customers in some rural communities at the moment and with Highland Council for out of hours calls.

Inverness has proven to be a suitable location for the headquarters of another national public body and there is no reason to assume it could not provide a suitable regional base for functions associated with the Police Service for Scotland.

5. **Part 1, Chapter 2, Section 9 Special Constables**

Highland Council welcomes the provision in the Bill to continue with the appointment of special constables. It seeks assurance that the appointment of special constables by the Chief Constable will continue to supplement and not replace the appointment of regular constables in the Highlands. The Council has two reasons for responding in this way:
- a. The Council is concerned that the new Authority or Chief Constable may have a perception that serious crime is less of an issue in the Highlands than elsewhere in Scotland (this is not evidenced);
- b. The move to a Police Service of Scotland, without careful human resource management, may lead to a drain of talent from the Highlands causing recruitment difficulties for regular constables in the future.
6. Part 1, Chapter 2, Section 15 (Constables: service outwith the Police Service of Scotland) and Part 2, Section 99 sub section 9 and Amendments relating to Part 2.

Highland Council seeks assurance (through a provision in the Bill or in accompanying guidance) that when consent is given for constables to be engaged in service outwith the Police Service (paid or voluntary) that this does not exclude engagement in another emergency service (paid or voluntary). This assurance is sought because it may be helpful in remote rural and island communities for there to be an ‘emergency first responder’ capability, where skills found in the separate emergency services (police, fire and rescue and ambulance) could be developed across staff with these roles and deployed more quickly to deal with emergencies arising.

Part 2, Section 99 of the Bill does not make reference to a statutory bar on employment within the Scottish Fire and Rescue Service. This existed in the Section 51 of the Fire (Scotland) Act 2005, but there appears to be no amendment to the prohibition on employment of police in the Amendments relating to Part 2 of the Bill (page 110). The Council is unsure why this prohibition needs to remain and presses for it to be repealed.

By making provision for paid and voluntary employment in more than one emergency service, some recruitment difficulties in remote rural and island authorities may be overcome.

7. Part 1, Chapter 4, Section 33 Strategic Police Priorities

Highland Council welcomes the provision (at subsection 3) that before determining the strategic priorities for the Scottish Police Authority, Scottish Ministers must consult with ‘such persons as appear to them to be representative of local authorities’. This may be interpreted as consultation with a national body such as Cosla; however with arrangements to be trialled through local pathfinders for the engagement and scrutiny of local police plans, there may be merit in specifying in the Bill the need for Ministers to consult with locally elected representatives involved in the scrutiny of their local police plans, especially if the strategic police priorities are to be informed (at least in part) by community safety issues and priorities in communities. This approach may also reduce the time required to consult local authorities on the Strategic Police Plan (as set out in subsection 4).

8. Part 1, Chapter 5, Sections 38 and 39 Best Value

Highland Council welcomes the duty of the Scottish Police Authority to make arrangements to secure Best Value and for these to be aligned to the duty placed on local authorities. It may be worth noting that arrangements for auditing Best Value (in police and local authorities) may change as the approach to external scrutiny of community planning partners and partnerships in the achievement of outcomes is currently under review. This may be dealt with in the future in accompanying guidance to the legislation (referred to in section 39).
9. **Part 1, Chapter 6, Section 41, Annual Accounts**

Although the Financial Memorandum for the Bill is being considered by the Finance Committee, the Council is concerned that the proposed delivery model means that the new single forces will not be able to recover Value Added Tax (VAT). This will incur additional cost to the public purse and reduce resources for the new services. The Council acknowledges that the Scottish Government is in discussion with HM Treasury and the HMRC seeking exemptions, but the Council seeks assurance that this will be resolved before the legislation is passed.

10. **Part 1, Chapter 7, Section 45 Local Policing**

In subsection 1 reference is made to adequate arrangements being in place for each local authority area. Highland Council would like to see cross reference with the policing principles (Section 32) and the local implementation of the Police Authority functions (especially Section 2 sub section 1 (a) maintenance of the police service and (b) continuous improvement.

Highland Council welcomes the provision at sub section (2) that a local commander must be designated for each local authority area. It does not however specify the rank for the local commander. If this is to vary across local authorities, there is a concern that in rural or smaller local authorities a lower ranking officer will be appointed. This is of concern because in an organisation with a hierarchical structure, they would have a lower level of authority within the Scottish Police Service potentially limiting their capacity to influence the national policing plan and the resources required for the local police plan. The Council seeks provision in the Bill or accompanying guidance that if the rank of a local commander is to vary, that the position of local commander is afforded a particular status which would not be superseded by higher rank in other command areas on matters affecting local command in Highland and the resources for it.

Under sub section (3) the Bill provides that a local commander could cover more than one local authority area. This is more likely to be the case where the local authority has a relatively small population or covers a relatively small geography. With this more likely to affect the Highlands and Islands, Highland Council is concerned that it may not be as well served as other areas with a dedicated local commander. This is of even more concern if the rank of the local commander may be lower than in other areas. Assurance is sought in the provisions of the Bill or in the accompanying guidance, that service delivery, performance and resources will be fairly distributed with no reduction for the Council currently served by Northern Constabulary.

11. **Part 1, Chapter 7, Section 46 Local Authority role in policing**

Highland Council welcomes the provisions in the Bill for the mandatory involvement of the local authority in setting priorities and objectives for policing in the area, in providing feedback on policing in the area and improvements to it and in receiving reports on police functions and complaints made. The Council seeks to strengthen these provisions or include a further provision that the local commander must at least
have regard to the views of local authorities in their involvement in local priority setting and objectives and in their feedback on performance.

This section of the Bill provides little assurance on local accountability and governance for local policing. While arrangements for proper local scrutiny of policing and for community engagement are to be trialled through pathfinders, the Bill should make reference to the principle and value of local scrutiny of policing in its area.

In addition it would be helpful if the accompanying guidance could refer to:

- the support for joint strategic assessment with the local authority to understand needs and priorities for policing and
- the performance standards and performance framework to be used for reporting on how police functions are being carried out. This would support one of the Government’s four pillars of public service reform; strengthening the performance culture of public bodies.

The Council is concerned that the Bill does not make clear the alignment of arrangements for local policing with community planning arrangements. Community planning should reduce the need for separate plans for local policing and fire and rescue services and instead support the production of a joint public protection and community safety plan for each area as agreed with other partners especially local authorities, local health boards and the Scottish Ambulance Service locally. The Council accepts that some CPPs may be more able to proceed with this joint planning than others, but it seeks provision in the Bill for those partnerships to proceed in this way if they are ready to do so.

Community planning is also the process for agreeing joint operational working and tasking. More explicit reference to building on current community planning arrangements at the planning and operational levels would support the integration and prevention agendas better as well as finding potential efficiencies in service planning. This point relates to the provisions in the Bill relating to community planning and the local policing plan below.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The Council seeks assurance that these costs are netted against the transfer of grant from local to central government.

12. Part 1, Chapter 7, Section 47 Duty to Participate in Community Planning

Highland Council welcomes the inclusion of the local commander to participate in community planning. The Council seeks the same duty to apply to the Local Senior Officer for the Fire and Rescue Service. There are four further provisions or assurances requested by the Council:

a. The Council seeks greater clarity either in the Bill or in its accompanying guidance on the extent of local joint working expected of the new Scottish Police Service. This is required because the Council fears that current effective joint working in key public protection and community safety areas (child and adult protection, dealing with violent offenders, violence against women, tackling alcohol and drug misuse,
anti-social behaviour, youth re-offending and road safety) will be undermined if current policing input is reduced in any way. Joint working is effective if those taking part have authority to task resources decisively, quickly and within the local command. Delegated authority for local commanders in deploying their local resources needs to be assured for effective police participation in community planning.

b. The Council seeks clarity on how protocols for joint working can be maintained and improved in the change to a Scottish Police Service.

c. The Council seeks to extend the provisions for the duty to apply also to the Scottish Ambulance Service, given the need to align its resources with other emergency services and local partnership arrangements.

d. The Council is aware of the current detailed review of community planning and any implications arising from that for the Scottish Police Service will need to be reflected in the Bill or in accompanying guidance.

13. Part 1, Chapter 7, Section 48 Local Police Plans

The Council welcomes the provisions in the Bill for the local commander to prepare and submit a local police plan to the relevant local authority for approval, but sees these provisions as limiting. This is because:

1. It is not clear what the process would be if approval is not given. Some positive process of resolving any lack of agreement would be required.

2. It is less likely to support the approach to achieving public protection and community safety outcomes. Outcomes require partnership or integrated working with other relevant partners, not the development of a separate plan by one organisation for consultation with others. It would be more helpful instead to at least allow for the local police plan to be developed jointly with the local authority and for it to be subject to public consultation. Even better would be the acknowledgement in the Bill that outcomes mean the involvement of other partners, notably the local fire and rescue service, the Health Board, Scottish Ambulance Service locally and the third sector. Having a joint public protection and community safety plan could be achieved within a framework of national outcomes, national policing priorities and the fit with local outcomes and local resources. All of this can be supported by the development of the Single Outcome Agreement, especially in relation to partnership performance. This joint approach would enable local solutions to be developed for integrated and preventative services, two of the Governments four pillars of public service reform.

Subsection 5 refers to a review of the local police plan at least every 3 years, but this is not well aligned to the requirement for an annual police plan (Section 35). The Bill or accompanying guidance should enable an annual review of the local plan.
14. **Part 1, Chapter 10, Section 62 and 63, The Police Investigations and Review Commissioner**

The Council seeks further information on the implications in the Bill on the change proposed for the Police Complaints Commissioner for Scotland to become the Police Investigations and Review Commissioner. In addition the Council seeks provision in the Bill for there to be an opportunity for the local scrutiny of local complaints handling.

15. **Part 1, Chapter 11, Sections 71 and 74 Her Majesty’s Inspectors of Constabulary in Scotland**

It is not clear how the Bill makes provision for reducing external scrutiny and making it risk based and proportionate as required following the Crerar Review. In addition it does not take into account the current review of external scrutiny of community planning partnerships. The Council emphasises this point given the provisions in the Bill for a separate Chief Inspector of the Scottish Fire and Rescue Service (Section 117).

16. **Part 1, Chapter 17, Section 95 and Schedule 4 Transfer of constables, staff, property etc**

Highland Council will consider the potential impact of a staff transfer scheme for staff who are to be treated as police employees but are employees of the local authorities involved in the NJPB. It would be helpful to have further guidance available on this matter in advance of the appointed day.

This is important because Highland Council provides services to the Joint Northern Police Board in terms of clerking and administration, policy development and finance services. Similarly Highland Council has shared services for procurement, out of hours call handling and some co-located customer services within some remote and rural communities. The Council therefore needs to understand the implications, if any, for staff involved.

17. **Part 2, Fire Reform, The Scottish Fire and Rescue Service, Section 99 Schedule 1A**

Schedule 1A provides that the SFRS will have between 7 and 11 members, all to be appointed by Scottish Ministers with appointments held for no more than 4 years. Highland Council is concerned that this membership does not allow adequate regional or local input to Scottish Fire and Rescue Service arrangements. Highland Council requests that further consideration is given to make provision for Scottish rural, island and urban community safety interests to be included. One way of achieving this would be to include the appointment of local elected members, and to increase the size of the SFRS Board.

Unlike the provisions in part 1 of the Bill relating to Special Constables, Part 2 does not appear to make reference to the role of retained or volunteer staff and their entitlements as part of the SFRS. This is of concern in the Highlands where there is some reliance on these arrangements. The Bill should make reference to these
roles, but in keeping with the evidence at paragraph 5 above, their use should complement the role of SFRS’s full time and paid employees.

18. **Part 2, Section 111, sub section 39A Best Value**

Highland Council welcomes the same duty on SFRS to secure Best Value, as it applies to local authorities. It seeks inclusion of a reference to shared services with other public bodies, including local authorities and the Scottish Police Service where that will support best value.

19. **Part 2, Chapter 8A, Section 112, sub section 41A Scottish Fire and Rescue Service Strategic Plan**

Highland Council recommends that in preparing the strategic plan the Scottish Police Authority is named along with local authorities as a mandatory consultee.

20. **Part 2, Chapter 8A, Section 113 Local Fire and Rescue Plan**

Highland Council recommends that at least the local police commander is included as a mandatory consultee for the local fire and rescue plan.

However, as stated at paragraph 12 above, to achieve public protection and community safety outcomes, provisions should be made in the Bill for the production of a joint public protection and community safety plan involving not only fire, police and local authorities, but also the ambulance service locally and NHS. This would support the Single Outcome Agreement better and develop community planning arrangements further.

This integrated community safety approach would enable the provision in the Bill (41E, (2) (d)) for the local plan to refer to outcomes and how they can be measured. Specifying and achieving outcomes normally requires a partnership or integrated approach to service planning and delivery.

No specific reference to the SFRS having a duty to participate in community planning appears to be made in Part 2 of the Bill. It would be helpful to clarify whether this is a standing provision in the 2005 Act or if it has been omitted purposefully as a duty in this Bill.

21. **Part 2, Chapter 8A, Section 113 (41K) Monitoring by local authority**

With the monitoring of the local police plan by the local authority also a provision of the Bill, with the similar provision for the local fire and rescue plan, it would be more effective if separate plans are to be produced for them to be monitored together or simultaneously given the connections and dependencies across both emergency services.

However, if the Bill is amended to enable the production of a joint public protection and community safety plan for each local authority area, then each contributing partner would need to be accountable for its performance against the plan. This can be facilitated locally through joint scrutiny arrangements (which could be trialled
through local pathfinders) and it can be reported nationally through the arrangements for the single Outcome Agreement.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The Council seeks assurance that these costs are netted against the transfer of grant from local to central government.

22. **Part 2, Chapter 8B, Section 116 (42A) Directions by Scottish Ministers**

In keeping with the response at paragraph 4 above, Highland Council is keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of fire and rescue services to ensure either:

- no loss of front-line or back office services currently based in the Highlands or
- for new central services to be moved to the Highlands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements.

23. **Schedule 5 (introduced by section 118) Transfer of staff, property etc**

Highland Council will consider the potential impact of a staff transfer scheme for staff who may be treated as SFRS employees but are employees of Highland Council. It would be helpful to have further guidance available on this matter in advance of the appointed day.

Highland Council
6 March 2012
Integrity4Scotland which campaigns for the highest ethical standards, transparency and public accountability within Scottish public service bodies is pleased to make the following submissions on the general principles of the Police and Fire Reform (Scotland) Bill.

These submissions relate to 1) the people’s ownership of policing, 2) the requirement for transparency in the proposed single police force’s operation and 3) the need for the public to be able to hold the proposed single police force to account.

1) The people’s ownership of policing:

1) (i) We have concerns that the Bill does not clearly acknowledge the people’s ownership of policing in Scotland and that adequate provision is not included within the Bill for the people’s direct involvement in and control of the police services to their communities and county.

1) (ii) Our view is that a crucial function of policing is the promotion of a sense of security in the public. We feel that as well as a recognition of the people’s ownership of policing that particular function requires to be explicit in the proposed new “Constable’s Oath”.

1) (iii) There is also the democratic imperative that a police force is under the control of the people rather than the state. While the Bill sets out in differing degrees of detail the roles and powers which the Scottish Government and members of local authorities will have in respect of policing, little is made clear in respect of the role the Scottish Parliament will play and nothing at all on the people’s direct control over policing. Viewing the Bill from democratic perspective we see this as a fatal omission.

1) (iv) It is generally accepted that the people themselves are capable of being a great asset to policing. Within our Scottish population we have a wealth of untapped talent some of whom could render excellent service to the nation through direct involvement in smart, open, inclusive and socially responsible policing. We would therefore wish to see the Bill re-drafted to recognise the existence of that talent and include possibilities for much greater public involvement at every level of policing in Scotland.

1) (v) Policing in order truly to be policing for the people must be conducive to social cohesion. It is a universally accepted fact that for a police force to operate to its maximum effectiveness it must have the acceptance and support of the people it serves. A stronger sense of ownership of policing we believe would correspondingly enhance the people’s sense of responsibility towards policing and thereby their
willingness to contribute beneficially to policing operations, social coherence and ultimately quality of life in Scotland.

1) (vi) With the creation of a single police force covering all of Scotland we will introduce a new and powerful element into the interactive life of our nation. This new force will itself require policing if it is to render best service to the people of Scotland and we would submit that in the interest of our democratic society policing of the police must be done primarily by the people rather than the state. We would wish that requirement to be explicit in any eventual legislation.

2) Transparency of policing:

2) (i) In an open society policing can never be secret. For the maintenance of public confidence in any public service that service must not only operate but be seen to operate in the public interest. In particular, a police force with a monopoly on policing powers in Scotland, we submit, would have to conform to the highest demands of transparency and be subject to correspondingly high levels of scrutiny.

2) (ii) We do not consider that such proposed measures as the laying before the Scottish Parliament of annual reports and “accountable persons” attending interviews at parliamentary committee level represent adequate opportunity for parliamentary scrutiny of policing.

2) (iii) Given that Scottish Ministers must of necessity delegate much of their duties to aids and civil servants we are concerned that much of Ministers’ duties in respect of police scrutiny will be carried out less democratically than will be healthy for our society.

2) (iv) While we recognise that formal links between local authorities and the police will always be necessary we are concerned that the Bill proposes that oversight of policing at a local level should be the sole preserve of local authority members. Our fear is that the Bill assumes a public confidence in the ability of local authority members to competently represent them in local policing matters, including scrutiny, while in many cases such a confidence simply does not exist.

2) (v) We would wish to see incorporated into any legislation which may be passed explicate provision for public representation in a Scottish Police Authority and local police liaison committees and also provision for a new appropriately empowered national policing oversight body composed entirely of members of the public. By “public representation” and “members of the public” we mean here resident of Scotland who can demonstrate to the public’s satisfaction that they have no connection to the political, legal or police “establishments” which would constitute a conflict of interest.

3) Public accountability of policing:

3) (i) Any police service clearly has to be accountable for its actions and ultimately the ways in which the police are held to account have to be satisfactory to the public.
3) (ii) We have given our police extraordinary powers including the power to breach what we consider some of our most cherished natural rights and we must have corresponding powers to scrutinise their use of those powers and to hold them accountable for any suspected misuse.

3) (iii) Ideally a police service should on all occasions be accountable directly to the public for its actions. However, while we accept that such an arrangement may be excessive and impracticable we contend that it should be the ideal towards which we strive.

3) (iv) We are therefore concerned over the total lack of provision within the Bill for direct public involvement in the processes for holding the police to account.

3) (v) Noting the Bill’s intentions for the investigation and answering of complaints against the police we recognise the considerable problems associated with (a) one police officer handling a complaint against another police officer and (b) the enhanced role proposed for the much criticised Police Complaints Commissioner for Scotland.

3) (vi) We fear that the provisions in the Bill to scrutinise the police and to hold them to account fall far short of anything which would be likely to persuade the public that the protection of their rights is its paramount concern.

3) (vii) As in scrutiny of policing, we consider that the public will only be satisfied over the impartiality of a process which holds the police to account if they can see that it has the direct public involvement and independence of a kind which they accept.

3) (viii) This we believe will also necessarily entail the kind of public representation which we described in point 2) (v).

4) Summary:

4) (i) Our central message to the Justice Committee, the Scottish Government and the Scottish Parliament is that in the fair, open and inclusive Scotland which we all wish to see policing must above all be policing for the people.

4) (ii) We believe that this means that future policing in Scotland should be transparent, publicly accountable and reflect its ownership and control by the people of this country.

4) (iii) The decision the Scottish Government has taken to reform the police forces in Scotland into one national force while offering the opportunity to save public funds carries with it the risks which creating any large powerful organisation entails.

4) (iv) However, the present considerations also offer us the opportunity to tailor our police service to the future needs of the Scottish people.

4) (v) We believe that in order to minimise risk to appropriate democratic control over policing and to maximise the opportunity for progressive change in policing the
people must have opportunities to have real, hands-on involvement in every aspect and at every level of policing.

4) (vi) The introduction of the present Bill gives us a seldom available opportunity to consider how we wish to shape future policing in Scotland and indeed life in Scotland. However, for the reasons given above we consider that the Bill now under consideration falls far short of an acceptable blueprint for the future provision of police services to this country.

Arthur McFarlane
Secretary, Integrity4Scotland
25 February 2012
Criminal Justice Supply Chain links into Security Cartel

Because of successive government reforms, G4S are now in the position where they are moving towards cartel control of every stage of the criminal justice system across England Wales which has been reformed to be the new highly profitable criminal justice supply chain.

On 29th December 2011, Lincolnshire Police handed control of all police “services” to G4S for 10 years awarding them a £200m contract (immediately indicating a further 15 year extension is already on the cards).

www.publicservice.co.uk/news_story.asp?id=18943

This contract gives G4S control of their police cells and police control rooms (with only 2 police officers supervising) but also the crime management bureau, ticket office, collisions units, criminal justice units, firearms licencing, hiring and firing of police officers, and police computers as well as fleets of police cars, police procurement and police finances.


Then on the 2nd March 2012 it was reported in the Guardian

“West Midlands and Surrey have invited bids from G4S and other major security companies on behalf of all forces across England and Wales to take over the delivery of a wide range of services previously carried out by the police.”

http://www.guardian.co.uk/2012/mar/02/police-privatisation-security-firms-crime

The contract is the largest on police privatisation so far, with a potential value of £1.5bn over seven years, rising to a possible £3.5bn depending on how many other English and Welsh constabularies get involved.

The breathtaking list of policing activities up for grabs includes investigating crimes, detaining suspects, developing cases, responding to and investigating incidents, supporting victims and witnesses, managing high-risk individuals, patrolling neighbourhoods, managing intelligence, managing engagement with the public, as well as more traditional back-office functions, such as managing forensics, providing legal services, managing the vehicle fleet, finance and human resources.”

http://www.guardian.co.uk/uk/2012/mar/02/police-privatisation-security-firms-crime
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http://www.guardian.co.uk/uk/2012/mar/02/police-privatisation-security-firms-crime

This English/Welsh contract, in effect, reduces our police officers to serve the only purpose of being arresting officers on behalf of G4S and other private security companies - effectively reducing every police officer to being nothing more, and having no place in policing other than to be glorified G4S Bounty Hunters.

In Scotland the SNP government have just introduced a bill to create a single Scottish police force to save money.


Is it the intention of the SNP government and Scottish police leaders to make the financial savings by privatising the entire Single Scottish police force?

It has already been reported John Shaw, the managing director of G4S has already held “exploratory” talks with leaders of two Scottish police forces.


While in February 2011 the SNP Justice Secretary, Kenny MacAskill shared a platform with John Shaw (managing director at G4S) at the Policing Scotland summit.

http://www.scotsman.com/news/scottish_police_in_talks_to_sell_off_cells_1_1501273

Since then G4S has been awarded a 7 year, contract to transport every prisoner in Scotland for the next seven years.

http://www.bbc.co.uk/news/uk-scotland-12739411
As more and more police “services” are being fast-tracked for outsourcing the combination of contracts awarded piecemeal, with no Monopolies Commission oversight, this is resulting in G4S grabbing contracts and policing power across the country.

Combine all these contracts with the Ministry of Justice awarding G4S a £300 million contract, starting on the 1st February 2012, to provide “services” to over 340 court, tribunal and administering buildings across the Midlands, Wales and the North of England.

G4S already have a 25 year contract, awarded in 2004 transferring the court facilities and employees from the court service to G4S for the entire Manchester Magistrates Court building which houses 18 courtrooms, a coroners court and 48 custody cells is managed by G4S, where they provide security and I.T. and mailroom functions alongside many other “services”!

G4S are even involved in training magistrates for their “customer journey” for the Bedfordshire, Essex and Hertfordshire courts Board (with 1,600 judicial office holders, judges and magistrates) covering the lives of 3.5 million people!

G4S are not only involved in policing, prisoner transport courts and magistrates training but have now extended their tentacles to take control of more and more forensics when they were awarded a contract for 5 police forces in England in South East of England for Essex, Suffolk, Norfolk, Cambridgeshire and Bedfordshire constabularies.

So G4S now have the power, through contracts, to police us, to control and examine forensic evidence, detain us and take us to courts they manage with some magistrates sitting in judgement who have received training from G4S.

But our G4S journey along the new criminal justice supply chain does not end there!

If you are found guilty of a crime and a tagging order is imposed, G4S once again take control with their dominance in control of Tagging and Control Orders (a
“market” with new contracts currently up for grabs, worth over £1 billion as control orders have exploded from the initial 3,500 in the first year to 70,000 per year and growing).

http://www.guardian.co.uk/society/2011/sep/30/electronic-tags-offenders

Despite G4S already controlling four prisons in England, the government handed G4S even greater power with the awarding of two 15 year contracts for £750 million to run HMP Birmingham (the first publicly run prison to be transferred to the private sector as well as the new prison, Feathersone 2, which is currently under construction).

http://www.g4s.com/en/Media%20Centre/News/2011/03/31/HMP%20Birmingham%20and%20Featherstone%202/

On Thursday 1st March the Guardian reported G4S new, more sinister methods, to increase their power and control within the criminal justice system when a prison governor had to throw out G4S “probation” staff from three prisons in South Yorkshire after discovering that the local probation trust had formed an alliance with the private security company G4S to take over the running of his jails.

http://www.guardian.co.uk/society/2012/mar/01/prison-governor-locks-out-probation-staff

G4S links with this probation “trust” demonstrate not only are G4S hoping to grab control of 3 more prisons, they also hope to take control of prisoners’ probation using the government’s planned “reform” of probation and community sentencing services.

http://www.guardian.co.uk/society/2011/jul/12/probation-services-put-out-tender

G4S are preparing their way now, having appointing David Griffiths as their new Director of Probation and Community Services on 8 December 2011

“David joins G4S with more than 25 years’ experience within the criminal justice system and in probation services, most recently as Deputy Director (justice policy) at the Ministry of Justice.”

http://www.g4s.uk.com/EN-GB/Media%20Centre/News/2011/12/08/New%20Director%20of%20Probation%20and%20Community%20Services/

And just to complete their control of the newly created “criminal justice supply chain” G4S have also been awarded three contracts for the government’s new welfare to work programme.

http://www.g4swelfaretowork.com/in-your-region/south-west/default.php

with Nick Clegg ensuring “they” will be meeting prisoners at the gates of the prisons on their release.
Still, at least the lawyers are independent of G4S – or are they?

The “reform” of British Legal Services (otherwise known as the Tesco Law) has opened up British Legal Services to ownership to those out with the legal system. In theory, this means G4S could buy a 49% stake in every legal practice in Britain (and we would never know).

Already at least one firm of Barristers quotes proudly on their website “. . . has been instructed in a variety of criminal cases, both for the prosecution and defence, regularly appearing in the Magistrates and Crown Court. As well as being regularly instructed by defence solicitors, . . . has undertaken cases for the probation service, G4S and the CPS in the Crown Court. . . . has appeared in several sentence hearings. . . . has regularly instructed to appear in Magistrates trials both for the CPS, G4S and Defendants and is looking to develop her Crown Court practice.”

http://www.dorestreet.co.uk/barristers/kayleigh-long-~82/

which only demonstrates the new power G4S wields when they have barristers quoting they are serving G4S needs alongside the Crown Prosecution service and the Crown Court in Britain’s criminal justice system.

Even our politicians are not independent of G4S, as, after giving up his MP role in 2010, New Labour’s Cabinet Minister John Reid joined the board of G4S Regional Management Services

http://www.parliament.uk/biographies/john-reid/25200 [Link no longer operates]

Combined with his appointment to the House of Lords John Reid is in a position to vote for greater public sector reforms (without being elected) which may just further benefit G4S (and John Reid’s) interests and profits, especially when this member of the House of Lords’ interest in G4S Regional Management Services had to be declared when he wrote an article for the Guardian on new security strategies being required for the MOD on cybercrime.

http://www.guardian.co.uk/commentisfree/2011/jun/03/defence-counter-cyberterrorism-threat

And what about the independence of our judiciary – would we know if they had shares in the G4S criminal justice supply chain?

Giving any one company so much power across our entire criminal justice system – to the extent it has been converted into a criminal justice supply chain which may be controlled by a cartel is criminal in itself.

But G4S contracts do not end there.
G4S are still gaining contracts for asylum seeking housing and borders despite a Guardian report in January 2012 indicating “A Commons home affairs select committee inquiry into the treatment of people being deported also found evidence of a racist culture among private security escort staff and a "too cosy relationship" between UKBA and its private contractors.

The MPs' inquiry followed the death of Jimmy Mubenga while he was being deported from Heathrow to Angola in 2010. Three G4S security guards escorting him were arrested and are still under police investigation.

Keith Vaz, the chairman of the Commons home affairs committee, said serious questions remained over the use of contractors in removals and deportations since Reliance took over from G4S following the death of Mubenga!"

http://www.guardian.co.uk/uk/2012/jan/26/deportation-techniques-mps-warn

The G4S 2012 Olympics contracts got a massive boost when David Cameron kindly doubled the security budget from £271 million to £553 million by adjusting the number of security guards required) as well as doubling the security budget of the opening and closing ceremonies from £40 million to over £80 million.

http://www.bbc.co.uk/news/uk-16030785

And the government's love affair with G4S even extends beyond policing and security to the classification of the disabled within our welfare system. G4S, in conjunction with the Department Of Work and Pensions advertising on the British Deaf Association website for volunteers to come forward for their “Personal Independence Payment Testing” stating “It will involve a single, one hour, face-to-face appointment with a healthcare professional from G4S Medical Services, working on behalf of DWP”.


One Guardian blogger wrote of the G4S/DWP trial assessment scheme “Will I still get Personal Independence Payments if G4S can't talk to me? Liz Ball is a deafblind wheelchair user but when G4S invited her to take part in a trial interview they failed to arrange an interpreter”.


But let’s not forget the G4S jewel in the crown – GCHQ - believe it or not they even have contracts there

“Ex-Prime Minister, Tony Blair states: "Secret intelligence gives the Government a vital edge in tackling some of the most difficult problems we face....intelligence forewarns us of threats to our national security; helps the Government promote international stability; provides support and protection to our forces; contributes to our economic health and strengthens our efforts against terrorism and serious crime.”
With this in mind, it is essential for a government organisation such as GCHQ to be kept highly secure at all times. An integrated security solution from G4S Technology offers the reliability, security and professionalism necessitated by a project such as this, and other integrated security projects throughout the UK.

And don’t discount Theresa May’s decision to split border control in two. Is this to pave the way for contracts to be awarded to “G4S Homeland Security” where their website states “At G4S we understand the bigger picture”?

When criminal justice services were in public control they were all kept completely independent to ensure vital freedoms and justice for the people of Britain.

It is amazing how quickly separate reforms have combined to transfer too much power into the hands of too few people.

And with government ministers leaving parliament to go straight on to the boards of the companies after they have “reformed” our laws and our criminal justice system, this surely demonstrates why all public services (and especially our criminal justice system) should be reverted back to complete public control.

We cannot put a price on justice and freedom (even if politicians can put a price on contracts and future board membership ensuring crime does pay for themselves and G4S).

G4S brag on their website “At G4S we understand the bigger picture” - sadly our politicians do not – because even the KGB will read this and weep.

There is surely a case for all police privatisation and criminal justice reforms to be put on hold and a public sector cartel commission be formed and investigation undertaken to ensure criminal justice is not controlled by private sector cartels across the whole of the UK.

If this is not put on hold the following scenario is what English and Welsh (and possibly Scottish) residents will face.

Could this be the future experience of victims under our criminal justice system which is being privatised faster than any reform before. (Hypothetical scenario below)

I cannot explain my distress when my house was burgled. As I waited for the police I was shaking from head to toe. The doorbell rang, they were here at last!

To my surprise it was not the police at the door but instead a burly man with a skinhead wearing a private security guard’s uniform. Was he here to sell me an
alarm system – how sick is that – how did he find out so fast I might want to consider a home security system after today’s events?

He proceeded to walk straight in to my home. What the hell was he doing? Flashing a badge he mumbled something about him being the scenes of crime “officer”.

I was gobsmacked! Since when was a private security guard in charge of a crime scene?

I immediately called the local police station to speak to a police officer – but I was told the police could no longer take my call and a representative of G4S would call me back!

Was I dreaming?

When I called my husband at work, he wouldn’t believe me, said I must have misunderstood. By this time I was confused and frightened and the return call from G4S just made it worse.

A brusque woman explained G4S now controlled all police services in my area, including crime scenes and after they had gathered the evidence they would send all evidence away for examination – to G4S forensics.

She also informed me if the suspects were caught G4S police transport would take them to the G4S controlled court to be placed in front of the magistrates who had just completed their G4S training in “customer experience” and not to worry, should the suspects be found guilty they will be tagged by G4S or transferred to a G4S prison, depending on the sentence.

This G4S representative then went on to say rest assured G4S Probation Services would take control of offenders when their probation began and put them on one of their G4S controlled work programmes.

I was also informed she would be happy to supply a list of legal practices in which G4S had a financial interest (apparently thanks to “reform” legislation introduced last year) and a brochure detailing G4S security products for my home which I may wish to consider (with a discount on offer if I provided my crime reference number).

As I looked around my devastated home the crime did not seem so bad when compared to the sense of danger this conversation and the G4S security guard’s presence in my home had created.
Could this really be happening?

Mel Kelly (aka Mary-Ellen Kelly)
5 March 2012
Evidence pertaining to Non Amendment Section 51 of the Fire Scotland Act

1. My evidence has been generated from my personal investigatory activities through consultation with various Police and Fire and Rescue Services in England, Chief Fire Officers Association Scotland, Fire Officers Association, Communities and Local Government, the National Policing Improvement Agency and my involvement with a petition I had lodged with the Scottish Parliament Petitions Committee (Petition Ref No 1254), and also my own personal circumstances, where I served as a Special Constable with Lothian and Borders Police from April 2007 to November 2008, whilst also employed as a Full time Fire Officer with Lothian and Borders Fire and Rescue Service.

Section 51 of the Fire Scotland Act is a continuation from a Section of legislation which was contained within the Fire Services Act 1947. (Section 32)

Section 51 states “A relevant authority, may not employ a Constable for the purpose of carrying out any of the functions as conferred on the authority by virtue of this Act”

2. In 2004 when the Fire and Rescue Services Act (England & Wales) was enacted, Section 37 of this Act stated: “No member of a police force may be employed by a fire and rescue authority for the purpose of discharging any of the authority’s functions under this act.” Special Constables are not deemed to be members of the ‘Police Force’ and are not covered by the definition in Section 101 of the Police Act 1996. However Special Constables in England and Wales are deemed to be warranted and attested officers, as such they possess full policing powers, including the power of arrest, which can be exercised in any police force in England and Wales. Guidance provided in Fire and Rescue Service Circular 62/2009 ‘Employment of members of Police Forces by Fire and Rescue Authorities’, clearly defines the situation in England and Wales which is: “Provided there is local agreement between the Chief Fire Officer and the Chief Constable of the Police Force, a Special Constable can be permitted to serve as a Retained or Wholetime Duty System Firefighter.” This clearly defines the situation from the Fire Service Legislative perspective, the following defines the situation from the Police Legislation: Firefighters Employed as Special Constables, “There is no restriction in the Police Act 1996 which prohibits Firefighters from becoming Special Constables. Firefighters employed on either the Retained or Wholetime Duty Systems who seek to also work as Special Constables are eligible to do so, provided there is local agreement between the Chief Fire Officer and the Chief Constable.”

3. I made direct contact with the National Policing Improvement Agency and the department of Communities and Local Government, to ascertain if there had been any reported cases, of a “conflict of interest” existing between an individual who was either a Retained or Wholetime firefighter who was also a Special Constable, in the
seven years of this legislations existence, the response from both Westminster Government and the NPIA was: "There had been no reported cases of a conflict of interest existing between the two roles, of anyone who was a Firefighter and also a Special Constable"

So this is very strong evidence which states that the hypothetical reasoning behind the Scottish Government continuing to retain Section 51, being that of "A conflict of interest could exist between the role of Firefighter and Police Officer," bears no relevance and accuracy, in modern times, as the existence of the Fire and Rescue Services Act 2004 proves this unequivocally.

4. During the Justice 2 Committee Official Report process, September 2004 – January 2005, (Fire Scotland Bill), there was much debate in relation to whether Section 47 of the Fire Scotland Bill “Prohibition on employment of Police”, should be retained, there was a large difference of opinions, the majority being in favour of the exclusion/amendment of this section, to allow Special Constables to be eligible to also serve as Firefighters particularly in remote rural areas, this was stated by CFOAS, as they wished that Special Constables were differentiated from full time Police Officers in the legislation. Those in favour of an amendment were: Lothian and Borders Fire Board, Highlands and Islands Fire Board, Fire Officers Association, Chief Fire Officers Association (Scotland), Retained Firefighters Union.

5. Throughout the period of my petition (Ref 1254), views were sought from the following organisational groups on the inclusion of Section 51 of the Fire Scotland Act, and whether they would wish it to be amended/removed, the following were in favour of an amendment:
Chief Fire Officers Association Scotland
Fire Officers Association
Association of Chief Police Officers in Scotland
Police Federation

Those wishing for Section 51 to be retained were:
Current Scottish Government
Fire Brigades Union (Scotland)

The reasons given by the Government and the FBU for the retention of Sect 51 were that a “Conflict of interest could exist between the roles of Constable and Firefighter. Fergus Ewing also stated that there are no differences between Special and Regular Constables in the context of Police powers, both take the same oath to the same office, and the powers and responsibilities associated with their roles are the same. I shall refer to previous evidence in relation to the situation in England and Wales, Special Constables in England and Wales hold exactly the same Police powers as Regular officers, Special Constables are fully warranted and attested and hold full Policing powers.

6. A point which was raised by myself during the process of my petition was:” Why does a similar restriction not exist, in the Fire Scotland Act, which prevents other members of the emergency services, being eligible to be appointed by a Fire Authority, as if a conflict of interest could apply between the Police and the Fire Service, then this could also be true for other services."
7. So to clarify matters, in Scotland Special Constables hold the same Police powers as that of Regular Constables, as do their counterparts in England and Wales, but in Scotland Special Constables are not differentiated from Regular Constables under (Sect 51), in being prevented from also serving as a Firefighter, because according to the Government a conflict of interest could exist, as their Police powers are the same. But in England and Wales Special Constables are differentiated under the Fire and Rescue Services Act from Regular Constables, therefore they are eligible to be appointed as a Firefighter under agreement between the Chief Constable and the Chief Fire Officer. There have been no reported cases of a conflict of interest, even though Special Constables and Regular Constables in England and Wales hold the same Police powers, as do Special Constables and Regular Constables in Scotland.

8. During the 18 month period where I served as a Special Constable and also at the same time, as a Full time Firefighter, on not one occasion, did a conflict of interest situation occur, because I held Police powers, and also operated as a Firefighter. I must stress that during this 18 month period I attended incidents as a Firefighter, there were occasions where criminality was involved, but due to the fact that I was on duty as a Firefighter and not as a Special Constable, I acted in my Firefighter role only, and because I had a greater understanding and awareness of the manner in which the Justice system functions, I ensured the preservation of evidence, and acted as a more effective professional witness.

Serving as a Special Constable and also having the training of a Firefighter served as a huge advantage whilst attending incidents as a Special Constable, especially for example, at Road Traffic Collisions, where hazardous materials were involved and at incidents where casualties required treatment prior to the arrival of the Ambulance Service, as Firefighters are trained to a significantly higher level in casualty care, to that of the Police, and also attending incidents involving Water Rescue, as I could inform Police Officers of the systems of work/procedures/protocols which the Fire Service utilise, so that the inter-agency incident could operate more effectively.

The restriction of preventing Special Constables from being eligible to be appointed as a Firefighter exists solely from the Fire Scotland Act, as Chief Constables have complete discretion, in appointing individuals who have employment or business interests' outwith the Police Service. (Regulation 5 Police Special Constables Scotland Regulations 2008)

9. In relation to the responses from the online consultation on Police and Fire Reform, (Question 23) the following were in clear favour of an amendment to Section 51 of the Act, providing realistic and credible reasons:

Aberdeenshire Community Planning Partnership
Aberdeenshire Council
Association of Principal Fire Officers
Chief Fire Officers Association Scotland
Central Fire and Rescue Service and Highlands and Islands Fire Board commented that the existing arrangements were justified, however there may be occasions within remote rural areas that justify a Constable becoming a Firefighter.

East Ayrshire Council, East Renfrewshire Council and Falkirk Council commented that, this was a matter, for the Police and Fire Services to determine.

10. To summarise, concerns have been expressed by Organisations, who can clearly appreciate and fully understand, the advantages an amendment of Section 51 of the Fire Scotland Act 2005, would bring to the communities of Scotland, mainly communities who reside within the remote rural areas of our country, where suitable publically spirited individuals who could quite effectively serve their community as a Special Constable and a Firefighter either Wholetime or Retained, but currently are unscrupulously prevented from doing so, from a section of legislation which was created in 1947, but has been included in modern legislation for a hypothetical reason which, by the very nature of the evidence which I have collated, I have proven to be totally unethical and disproven.

To retain this section of legislation unamended which is 65 years old into our modern Scottish society for a reason, which refers to a hypothetical scenario, which has never occurred during seven years of the existence of the equivalent English and Welsh Legislation, will only result in communities of Scotland being deprived of an enhancement of the services which the Scottish Police and Fire Services, can provide to making Scotland’s Communities a Safer place to live and work.

11. Therefore I respectfully implore, the Scottish Parliament to take cognizance of the evidence which I have presented, and consider an amendment to Section 51 of the Fire Scotland Act 2005 (as amended) to differentiate between Special Police Constables and Regular Police Constables, to effectively bring Section 51 in line with Section 37 of the Fire and Rescue Services Act 2004 (England and Wales). This in effect would retain the prohibition of the Scottish Fire and Rescue Service from employing a Full time Police Constable, but would allow a Special Constable to be eligible to be appointed as a Firefighter either Wholetime or Retained, through agreement from the Chief Constable and Chief Fire Officer.

Mark Laidlaw
3 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Northern Joint Police Board

The Northern Joint Police Board welcomes the opportunity to provide written evidence to Justice Committee on the Police and Fire Reform (Scotland) Bill. The Board is keen to contribute to the legislation to ensure the new arrangements for single forces work effectively from their inception. The Board seeks continuity in the performance of police and fire and rescue services in the Northern area. The constituent authorities of the Northern Joint Police Board intend to be pathfinders to aid the transition to the new single services.

1. Part 1, Chapter 1, Section 1 and Schedule 1 The Scottish Police Authority

Schedule 1 provides that the Scottish Police Authority will have between 7 and 11 members, all to be appointed by Scottish Ministers with appointments held for no more than 4 years. The Northern Joint Police Board (NJPB) is concerned that this size of membership is too small to allow adequate regional or local input to Scottish policing arrangements. The NJPB seeks the size of the Board to increase to 15 members. It also seeks reassurance in the Bill that membership of the Authority makes provision for Scottish rural, island and urban community safety interests. The NJPB sees the inclusion of local elected members beneficial in this respect, and seeks that they comprise at least 8 of 15 members on the Scottish Police Authority. This would bring a breadth of experience and knowledge of policing across Scotland. The NJPB supports the appointment of Authority members through the Public Appointments process.

The use of sub committees may be useful but if the maximum number of Board members remains at 11, this would be too small for proper consideration of rural, island and urban issues at sub-committee level.

2. Part 1, Chapter 1, Section 2 Functions of the Scottish Police Authority

The NJPB welcomes the inclusion of maintaining the Police Service, promoting and supporting continuous improvement in the policing of Scotland and the accountability of the chief constable and the need for proportionate, accountable and transparent governance in the main functions of the Scottish Police Authority. However the NJPB seeks assurance that these functions will have regard to the current standard of policing in the Northern Constabulary area. Specifically it seeks assurance that the legislation and/or accompanying guidance will ensure:

- the maintenance of the police service in the northern area (Highlands and Islands);
- that continuous improvement will be based on current performance in the northern area and not based on a levelling of performance where that might be lower for other areas of Scotland or for Scotland as a whole; and
- that appropriate local governance arrangements are made for the area which includes mainland and island communities. Community representation in these areas should have no less weight than community representation in other areas of Scotland.
The NJPB expects that there will be no reduction in service performance in the Highlands and Islands as a result of police reform.

The NJPB seeks clarity on the nature of the relationship between the members of the Scottish Police Authority and the members of the local committees and with other regional bodies such as the Community Justice Authorities and Regional Transport Partnerships.

3. Part 1, Chapter 1, Section 3 Maintenance of the Police

The NJPB notes the provision for the Scottish Police Authority to provide and maintain various assets to carry out its functions. It seeks the inclusion in this Section of a reference to sharing public assets with other public bodies where that would enable best value for the public purse. This could be detailed further in guidance, with reference for example made to shared buildings, shared vehicles or shared maintenance of them, shared land or partnership arrangements for land disposal for best community benefit, shared ICT provision and shared procurement where appropriate.

4. Part 1, Chapter 1, Section 5 Directions

The NJPB would be keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of police services to ensure either:

- Minimising the loss of front-line or back office services currently based in the Northern area or
- for new central services to be moved to the Highlands and Islands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements. For example there are shared arrangements with Highland Council Service Points for customers in some rural communities at the moment and with Highland Council for out of hours calls. There are arrangements too with Orkney Islands Council, with the Stromness Pierhead Regeneration Project, where a new Stromness library, Council Customer Services and Police contact will share a building.

5. Part 1, Chapter 2, Section 7, Senior Officers

The NJPB requests that the appointment of the chair and other members are fast tracked so that Chief Officers can be appointed before December 2012. Appointing the Chief Constable sooner will enable transitional arrangements to be put in place earlier. If appointment to the Scottish Police Authority cannot be fast-tracked, the NJPB suggests that the new chairs of joint boards are brought together to select the chief officers for police and fire to enable recruitment September 2012.

The nature of the relationship between the Chief Constable and local elected members or the new local committees is not clear. The NJPB seeks assurance that this matter will be considered in the Bill process.
6. Part 1, Chapter 2, Section 9 Special Constables

The NJPB welcomes the provision in the Bill to continue with the appointment of special constables. It seeks assurance that the appointment of special constables by the Chief Constable will continue to supplement and not replace the appointment of regular constables in the Highlands and Islands. The NJPB has two reasons for responding in this way:

a. The NJPB is concerned that the new Authority or Chief Constable may have a perception that serious crime is less of an issue in the Highlands and Islands than elsewhere in Scotland (this is not evidenced);
b. The move to a Police Service of Scotland, without careful human resource management, may lead to a drain of talent from the Highlands and Islands causing recruitment difficulties for regular constables in the future.

7. Part 1, Chapter 2, Section 15 (Constables: service outwith the Police Service of Scotland) and Part 2, Section 99 sub section 9 and Amendments relating to Part 2.

The NJPB seeks assurance (through a provision in the Bill or in accompanying guidance) that when consent is given for constables to be engaged in service outwith the Police Service (paid or voluntary) that this does not exclude engagement in another emergency service (paid or voluntary). This assurance is sought because it may be helpful in remote rural and island communities for there to be an ‘emergency first responder’ capability, where skills found in the separate emergency services (police, fire and rescue and ambulance) could be developed across staff with these roles and deployed more quickly to deal with emergencies arising.

Part 2, Section 99 of the Bill does not make reference to a statutory bar on employment within the Scottish Fire and Rescue Service. This existed in the Section 51 of the Fire (Scotland) Act 2005, but there appears to be no amendment to the prohibition on employment of police in the Amendments relating to Part 2 of the Bill (page 110). The NJPB is unsure why this prohibition needs to remain and presses for it to be repealed.

By making provision for paid and voluntary employment in more than one emergency service, some recruitment difficulties in remote rural and island authorities may be overcome.

8. Part 1, Chapter 4, Section 33 Strategic Police Priorities

The NJPB welcomes the provision (at sub section 3) that before determining the strategic priorities for the Scottish Police Authority, Scottish Ministers must consult with ‘such persons as appear to them to be representative of local authorities’. This may be interpreted as consultation with a national body such as Cosla; however with arrangements to be trialled through local pathfinders for the engagement and scrutiny of local police plans, there may be merit in specifying in the Bill the need for Ministers to consult with locally elected representatives involved in the scrutiny of their local police plans, especially if the strategic police priorities are to be informed (at least in part) by community safety issues and priorities in communities. This approach may also reduce the time required to consult local authorities on the Strategic Police Plan (as set out in subsection 4).
9. **Part 1, Chapter 5, Sections 38 and 39 Best Value**

The NJPB welcomes the duty of the Scottish Police Authority to make arrangements to secure Best Value and for these to be aligned to the duty placed on local authorities. It may be worth noting that arrangements for auditing Best Value (in police and local authorities) may change as the approach to external scrutiny of community planning partners and partnerships in the achievement of outcomes is currently under review. This may be dealt with in the future in accompanying guidance to the legislation (referred to in section 39).

10. **Part 1, Chapter 6, Section 41, Annual Accounts**

Although the Financial Memorandum for the Bill is being considered by the Finance Committee, the NJPB is concerned that the proposed delivery model means that the new single forces will not be able to recover Value Added Tax (VAT). This will incur additional cost to the public purse and reduce resources for the new services. The NJPB acknowledges that the Scottish Government is in discussion with HM Treasury and the HMRC seeking exemptions, but the NJPB seeks assurance that this will be resolved before the legislation is passed.

11. **Part 1, Chapter 7, Section 45 Local Policing**

In subsection 1 reference is made to adequate arrangements being in place for each local authority area. The NJPB would like to see cross reference with the policing principles (Section 32) and the local implementation of the Police Authority functions (especially Section 2 sub section 1 (a) maintenance of the police service and (b) continuous improvement).

The NJPB welcomes the provision at sub section (2) that a local commander must be designated for each local authority area. It does not however specify the rank for the local commander. If this is to vary across local authorities, there is a concern that in smaller local authorities (e.g. island authorities) a lower ranking officer will be appointed. This is of concern because in an organisation with a hierarchical structure, they would have a lower level of authority within the Scottish Police Service potentially limiting their capacity to influence the national policing plan and the resources required for the local police plan. The NJPB seeks provision in the Bill or accompanying guidance that if the rank of a local commander is to vary, that the position of local commander is afforded a particular status which would not be superseded by rank in other local command areas on matters affecting local command in the Highlands and Islands and the resources for it.

Under sub section (3) the Bill provides that a local commander could cover more than one local authority area. This is more likely to be the case where the local authority has a relatively small population or covers a relatively small geography. With this more likely to affect the Highlands and Islands, the NJPB is concerned that it may not be as well served as other areas with a dedicated local commander. This is of even more concern if the rank of the local commander is likely to be lower than in other areas. Assurance is sought in the provisions of the Bill or in the accompanying guidance, that service delivery, performance and resources will be
fairly distributed with no reduction for the local authority areas currently served by Northern Constabulary.

12. Part 1, Chapter 7, Section 46 Local Authority role in policing

The NJPB welcomes the provisions in the Bill for the mandatory involvement of the local authority in setting priorities and objectives for policing in the area, in providing feedback on policing in the area and improvements to it and in receiving reports on police functions and complaints made. As a minimum the NJPB seeks to strengthen these provisions or include a further provision that the local commander must have regard to the views of local authorities in their involvement in local priority setting and objectives and in their feedback on performance.

This section of the Bill provides little assurance on local accountability, scrutiny and governance for local policing. While arrangements for proper local scrutiny of policing and for community engagement are to be trialled through pathfinders, these will not be evaluated until after the Bill is enacted, so the Bill should at least make reference to the principle and value of local scrutiny of policing in its area or explicitly state the role of local committees in scrutiny of performance.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The NJPB seeks assurance that these costs are netted against the transfer of grant from local to central government.

In addition it would be helpful if the accompanying guidance could refer to:

- the support for joint strategic assessment with the local authority to understand needs and priorities for policing and
- the performance standards and performance framework to be used for reporting on how police functions are being carried out. This would support one of the Government’s four pillars of public service reform; strengthening the performance culture of public bodies.

The NJPB is concerned that the Bill does not make clear the alignment of arrangements for local policing with community planning arrangements. Community planning should reduce the need for separate plans for local policing and fire and rescue services and instead support the production of a joint public protection and community safety plan for each area as agreed with other partners especially local authorities, local health boards and the Scottish Ambulance Service locally. The NJPB accepts that some CPPs may be more able to proceed with this joint planning than others, but it seeks provision in the Bill for those partnerships to proceed in this way if they are ready to do so.

Community planning is also the process for agreeing joint operational working and tasking. More explicit reference to building on current community planning arrangements at the planning and operational levels would support the integration and prevention agendas better as well as finding potential efficiencies in service planning. This point relates to the provisions in the Bill relating to community planning and the local policing plan below.
13. **Part 1, Chapter 7, Section 47 Duty to Participate in Community Planning**

The NJPB welcomes the inclusion of the local commander to participate in community planning; although it notes there is no explicit requirement made in the Bill for the Local Senior Officer for the Fire and Rescue Service to participate in community planning. The NJPB seeks the same duty to apply for the Local Senior Officer. In addition there are four further provisions or assurances requested by the NJPB:

a. The NJPB seeks greater clarity either in the Bill or in its accompanying guidance on the extent of local joint working expected of the new Scottish Police Service. This is required because the NJPB fears that current effective joint working in key community safety areas (child and adult protection, dealing with violent offenders, violence against women, tackling alcohol and drug misuse, re-offending, anti-social behaviour and road safety) will be undermined if current policing input is reduced in any way. Joint working is effective if those taking part have authority to task resources decisively, quickly and within the local command. Delegated authority for local commanders in deploying their local resources needs to be assured for effective police participation in community planning.

b. The NJPB seeks clarity on how protocols for joint working can be maintained and improved in the change to a Scottish Police Service.

c. The NJPB seeks provision made for the continuation of joint working to support police service performance (including the sharing of resources across partnerships). The three island authorities (Orkney, Shetland and Western isles) are working with the Scottish Government to develop a model for integrated service provision in island communities which could see much closer integration of services within the public sector in each island group.

d. The NJPB seeks to extend the provisions for the duty to apply also to the Scottish Ambulance Service, given the need to align its resources with other emergency services and local partnership arrangements.

e. The NJPB is aware of the current detailed review of community planning and any implications arising from that for the Scottish Police Service will need to be reflected in the Bill or in accompanying guidance.

14. **Part 1, Chapter 7, Section 48 Local Police Plans**

The NJPB welcomes the provisions in the Bill for the local commander to prepare and submit a local police plan to the relevant local authority for approval, but sees these provisions as limiting. This is because:

1. It is not clear what the process would be if approval is not given. Some positive process of resolving any lack of agreement would be required.

2. It is less likely to support the approach to achieving public protection and community safety outcomes. Outcomes require partnership or integrated
working with other relevant partners, not the development of a separate plan by one organisation for consultation with others. It would be more helpful instead to at least allow for the local police plan to be developed jointly with the local authority and for it to be subject to public consultation. Even better would be the acknowledgement in the Bill that outcomes mean the involvement of other partners, notably the local fire and rescue service, the Health Board, Scottish Ambulance Service locally and the third sector. Having a joint public protection and community safety plan could be achieved within a framework of national outcomes, national policing priorities and the fit with local outcomes and local resources. All of this can be supported by the development of the Single Outcome Agreement, especially in relation to partnership performance. This joint approach would enable local solutions to be developed for integrated and preventative services, two of the Governments four pillars of public service reform.

Subsection 5 refers to a review of the local police plan at least every 3 years, but this is not well aligned to the requirement for an annual police plan (Section 35). The Bill or accompanying guidance should enable an annual review of the local police plan.

15. Part 1, Chapter 10, Section 62 and 63, The Police Investigations and Review Commissioner

The NJPB seeks further information on the implications in the Bill on the change proposed for the Police Complaints Commissioner for Scotland to become the Police Investigations and Review Commissioner. In addition the NJPB seeks provision in the Bill for there to be an opportunity for the local scrutiny of local complaints handling.

16. Part 1, Chapter 11, Sections 71 and 74 Her Majesty’s Inspectors of Constabulary in Scotland

It is not clear how the Bill makes provision for reducing external scrutiny and making it risk based and proportionate as required following the Crerar Review. In addition it does not take into account the current review of external scrutiny of community planning partnerships. The NJPB emphasises this point given the provisions in the Bill for a separate Chief Inspector of the Scottish Fire and Rescue Service (Section 117).

17. Part 1, Chapter 17, Section 95 and Schedule 4 Transfer of constables, staff, property etc

The NJPB will consider the potential impact of a staff transfer scheme for staff who are to be treated as police employees but are employees of the local authorities involved in the NJPB. It would be helpful to have further guidance available on this matter in advance of the appointed day.

This is important because Highland Council provides services to the Joint Board in terms of clerking and administration, policy development and finance services. Similarly Highland Council has shared services for procurement, out of hours call handling and some co-located customer services within some remote and rural
communities. The Council therefore needs to understand the implications, if any, for staff involved.

18. **Part 2, Chapter 8A, Section 112 Scottish Fire and Rescue Service Strategic Plan**

The NJPB recommends that in preparing the strategic plan the Scottish Police Authority is named as a mandatory consultee.

19. **Part 2, Chapter 8A, Section 113 Local Fire and Rescue Plan**

The NJPB recommends that the local police commander is at least included as a mandatory consultee for the local fire and rescue plan. In keeping with the written evidence provided at paragraphs 12 and 14 above, the NJPB seeks provisions in the Bill for the production of a joint public protection and community safety plan involving not only police, fire and local authorities, but also the local ambulance service and NHS Boards.

20. **Part 2, Chapter 8A, Section 113 (41K) Monitoring by local authority**

With the monitoring of the local police plan by the local authority also a provision of the Bill, with the similar provision for the local fire and rescue plan, it would be more effective if separate plans are to be produced for them to be monitored together or simultaneously given the connections and dependencies across both emergency services.

However, if the Bill is amended to enable the production of a joint public protection and community safety plan for each local authority area, then each contributing partner would need to be accountable for its performance against the plan. This can be facilitated locally through joint scrutiny arrangements (the pathfinder committees) and it can be reported nationally through the arrangements for the Single Outcome Agreement.

Northern Joint Police Board
28 February 2012
Written submission from the Police Complaints Commissioner for Scotland

1. The Police Complaints Commissioner for Scotland ("the PCCS") welcomes this opportunity to provide written evidence to the Justice Committee on the Police and Fire Reform (Scotland) Bill. The evidence is restricted mainly to Chapter 10 of the Bill which contains proposals for additional, investigative functions to be given to the PCCS (to be re-named the Police Investigations and Review Commissioner ("PIRC")).

2. In general, the PCCS views the terms of Chapter 10 positively and as going some way to satisfying the requirements of articles 2 and 3 of the European Convention of Human Rights ("ECHR") now that a single police force is to be established. There are, however, a number of aspects which are unclear, and questions as to how the proposed arrangements might work in practice.

PIRC investigations into serious incidents involving the police

3. Section 63 envisages PIRC investigating "serious incidents involving the police". These are defined as including incidents in which there is an indication that the police may have caused or contributed to the death or serious injury of an individual; cases in which a person in police custody has sustained serious injury; and cases in which the police have used a firearm.

4. The Bill does not, however, contain any provision as to how such investigations will be triggered. Unlike those cases in which there is an indication of criminality, investigations into "serious incidents involving the police" are not dependent upon a direction from the prosecutor. The Bill appears to envisage the Chief Constable notifying PIRC of such incidents as there is reference in section 67 to the possibility of regulations requiring the Chief Constable or Scottish Police Authority ("the Authority") to refer particular cases to PIRC. The prompt referral of such cases will be of critical importance to the exercise of PIRC’s functions and the integrity of its investigations. The PCCS therefore considers that the notification arrangements ought to be specified in the Bill, rather than within regulations which may (or may not) be made.

5. All other police oversight bodies in the UK and Ireland operate on the basis of mandatory referrals by the police of cases involving death or serious injury (see e.g. section 102(1) of the Garda Siochana Act 2005 (Ireland); and section 14C of the Police Reform Act 2002 (England and Wales)). In the absence of a similar provision, it is unclear how PIRC might be alerted to a serious incident of the kind it is expected to investigate. At best, the police service will decide voluntarily to refer incidents to PIRC which itself might give rise to uncertainty and inconsistency. At worst, the police service may decide to investigate the matter itself, thereby undermining the very purpose of this part of the Bill, namely to ensure an independent investigation of such incidents.
6. The PCCS also considers that the distinction between investigations of “serious incidents involving the police” and those commenced only on the direction of the prosecutor may in practice become blurred, or disappear altogether. For example, while investigating an incident in which a suspect in police custody has suffered serious injury, PIRC may obtain evidence of a police assault. In such a case, it appears that PIRC would require to cease its investigation, alert the prosecutor and then await a direction as to whether to proceed. If issues such as this are to be resolved quickly and without confusion as to which body is to investigate the incident, there will require to be clear lines of communication between PIRC and the prosecutor. A comprehensive protocol between PIRC and the Crown Office will also be required.

The obligation upon PIRC to publish reports of investigations

7. Section 68 provides that PIRC must prepare and publish reports of its investigations into serious incidents involving the police, as well as those it undertakes in the public interest. In general, the publication of reports will serve to enhance public confidence in the way such incidents are dealt with. However, cases investigated under this part of the Bill will involve serious issues, and alleged victims, their relatives etc will rightly expect PIRC’s findings to be capable of effecting change where appropriate. As it stands, the Bill makes no provision as to how this might be done and by whom. For example, is it envisaged that PIRC will merely detail its findings, or will it be expected to make directions to the police service with a view to avoiding a similar incident occurring in future? If the latter, PIRC will require to be empowered to make such directions and the police service subject to a corresponding duty to implement these.

8. The PCCS is also concerned that the obligation upon PIRC to publish reports of its findings is not subject to any exception. There may, for example, be circumstances in which the publication of a report will not be in the public interest. This could be the case where publication, even in anonymised form, might result in harm to an individual, or prejudice legal proceedings. Section 68 allows PIRC to identify individuals in reports where this is considered to be in the public interest. The PCCS considers that a similar provision should be inserted to permit PIRC not to publish at all, publish only partially, or delay publication where this is considered necessary in the public interest.

Duties in respect of PIRC investigations

9. Section 67 provides that the Scottish Ministers may, by regulations, make provision requiring the Chief Constable, the Authority or other persons to assist and co-operate with PIRC when carrying out an investigation. It is unclear whether such regulations will in fact be made and, if so, whether this will be done prior to PIRC becoming operational. Again, the PCCS considers that such provisions are critical to the effective performance of PIRC’s functions and the integrity of its investigations. In the PCCS’s view, they should therefore feature in the Bill itself.

10. As the commencement of a PIRC investigation will be dependent upon prior notification by the prosecutor and/or police, its investigators are unlikely ever to be first at the scene. PIRC will require to attend incidents as quickly as possible, but the
time taken to do so will obviously increase in the event that the incident occurs in a remote area or a location some distance away from the central belt. In light of this, the PCCS considers it essential that the Bill contains a provision obliging the police service to preserve the scene of an incident, and any evidence, pending the arrival of PIRC investigators. In the PCCS’s view, the Bill must also contain a provision requiring the Chief Constable to co-operate with PIRC in its investigations and to comply with any reasonable direction given by PIRC in this connection. Obligations of this kind will be essential if PIRC is to secure the assistance of the police during the course of an investigation, where this is necessary. Although such obligations could be imposed by statutory instrument, again it is unclear whether regulations will in fact be made and, if so, whether the intention is to do so before PIRC becomes fully operational.

11. A notable feature of Chapter 10 is that there are few obligations imposed upon PIRC, the Chief Constable or the Crown. For example, under the current provisions the decision to direct an investigation by PIRC in serious criminal cases and deaths in custody is a matter entirely for the discretion of the prosecutor. Likewise, as noted above there is no obligation upon the Chief Constable to refer serious incidents to PIRC, and no obligation upon PIRC to carry out investigations into such incidents.

12. Although section 67 provides that regulations may be passed about the circumstances in which PIRC “must, must not or need not carry out an investigation”, again the PCCS considers this issue to be too important to be left in a state of uncertainty. The case law of the European Court of Human Rights under articles 2 and 3 is at times inconsistent as to precisely what an independent and effective investigation comprises, and in what circumstances such an investigation is required. However, there appears to be sufficient clarity to allow the Bill to prescribe the types of cases which require to be referred to PIRC. In any event, there is nothing to prevent the legislation going beyond the minimum standards set by the ECHR. The extent of investigation actually required is a matter which can be determined by PIRC, subject to any instructions given by the prosecutor.

13. A lack of clarity regarding those cases which must be referred to PIRC may give rise to uncertainty and inconsistency. It may also increase the scope for legal challenges by alleged victims based on a failure to adhere to the positive obligations under articles 2 and 3. The IPCC in England and Wales frequently faces such challenges in connection with decisions not to conduct independent investigations into serious incidents.

The provision of forensic services to PIRC

14. Section 31 of the Bill provides that the Authority must provide forensic services to the police service, the Lord Advocate and procurators fiscal, and may provide such services to other persons as it sees fit. Section 84(5) permits the Authority to charge for services it provides to public bodies and office-holders, but provides that no such charges will be made for forensic services it provides to the Lord Advocate or procurators fiscal.

15. Presumably PIRC would not be charged for any forensic services provided by the Authority in respect of an investigation undertaken on the direction of the prosecutor;
however, the PCCS considers that this should be made explicit in the legislation. More importantly, there is nothing in the Bill to prevent PIRC incurring significant costs for forensic services in respect of those investigations which are not directed by a prosecutor (i.e. section 41B investigations and those carried out in the public interest).

16. In light of these concerns, the PCCS considers that section 31 requires to be amended to make clear that, as well as the police service and the Crown, the Authority must also provide PIRC with forensic services. The PCCS also considers that an amendment to section 84(7)(a) is necessary, making clear that the Authority may not charge for the provision of such services to PIRC.

Local policing

17. Section 46 of the Bill provides that the local authority may monitor and provide feedback to the local commander, in particular regarding its views on any matter in relation to the policing of its area. The local authority may also make recommendations for improving the policing of the area. As the local commander is specifically tasked with providing the local authority with statistical information on complaints made about the police in relation to the area, the PCCS considers that this places a duty on the local authority to hold the local commander to account in this respect. The PCCS would welcome this. The Bill is, however, silent as to how local authorities should implement their arrangements for the scrutiny of local policing. In the PCCS’s view, it is important that scrutiny is exercised consistently and takes account of guidance from PIRC in respect of complaints about the police. While the Authority and the Chief Constable will be obliged under statute to have regard to PIRC guidance, there is a deficit in terms of the local authorities when they come to exercise that scrutiny.

Co-operation, Exchange of Information etc

18. Section 82 of the Bill obliges Audit Scotland, PIRC and HMICS to co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions. The PCCS supports this provision entirely, but it is important to emphasise that the duty to secure efficient and effective complaints handling currently lies with PCCS. Based on the current proposals, the same function will in the future be exercised by PIRC. This arrangement ensures that the oversight landscape does not become cluttered or confused and also that the arrangements for handling complaints by policing bodies is subject to independent scrutiny. The PCCS has to date undertaken a number of intelligence-led audits of complaints handling arrangements within various policing bodies, the results of which it has shared widely.

PCCS
28 February 2012
At the close of my evidence to the Justice Committee on 6 March, the Convenor advised that any further points the panel wished to raise should be communicated to you in writing. I have summarised below a number of issues I had intended to raise during my oral evidence.

1. I mentioned briefly in my oral evidence the need for PIRC to be given protection from defamation proceedings. Over the course of the last two years, the PCCS has been subject to the threat of such proceedings on a number of occasions in respect of case reports published on our website. Unlike many other complaints oversight bodies (e.g. the Scottish Public Services Ombudsman) the PCCS has no privilege in respect of such actions. I therefore seek an amendment to the Bill providing PIRC with absolute privilege, or at the very least, qualified privilege to protect it from defamation proceedings.

2. Section 69 of the Bill allows PIRC to petition the Court of Session where it is believed that a person is obstructing an investigation. I seek an extension of that provision so that it covers the current functions of the PCCS. In other words, where PIRC believes that a person is obstructing its review of a relevant complaint, it may petition the Court of Session in exactly the same manner as it would where a person is believed to be obstructing an investigation.

3. Section 68 of the Bill requires PIRC to publish the findings of certain types of investigation. I mentioned in my written evidence that this required to be subject to a public interest exception. However, I also believe there is a strong case for extending the obligation to publish to the reports which the PCCS currently produces. Since 2007, the PCCS has published reports of complaint handling reviews on its website. This is done in order to promote transparency and is instrumental in holding the police service to account. However, there are concerns that, in the absence of a statutory obligation to publish these reports, their publication, even in anonymised form, breaches the Data Protection Act 1998. In order to remove any doubt over the legitimacy of the publication of these reports, I seek a statutory obligation to do so, subject to a public interest test.

4. I also believe there is a strong case for imposing some form of time limit for cases to be investigated by PIRC. The establishment of PIRC will in all likelihood lead to an increase in expectation on the part of many of those who believe that their cases were not properly investigated under the previous regime. If PIRC is to avoid being inundated with requests to investigate incidents which occurred many years ago, there must be some time limit imposed for investigations. The terms of such a time limit would require to be carefully worded in order not to exclude those cases where there is justified concern over previous investigations.
5. With regard to the question posed by John Finnie MSP towards the end of the session, I believe that the proposals for amending the constitution of the Police Appeals Tribunal are sensible.

I very much welcomed the opportunity to address the Justice Committee directly. I hope these additional issues can also be considered by the Committee.

John McNeill
Police Complaints Commissioner for Scotland
12 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from Reform Scotland

Thank you for inviting Reform Scotland to submit evidence to the Justice Committee’s inquiry into the Police and Fire Reform (Scotland) Bill.

Although we do believe that there needs to be a strengthening of specialist police functions and welcome the proposals to bring these services together, Reform Scotland is against the proposal to create a single Scottish police force.

However, we recognise that the political climate is such that the new force will be created so we have focused our evidence on how to ensure the new single force is not a centralised one. Reform Scotland’s main concern with the bill, as proposed, is the proposal to take a largely local service and turn it into a centralised national one, something for which we do not feel the Scottish government has demonstrated the need, and which represents a reduction of accountability and transparency, not the increase which is required.

As a result, our submission mainly addresses the appointment of members to the proposed Scottish Police Authority, the financing of the police and the role of local authorities within policing.

Scottish Police Authority

One of the key drivers of Reform Scotland’s approach to policing in Scotland is the need to improve local accountability. We would agree with the Scottish government that the current system of joint boards, representing a redundant layer of government in Scotland, means very few people have an idea as to who represents them in the policing chain of command. It is, therefore, essential that any changes to the structure improve local accountability.

However, we would disagree with proposals for the Scottish government to appoint members of the Scottish Police Authority, in effect creating a policing quango, which blurs transparency and accountability and leaves the public unsure who is responsible. Instead, Reform Scotland believes that the Scottish Police Authority should be made up of representatives of each of Scotland’s local authorities, with each council having a right to place a representative of their choosing on the board. Due to the national elements of policing, we would be happy for representatives from the Scottish government, whether minister or senior civil servant, to also sit on the board.

We appreciate that this means a rather large police authority. However, this is due to the number of local authorities in Scotland. As the policy memorandum states “most policing and fire and rescues services are delivered locally” and we therefore believe that it is essential that this is reflected in the make-up of the Scottish Police Authority.
Reform Scotland does not believe that the need to remove councillors from this role in the policing hierarchy has been justified.

Finance
Reform Scotland disagrees with the funding proposals which would see the police being funded directly by the Scottish government. We believe that it is essential that local authorities continue to contribute toward the cost of policing, just as we believe that they must be involved in the new Scottish Police Authority. As the old adage goes, “He who pays the piper calls the tune”, and if local authorities have no control over the purse strings then it will be difficult for councils to adopt differing policies towards policing, or even have a meaningful input into policy direction.

Whilst there is some scope to allow local authorities to increase funding to the police, there also needs to be the ability for them to decrease funding if they believe funding can be better utilised elsewhere, especially if that funding is in areas such as youth services or social work which may be able to prevent crime in the first place.

Role of local government
Historically, policing has been a local service in Scotland, reflecting different priorities around the country. Different types of crimes are more or less prevalent in the different police forces around Scotland, resulting in different police forces needing to focus on the different problems affecting their local area.

Such differences were reflected in the 2010/11 recorded crime in Scotland statistics. For example, Grampian had the worst record for crimes of indecency per 10,000 population but one of the lowest rates for fire-raising, vandalism etc; Strathclyde had the highest rates for non-sexual crimes of violence, but one of the lowest for motor vehicle offences; Central had the second highest level of fire-raising, vandalism etc but a lower than average level of crimes of dishonesty; and Dumfries & Galloway had the highest level of motor vehicle offences but the lowest level of violent crime.

Local priorities can still be taken into account within the structure of a single police force; however, it is not clear how this need for diversity and flexibility could be accommodated within the structure currently proposed. Although division commanders would appear to have some level of accountability to local authorities, they are ultimately answerable to their chief constable. If there is a conflict between some of the policing policies being pushed then ultimately the local needs end up coming second – unless that chief constable is, in turn, answerable to a Scottish Police Authority made up of representatives of local authorities.

For example, what flexibility is there to allow Edinburgh, should it wish, to adopt a prostitution tolerance zone again, while allowing another area to adopt a different practice? It is important that enough freedom is given to division commanders to try out different policing methods. This also enables innovative and new policing practices to be tried out. As with all public services, increasing diversity can raise standards for all. Imposing a one-size-fits-all structure from the centre will stifle that innovation.
Reform Scotland believes that the Scottish government has not provided sufficient justification for taking a service which has historically been delivered at a local level and running it from the centre. We believe that the changes we have proposed to the funding of the police as well as the makeup of the Scottish Police Authority help protect the vital role local authorities play in policing whilst achieving the Scottish government’s stated aim of creating a single Scottish police force.

Alison Payne
Research Director
22 February 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from RSPB Scotland

1 RSPB Scotland maintains a small team of Investigations staff whose primary responsibility is to assist the relevant statutory agencies, not least the police service, in the effective investigation of wildlife related crime. This team is based at our Edinburgh headquarters and covers the whole of Scotland. It has considerable experience in working alongside all the current Scottish police forces.

2 The main thrust of the proposed legislation and most of the issues addressed lie beyond the RSPB’s remit. However we have noted a concern expressed in other submissions which we share and which is relevant to our area of work.

3 Forensic investigation of wildlife crime scenes has grown more common and more sophisticated in recent years, to the extent that the Scottish Government sponsored Partnership Against Wildlife Crime Scotland has facilitated training for police officers in the gathering and handling of wildlife-related forensic evidence.

In their own written submission, the Association of Chief Police Officers in Scotland (ACPOS), express concern

http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/PFR9_ACPOS.pdf

Section 6) about the complete separation of forensic services from the police service.

Those concerns are expressed in detail by ACPOS and do not require reiteration here. Our interest in this lies in the risk to effective crime scene management that may be posed by the Bill’s proposals in particular where – as is frequently the case with wildlife crime – the crime scene is remote and relatively inaccessible. In these circumstances we observe that it is already challenging for the police service to allocate and manage resources for investigation of the crime(s) in question. Over and above the general concerns expressed by ACPOS on this issue, which we echo, we are concerned that the complete separation of crime scene evidence into two different classes, each managed by a different agency, risks dysfunction for the whole investigation. This is especially so since it may not be apparent at the outset into which class a particular piece of evidence falls.

It is not apparent to us why the public might not have confidence in evidence gathered by a properly trained and equipped constable. It should be clear that we are not suggesting that the scientific examination and analysis of forensic evidence should be done by anyone except a properly qualified person housed within a non-police agency.

We note that the Association of Scottish Police Superintendents, in their own submission, also express concern about this matter
Beyond the very specific matter of the gathering of forensic evidence, we hope that reorganisation of the Scottish police services does not undermine the good progress made by both police and by Scottish administrations in improving the effectiveness of wildlife crime detection and prosecution. Specifically we hope that an adequate body of specialist wildlife officers will be available in Scotland under the new arrangements to enforce this area of law that the Scottish Parliament have repeatedly declared to be of national importance.

RSPB Scotland
5 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Chief Police Officers Staff Association

1. Introduction

1.1 The Scottish Chief Police Officers Staff Association (SCPOSA) was formed as a separate entity to the Association of Chief Police Officers in Scotland (ACPOS) in order to represent the views of Scottish Chief Police Officers and senior Police Staff in respect of terms and conditions of service. As such, the views of the Association do not necessarily reflect the views of ACPOS, which is the professional voice of the service.

1.2 In view of the foregoing the evidence presented hereunder will relate only to those provisions of the Bill which are seen to relate directly to the terms and conditions of both current and future Chief Officers who either transfer to the Police Service of Scotland or are appointed to Chief Officer rank in the future.

2. Background

2.1 The terms and conditions of Chief Police Officers in Scotland have evolved over a considerable period through the Police Negotiating Board (PNB) and indeed more recently in direct negotiation with the Scottish Government. This has resulted in Chief Officers in Scotland having largely similar terms and conditions to their colleagues in the remainder of the United Kingdom although Police Authorities in England and Wales have deviated significantly from the recognised national arrangements to attract or retain Chief Officers.

2.2 In respect of Chief Police Officers, whilst conditions of service are broadly similar, a range of salaries exist in respect of Chief Constables and Deputy Chief Constables dependent on the size of the Force concerned, additionally, these ranks are the subject of Fixed Term Appointments which normally extend for a period of five years.

2.3 Assistant Chief Constables, no matter the size of Force or portfolio, are rewarded on a fixed scale of six points. These officers are not the subject of Fixed Term Appointments.

2.4 The definition of who is identified as a Senior Police Staff member varies throughout Scotland, as does the salary scale paid within each Force. In the main, these members of staff occupy senior positions in relation to finance, human resources, legal and corporate services.

2.5 In the current structure of policing in Scotland there are eight Chief Constables, nine Deputy Chief Constables and 13 Assistant Chief Constables, of whom eight currently hold the rank on a Temporary basis.
3. **General Implications of the Bill**

3.1 It is evident that on the implementation of the reform agenda the number of Chief Officers in Scotland will be significantly reduced with a resultant loss of experience and resilience in command roles throughout the country.

3.2 The implementation of the Bill will also lead to a loss of career path and predictability for all officers in the service who may have aspired to the assumption of command roles. Indeed in current form it provides a high degree of uncertainty to many serving senior officers as to their ability to complete their career or reach full pensionable service. It is therefore hoped that individual circumstances will be considered in order to retain experience and skills within the new organisation.

3.3 Whilst the Bill provides for the transfer of all existing Chief Police Officer ranks in Scotland to the Police Service of Scotland there will, by the nature of the amalgamations which will take place, be a significant reduction in the number of posts which are available in Scotland both in respect of police officers and Senior Police Staff. This will lead to a surplus of both senior officers and senior police staff in the early stages of the new service.

4. **Specific Provisions of the Bill**

The following are seen as the provisions of the Bill, which have a direct impact on the members of SCPOSA:

5. **Section 11**

5.1 Within the terms of this Section of the Bill the ranks, which will form the Police Service of Scotland are defined and mirror those currently in existence. Allowance is made in Section 11(5) for the addition or removal of any rank below that of Assistant Chief Constable.

5.2 The formation of the Police Service of Scotland will create the second largest police organisation in the United Kingdom with officer strength of 17,234 and a substantial police staff workforce. The closest comparators in the United Kingdom are West Midlands Police with c8581 officers and the Metropolitan Police Service with c33,298 officers.

5.3 Whilst the rank structure of West Midlands Police reflects the rank structure of the current Scottish Police Service the Metropolitan Police Service has an extended Chief Officer rank structure of Commissioner, Deputy Commissioner, Assistant Commissioner, Deputy Assistant Commissioner and Commander to allow for the management of a very substantial organisation.

5.4 It is accepted that the structure of the Police Service of Scotland has still to emerge but it is the view of SCPOSA that Section 11(5) should be amended to allow for the addition or removal of any rank in the service, including those of Chief Officers. In seeking this amendment the Association believe that it would allow for a larger degree of flexibility to manage what will be very substantial areas of responsibility in a national organisation. Whilst the insertion of an additional Chief
Officer rank is not proposed at this time it is felt that the option to do so should be allowed to the new Authority in order to effectively manage the organisation and indeed cope with what are likely to be substantial areas of responsibility for Chief Officers.

6. **Section 14**

6.1 The terms of this Section cause considerable concern to members of SCPOSA in relation to the security of their employment. As currently drafted the Section allows the Scottish Police Authority to:

> "call on a senior officer to retire from office in the interests of efficiency or effectiveness."

This extreme measure in respect of members is balanced only by the suggestion that a senior officer must be informed of the reason for such a decision being made and be given the "opportunity to make representations" to the Authority who "must consider any representations made".

6.2 As described previously in this paper the number of senior officers in the Police Service of Scotland is likely to reduce substantially from the numbers currently in post and it is therefore felt that this provision could be utilised to dispense with the services of senior officers merely on the grounds of undefined issues of efficiency or effectiveness. The unchecked use of these powers would have huge financial and career impacts on the most senior officers in the country who are charged with leading the new service and yet appear to have no route of either process or independent evaluation of an opinion regarding their performance.

6.3 Whilst a similar provision existed within the terms of the Police (Scotland) Act, 1967 it has never, to knowledge, been used and indeed legal opinion currently to hand indicates that any attempt to use such a wide and unchecked power would be challengeable by Judicial Review.

6.4 The position of senior officers who could be required to resign in the interests of efficiency or effectiveness is markedly different from that of senior employees in the private sector, or indeed elsewhere in the public sector. Most senior employees will have a fixed notice period, often of 12 months or more. They may also be entitled to bonuses during that period. While it is certainly the case that senior employees can be dismissed at short notice elsewhere in the public and private sector, in normal circumstances, such a dismissal will only be in circumstances where their entitlements under their contracts of service are also met. To put it in more common parlance, their contracts are paid up.

6.5 In the circumstances of senior officers, it would appear that what is being envisaged is requiring senior officers to resign with immediate effect with no compensation at all. While, as indicated, such a course of action could lend itself to a judicial review, nonetheless, the officer is left in a situation where he or she has no further entitlement to receive pay, in circumstances where any procedure, which has been followed could be perfunctory to say the least. Given that officers may be on fixed term contracts, which still have several years to run, and the officer may not
have accrued sufficient service to allow him or her full access to their pension, one can see that the officer concerned could be significantly disadvantaged. Following such a course of action could also impact upon the reputation of the officer concerned and therefore affect his or her future employment prospects.

6.5 It is of note that provisions in respect of the efficiency of more junior officers require a very detailed process to be applied to secure improvement and consider evidence in order to ensure fairness.

6.6 The current process for dealing with what is considered as misconduct which could potentially lead to the dismissal of a senior officer is balanced to the point that consideration of the evidence available is undertaken, following investigation by a Chief Constable, by the Police Authority, an independent solicitor and ultimately a panel chaired by a person nominated by the Lord President of the Court of Session. This is in stark contrast to the proposals made by Section 14.

6.7 SCPOS A fully accepts the need for a system to deal with underperformance by senior officers but feels strongly that appropriate safeguards require to be in place to protect officers from what amounts to summary dismissal.

7. Section 49

7.1 Whilst the Bill provides that the terms and conditions of officers will be preserved on transfer to the Police Service of Scotland, Section 49 provides the power to Scottish Ministers to make Regulations relating to the conditions of service of constables.

7.2 It is fully accepted that such a provision is required to develop conditions appropriate to the new service SCPOS A has concerns regarding the uncertainty which exists at present as it is apparent that the majority of terms and conditions of Chief Officers within the new service are unknown.

8. Schedule 4 Paragraph 4

8.1 This provision allows for the transfer of Chief Constables, Deputy Chief Constables and Assistant Chief Constables to the Police Service of Scotland and to retain their current contractual status and terms.

8.2 Whilst the preservation of current terms of members is welcomed, the consequence of this will be that there will be a surplus of senior officers on commencement of the service. In addition, there will be a number of members who, in the previous structure of the service, had a reasonable expectation of extension of Fixed Term Appointments to allow them to reach full pensionable service. This will result in serious financial and career penalties for members.

8.3 SCPOS A seeks assurance of the renewal of Fixed Term Appointments to allow the achievement of full pensionable service for members so affected and seeks consideration, as highlighted at Paragraph 6.4 above, of the buy out of the contracts of those members who do not secure substantive roles within the Police Service of Scotland but have Fixed Term Appointments which will allow them to reach full
pensionable service. The implementation of such a provision would allow the new service to rationalise senior ranks and make the recurring savings which reform seeks.

9. **Schedule 4 Paragraph 9**

9.1 This provision indicates that officers transferring into the Police Service of Scotland will not require to move home. Senior officers are excluded from this protection by Paragraph 4(a) of the Schedule.

9.2 Whilst SCPOSA recognises the need for flexibility within the new service it equally believes that members should not suffer detriment as a result of their position and would therefore seek a degree of protection for members in respect of the location of their workplace or appropriate compensation should they agree to move to a new location.

10. **Conclusion**

10.1 SCPOSA fully accepts the progress of the reform agenda and the savings which are sought to protect policing in communities. The Association seeks a fair settlement for officers who have led the outstanding performance delivered by the current Forces in Scotland whilst facilitating the transition to the Police Service of Scotland.

Deputy Chief Constable Andrew Barker
22 February 2012
The Scottish Countryside Alliance (SCA) champions the countryside, country sports and the rural way of life. Essentially the SCA exists to promote and protect and campaign for and on behalf of rural communities.

The SCA welcomes the chance to submit written evidence to the Scottish Parliament Justice Committee inquiry regarding the Police and Fire Reform (Scotland) Bill.

PART 1. POLICE

1. The main point that the SCA would wish to bring forward to the Justice Committee regarding the Police and Fire Reform (Scotland) Bill – ‘the Bill’ - is the fact that we wish to ensure that the proposed new single Scottish Police Force and Single Scottish Fire Service are set-up to serve the needs of all Scotland – both urban and rural.

2. In the Scottish Government consultation regarding the Bill, a new proposed ‘purpose of policing’ is set out as follows:

   PURPOSE OF POLICING: The purpose of policing is to improve the safety and well-being of individuals, families and communities in Scotland.

The SCA believes that the proposed ‘purpose of policing’ might be strengthened by emphasising that the new single Scottish police service will serve families and communities across all of Scotland. We believe that a subtle change in the suggested wording of the purpose would help, the SCA suggestion is:

   The purpose of policing is to improve the safety and well-being of individuals’ families and communities throughout the whole of Scotland.

The SCA believes that our suggested wording for the ‘purpose of policing’ will help to remind police officers that their duties are not only in crime-hotspots. We believe that the suggested SCA wording will also help to assure Scotland’s remote rural communities that the new Scottish police service exists to improve their safety and well-being as much as it exists for inner-city families and communities.

3. Representative organisations such as the SCA and rural people themselves have built up working relationships with the police on both a local and national scale. The Partnership for Action Against Wildlife Crime (PAW Scotland) and neighbourhood watch initiatives are just two examples.

The SCA believes that for policing to be effective, community involvement and partnership working initiatives are important. We would hope that a new single
Scottish police service would seek to keep these working relationships at local and national levels.

4. The SCA believes that rural areas of Scotland may sometimes differ from urban areas in their specific policing requirements. The SCA believes that the Scottish Police Authority should be composed of individuals with both urban and rural skill, experience and expertise if it is to perform its roles effectively.

5. The SCA believe that a key role and responsibility of the proposed Local Police Commanders, in developing and delivering Local Policing Plans, will be to take account of issues particular to their areas. Local policing priorities in rural areas may vary from those in urban areas and this variation must be recognised in Local Policing Plans.

PART 2. FIRE SERVICE

6. The Scottish Countryside Alliance (SCA) believes that the proposed ‘Purpose and Functions of the Scottish Fire and Rescue Service’ might be strengthened by emphasising that the new single Scottish Fire and Rescue service will serve families and communities across all of Scotland. We believe that a subtle change in the suggested wording of the purpose would help, the SCA suggestion is:

   To improve the safety and wellbeing of people across all of Scotland.

The SCA believes that our suggested wording (above) will help to remind fire service personnel that their duties are not only in urban centres. We believe that the suggested SCA wording will also help to assure Scotland’s remote rural communities that the new Scottish Fire and Rescue Service exists to improve their safety and well-being as much as it exists for inner-city families and communities.

7. The SCA believes that rural areas of Scotland may sometimes differ from urban areas in their specific fire and rescue requirements. The SCA believes that the Board of the Scottish Fire and Rescue Service should be composed of individuals with both urban and rural skill, experience and expertise if it is to perform its roles effectively.

The SCA believe that a key role and responsibility of the Local Senior Officers, in developing and delivering Local Plans, will be to take account of issues particular to their areas. Local fire and rescue priorities in rural areas may vary from those in urban areas and this variation must be recognised in Local Plans.

Ross Montague
Director
27 February 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Crime and Drug Enforcement Agency

1. Introduction and Overview

1.1 Policing in Scotland is now undergoing the most significant period of change in a generation. The Scottish Crime and Drug Enforcement Agency (SCDEA) is committed to fully engaging in the police reform process, whilst at the same time, through innovation and creativity, continuing to fulfil our statutory obligations in preventing and detecting serious organised crime.

1.2 We welcome sight of the Police and Fire Reform (Scotland) Bill (‘the Bill’), and the opportunity to provide the Scottish Parliament Justice Committee with our views.

1.3 The SCDEA represent an integral part of the extremely successful ‘brand’ that is Scottish policing. Our position from the outset of the debate and consultation on future policing structures in Scotland has been to support the creation of a single fully integrated and interoperable Police Service of Scotland. We have previously highlighted the primary benefits of the creation of a single service being:

- Better ability to meet the current and projected financial challenges
- Improved response to crimes which cross police force boundaries
- Improved local and national governance arrangements
- Opportunities to reduce duplication and streamline partnership working

1.4 These benefits are consistent with the Scottish Government’s three core policy objectives of the Bill, being:

- To protect and improve local policing in a time of financial constraint;
- To improve national capacity and access to specialist policing support throughout Scotland; and
- To strengthen arrangements for local engagement

1.5 The landscape in which policing in Scotland is delivered in the 21st century is very different to the one that existed in 1975, when the last major reform of the service took place. The additional complexities facing modern policing are heavily influenced by the following:

- Financial challenges;
- The changing nature of threat, risk and harm to our communities;
- The expectations of our communities;
- The costs associated with the investigation of serious crime;
- The requirement for multi-agency collaboration; and
- The speed of technological change
1.6 The greatest opportunity for policing in Scotland that the Bill presents is that which enables the service to develop from its position of strength founded on long-standing principles of accountability and cooperation to one which recognises and builds on these same principles, but in the very different context and landscape which the service now operates.

1.7 The opportunities to enhance the delivery of policing services are real and they are significant. That said there are challenges in meeting reform objectives. We have set out below some views on where these key challenges lie in the context of the Bill.

2. The Scottish Police Authority

2.1 During the consultation process we highlighted that national accountability needs to:

- Ensure that the service as a whole in Scotland is focused on the needs of Scotland’s communities as a whole;
- Recognise the role of the service in protecting Scotland from national threats and criminal activity that originates from outwith Scotland’s geographical boundaries;
- Better hold the service to account in relation to the discharge of its functions, particularly in relation to the deployment of resources on a Scotland wide basis; and
- Provide greater scrutiny over the discharge of some of the service’s most sensitive covert techniques

2.2 We strongly maintain the view that for the Scottish Police Authority (SPA) to properly ‘hold the chief constable to account for the policing of Scotland’ the limitation on membership (as laid out in Schedule 12(1) of the Bill) to ‘no more than 11 members’ seriously questions its future ability to deliver the range of skills, experience and expertise to address the full range of modern policing powers and functions. It is our understanding that there was general agreement amongst respondents on this issue during the previous consultation on police and fire reform.

2.3 Whilst we fully acknowledge the differences in the policing landscape of Northern Ireland and do not advocate a similar role and influence that nationally elected members of the Northern Ireland Assembly have on the Northern Ireland Policing Board (NIPB), it is notable to highlight that the NIPB constitutes **19 members**. Also, the NIPB currently functions with six sub-committees. Given the future size and scope of the Police Service of Scotland it is likely that the SPA will require to operate with a similar number of sub-committees. It is questionable how the SPA with a **maximum** of 11 members would be able to properly oversee and fulfil these sub-committee responsibilities.

2.4 An associated issue on the future membership of the SPA and its ability to effectively scrutinise the policing response to national threats, relates to the vetting status of its members. Schedule 1 of the Bill deals with various matters relating to membership, disqualification, tenure etc of SPA members. The Bill and associated documents though are silent on the issue of vetting status of SPA members.
2.5 It is clear and accepted that the service’s role in preventing and responding to national threats, particularly those related to serious organised crime and counter terrorism will necessitate inclusion in the Strategic Police Plan. The policing response to these threats will continue to involve the application of sensitive covert techniques. It is essential, therefore, that the composition of the Authority includes individuals who possess the skills and expertise and are appropriately vetted to hold the chief constable (or delegated senior officer) to account for the full range of policing responses from local to national threats.

3. Strategic Police Priorities

3.1 Section 33(3) outlines the persons and bodies that Scottish ministers must consult in determining strategic police priorities. It seems somewhat remiss that the chief constable of the Police Service of Scotland is not specifically listed as a person who would be consulted. As a comparison, the Police, Public Order and Criminal Justice (Scotland) Act 2006 (‘the 2006 Act’) provides for the Director General to be consulted in determining the strategic priorities of the Agency.

4. Strategic Police Plan

4.1 Section 34(5) outlines that the Authority must use its best endeavours to secure their (Scottish Ministers) approval of the plan. This is interesting phraseology to use within the Bill and begs the question of what provisions would be in place to deal with the resolution of any dispute or disagreement. (The issue of conflict resolution also applies in relation to arrangements for approval of Local Policing Plans as outlined at Section 48 of the Bill).

4.2 Section 34(1) outlines that the Strategic Police Plan will be prepared by the Authority. Whilst the plan will have distinct priorities relating to policing and those which relate more specifically to the SPA, it is our view that responsibility for development of the Strategic Police Plan of the Police Service of Scotland should sit with the chief constable, subject to the approval of the SPA. We take a similar view in respect of the preparation of annual police plans, as laid out in Section 35. As a comparison it is of note that the 2006 Act specifically places responsibility with the Director General for the preparation of the Agency annual plan, subject to the approval of the Authority (SPSA). This represents more than ‘involvement’ by the chief constable as articulated in section 36.

5. National and Local Connections

5.1 It is our view that improvements need to be made in respect of both national and local accountability and governance arrangements, as neither remain wholly appropriate for the challenges of 21st century policing. The police reform programme presents clear opportunities to enhance these arrangements.

5.2 The Bill presently does not address this crucial aspect of connectivity between national and local issues. As currently drafted the Bill provides no clear obligation or responsibility on the SPA to establish a formal process of engagement or consultation with local authorities. This is an important matter that we are of the view
requires to be addressed, potentially through legislation, to ensure proper dialogue and discussion on the allocation of finite police resources to meet both national and local demands. It may be the case that one of the sub-committees of the SPA could have responsibility for oversight in relation to national / local connectivity.

6. **The Role of Police Staff**

6.1 In the face of financial challenges an integral aspect of the police reform programme is the delivery of savings by reducing duplication. Given the significant savings that are to be achieved, this will inevitably reduce police staff posts. It is important to highlight, however, the crucial role that police staff play in the effective delivery of policing services. The important roles carried out by police staff cannot simply be categorised as ‘back-office’ functions. This is particularly relevant in relation to the covert and technical policing arena, where many of the police staff employed in this area perform crucial specialist ‘operational’ roles which could not be readily carried out by police officers. To ensure the most efficient and effective delivery of policing, it is essential that the Police Service of Scotland contains an appropriate balance of police officers and police staff.

7. **Investigation of Complaints**

7.1 Our position has been that a dedicated and independent police complaints body within Scotland, with an appropriate investigative capability, will provide the most suitable arrangement for the oversight and investigation of complaints within the Police Service of Scotland. We fully support the renaming and enhancement of the Police Complaints Commissioner for Scotland to establish the Police Investigations and Review Commissioner (PIRC).

7.2 Notwithstanding the above, the current Bill provisions require some further clarification, particularly the finer detail in respect of roles and responsibilities, which will influence the relationship between the PIRC, COPFS and the police. A clearer definition of the term ‘public interest’ and how this will set the parameters for PIRC investigations will also provide useful direction to the PIRC in fulfilling its statutory functions.

7.3 From a resourcing perspective and given the likely timescales for its establishment, will there be an expectation that considerable police resources, with relevant knowledge and expertise will be available to staff the PIRC, at least on an interim basis? If this is the case there are issues around formal cost recovery mechanisms and more importantly public reassurance around the independence of the PIRC that will require to be addressed. It is clear that the development of the PIRC needs to take place alongside and at the same pace as the development of the SPA and the Police Service of Scotland. All three bodies are interdependent and their establishment will be crucial to the maintenance of public confidence in the investigation of complaints.

7.4 One further point we would raise relates to the investigation of complaints against the Commissioner and PIRC staff. Section 70 within the Bill outlines that the ‘Commissioner must maintain suitable arrangements for the handling of any complaint’. In order to ensure public confidence in the new role and responsibilities
of the PIRC, it should be subject to external scrutiny. The Public Services Ombudsman for Scotland would seem an appropriate body to fulfil this scrutiny role.

8. Forensic Services

8.1 Whilst the SCDEA has not previously commented on the proposed separation of forensic services functions, we support the view that certain elements of ‘forensic services’ are intrinsically linked to police investigations and therefore require to be under the control of the chief constable. Specifically, this linkage relates to crime scene examination functions. Scene examination is an integral aspect of the investigative process with the knowledge and experience of scene examiners utilised across all aspects of operational policing. Fundamentally, decisions on crime scene examination are operational policing matters and in many circumstances are time critical to the direction and success of a police investigation, therefore the SCDEA supports the ACPOS position on this issue.

9. Conclusion

9.1 The introduction of the Police and Fire Reform (Scotland) Bill provides detail on critical aspects of the police reform process in Scotland.

9.2 We have endeavoured to highlight in this submission some key provisions within the Bill which we believe require further examination.

9.3 The SCDEA recognises the challenges reform presents, not least in terms of the extent of the work involved to combine the existing eight police forces, SPSA and the SCDEA into an integrated single service. As we have indicated, the reform programme presents significant opportunities to modernise and enhance policing and enable the Police Service of Scotland to respond to and protect our communities from ever changing threats.

9.4 The SCDEA will continue to engage in the reform programme and will found on our unique position and experience, as the only ‘operational’ organisation within policing with a Scotland wide responsibility, to develop thinking on the opportunities it presents to shape the future of policing in Scotland.

SCDEA
22 February 2012
Conveners have focussed their evidence on the following areas:

- Proposed structures of local democracy and accountability
- Implications for the local resourcing of fire and rescue services as a result of the establishment of the Scottish Fire and Rescue Service.
- The relationship between local authorities and the new Scottish Fire and Rescue Board
- Issues relating to the transfer of fire and rescue service staff

Proposed structures of local democracy and accountability

1. In addition to establishing the single national service governed by the Scottish Fire and Rescue Board, the Bill seeks to establish a formal statutory relationship between the service and each of the 32 local authorities. The aim of increasing local accountability and engagement with elected members at local level is welcomed however, there are practical considerations that need to be carefully worked through.

2. There is a broad duty on the SFRS to ensure adequate local Fire and Rescue service provision but national and local views on the extent and detailed application of that provision could differ. The Bill states that the SFRS must submit a plan prepared for approval to the local authority and if approved the SFRS must publish it. As it stands, the Bill offers no recourse for any dispute arising between the national service and the local authority, which could seriously hamper the ability of the service to engage effectively at a local level. We need to be clear on whether the service is a national service delivered locally or 32 local services delivered within the context of a national framework. It cannot be both.

3. Local scrutiny and engagement arrangements are currently being piloted to test a range of mechanisms e.g. blue light committees through which elected members may play a direct and formal role in shaping local priorities and scrutinising performance however we need to guard against drawing the FRS away from the multi-agency approach which has been proven to work. In terms of Community Planning and Engagement, there is a need to remove duplication, build capacity and integrate services.

4. The Scottish Government is committed to strengthening community planning arrangements and that is also reflected in the Bill. Care needs to be taken if the current review of the SOA and CPP arrangements provide a more robust legal duty and partners are bound by joint plans and performance as a result. The need to separate out police and fire through their own stand alone committees should at least be examined to avoid police and fire working towards strategic objectives that sit outwith CPP priorities, duplication of activity and an unsustainable resource commitment for local authorities in the support of “blue light” committees as well as renewing a commitment to CPP and SOA arrangements.
Implications for the local resourcing of fire and rescue services because of the establishment of the Scottish Fire and Rescue Service

5. The reality of being able to shape priorities locally and engage more effectively with the service at local authority level is obviously influenced by the extent to which budget decisions are driven nationally or locally. In the context of a single national service, it must be assumed that the budget is held centrally and allocated based on the priorities established within the national strategic plan.

6. It is not clear what level of delegated budgetary control is envisaged and whether delegated responsibility will be provided to the local senior officer for the management of a local budget. It is not clear what recourse the local authority has should that allocation not be considered sufficient for its needs or indeed does not match the priorities for the area as determined through the single outcome agreement or the local service plan which must be approved by the local authority.

The relationship between the local authorities and the Scottish Fire and Rescue Services Board

7. It is not clear from the Bill provision what arrangements will be in place to formalise the relationship between local authorities and the national Board or how local committees can formally raise matters of concern. As referenced previously, In the context of the development of a 3 year national strategic plan prepared on the basis of a national integrated risk management plan and developed in the context of a national budget set for the SFRS, it is entirely possible that conflict could arise if any given local authority does not feel that the local plan is sufficient for its purposes in terms of resource allocation, engagement in local initiatives or indeed the role of the local senior officer.

8. There is a broad duty on the SFRS to ensure adequate local service provision but national and local views on the extent and detailed application of that provision could differ.

Issues relating to the transfer of fire and rescue service staff

9. It is welcome that the SG commits to all staff directly employed by the 8 services and relevant staff employed by the unitary authorities transferring on the day of establishment of the new service with a commitment to retaining their terms and conditions on transfer. Ministers have publicly made a commitment to no compulsory redundancies, which is a welcome commitment for our staff. However, the assumptions around costs and savings as set out in the Financial Memorandum are challenged by a range of stakeholders and the real financial impact of this commitment is not considered to have been accurately reflected.

10. There will be a number of local variations to national conditions (all groups) and these will be “protected” under the Transfer commitment and carry forward. Where national frameworks exist each of the existing 8 will have negotiated locally on content and there may be wording differences as a minimum and probably policy differences. It is of real benefit to obviously seek to harmonise critical policies at Day 1 but there will be many other areas of variation e.g. shift systems, additional...
allowances, public holidays and so on where negotiation may take some time to achieve a satisfactory position. This could impact on costs and the timescales associated with achieving a standardised employment framework for the new SFRS.

**PLEASE NOTE THAT THE CONVENER OF FIFE POLICE, FIRE AND SAFETY COMMITTEE DOES NOT ENDORSE THIS SUBMISSION**

Scottish Fire Conveners Forum
2 March 2012
The Scottish Human Rights Commission (the Commission) welcomes the opportunity to submit comments to the Justice Committee on the Police and Fire Reform (Scotland) Bill (the Bill).

As stated in previous submissions, the Commission believes that the development of a single police force and oversight structures in Scotland is a unique opportunity to embed human rights into the new police structure to better ensure that the police comply with their obligations under section 6 of the Human Rights Act 1998. The Commission agrees with the overall purpose of the Bill which is to create a modern, statutory framework for policing in Scotland with appropriate accountability arrangements.

In this submission the Commission will focus on the scrutiny and oversight arrangements proposed in the Bill, in particular the overarching ethical framework, the mechanisms for police complaints and investigations and the oversight role of the new Police Authority. In line with our general duty, the Commission will highlight examples of best practice and provide recommendations for strengthening the framework of police accountability in Scotland.

2. Relevant human rights principles

There are a range of international Conventions and Codes which recognise that the primary purpose of policing includes the protection of human rights, for example:

- Article 2 of the United Nations Code of Conduct for Law Enforcement

1 Letter to Cabinet Secretary for Justice on the Single Police Service for Scotland, 31 October 2011.
2 Section 6 of the Human Rights Act 1998, requires all public authorities – including the police – to act in a way which is compatible with the individual rights and freedoms contained in the European Convention on Human Rights (ECHR).
3 The Commission acknowledges the contributions from Jane Gordon (former Human Rights Advisor for the Northern Ireland Policing Board) in informing this submission.
Officials\textsuperscript{4} states that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

- The European Code of Police Ethics 2001 states that the main purposes of the police in a democratic society governed by the rule of law includes the requirement to protect and respect the individual’s fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights (ECHR).\textsuperscript{5}

- The Human Rights Act 1998 (HRA) requires all public authorities – including the police – to act in a way which is compatible with the individual rights and freedoms contained in the ECHR.\textsuperscript{6} Article 2 and 3 of the ECHR are particularly relevant in this context.

In relation to police accountability mechanisms, there are also a number of international instruments that recognise the importance of current monitoring and measurement based on human rights indicators against which police policies are assessed. The Commission would like to mention two:

1. The European Code of Police Ethics, which requires accountability mechanisms, based on communication and mutual understanding between the public and the police, to be promoted.\textsuperscript{7}

2. The 2011 Laxenburg Declaration, which reiterates the need to ensure transparency, accessibility, accountability, legitimacy, impartiality and integrity in all systems created for police oversight and specifically promotes respect for the rule of law and human rights through and within all police oversight activities. It also calls for strong civil society participation in police oversight.\textsuperscript{8}

In other jurisdictions the benefits of introducing human rights into every day policing have been highlighted. For example, the former Northern Ireland Police Ombudsman, Dame Nuala O’Loan, reported that adopting a human rights based approach to policing in Northern Ireland made a significant difference, observing that ‘[w]hen human rights are factored into everyday policing, things change’:

*People are now coming forward to help police in a way that has not happened in the past. Complaints of abuse of force, intimidation and harassment by police officers fell over seven years from 52% to 36% of complaints... People and police officers are safer, and suffer less injury. Part of this can be attributed to wider political events; however much of the*

\textsuperscript{4} Adopted by General Assembly resolution 34/169 of 17 December 1979.

\textsuperscript{5} Appendix to Recommendation Rec (2001)10 on the European Code of Police Ethics adopted by the Committee of Ministers on 19 September 2001 at the 765\textsuperscript{th} meeting of the Ministers’ Deputies (the European Code of Police Ethics).

\textsuperscript{6} Human Rights Act 1998, s.6.

\textsuperscript{7} Recommendation Rec(2001)10 adopted by the Committee of Ministers on 19 September 2001 at the 765\textsuperscript{th} meeting of the Ministers’ Deputies.

\textsuperscript{8} Adopted by the key representatives of the national Police Oversight Bodies and national Anti-Corruption Authorities of the Member States of the Council of Europe and the European Union at the Eleventh Annual Professional Conference of the European Partners Against Corruption, including the EU’s Anti-Corruption Contact-point Network, in Laxenburg, Austria, 22 to 25 November 2011.
improvement is clearly the result of the introduction of human rights-compliant policing in a context of real leadership and of strong accountability mechanisms.9

3. The Bill

3.1. Human rights reference

The Commission believes that a good starting point for new legislation creating a Police Service of Scotland, a Police Authority and oversight mechanisms is to ensure that human rights are explicitly articulated in the legislation. Regrettably, there are no references to human rights in the Bill despite the distinct human rights obligations for the police under the HRA. Moreover, the Scotland Act 1998 makes clear that any decisions by both the Scottish Government and the Scottish Parliament in relation to policing must be in compliance with Convention rights.

The Commission notes that Section 32 of the Bill includes a statement of policing principles to which the Scottish Ministers, the Police Authority and the Chief Constable must have regard when setting the strategic direction for the Police Service. The policing principles define the core statutory purpose of policing and are designed to embed a model of policing based on partnership between the police and local communities. These principles offer an opportunity to define the fundamental values and principles of the Scottish Police Service.

Recommendation 1: A commitment to upholding human rights should be explicitly included in the policing principles of the Scottish Police Service.

3.2. Overarching ethical framework

Ethical standards are the cornerstone of good governance. The Commission is concerned that the Bill makes no provision for a code of ethics for the Scottish Police Service to inform and guide the conduct of police officers. The Commission is aware that the current Scottish Police Code of Ethical Practice refers to human rights and human dignity,11 and therefore considers that a common ethical framework for the police service in Scotland should have statutory basis. The Police (Northern Ireland) Act 200012, which exemplifies best practice in this area, requires the Northern Ireland Policing Board (the Policing Board)13 to issue - following consultation- a code of ethics for the Police Service for Northern Ireland (PSNI) laying down standards of conduct and practice for police officers and making officers aware of the rights and obligations arising out of the ECHR.14 Police officers must be guided by the Code of Ethics for the Police Service for Northern Ireland.

10 The Police principles, Sec 37, will inform the strategic policing objectives and the delivery of the policing purpose and plan.
12 Section 52 of the Act.
13 Established under the Police (Northern Ireland) Act 2000, s.2.
14 This follows a recommendation by the Patten Report that a new Code of Ethics, integrating the European Convention on Human Rights into police practice, replaces the existing, largely procedural code: Paten Report, para.4.8.
Ethics in carrying out their duties. The Police Ombudsman also uses the Code of Ethics to classify complaints made against the police.

It is important that the Police Service, the Police Authority and the Police Investigation and Review Commissioner share a common ethical base and that this is evident in every aspect of policing. A code of ethics provides a common ethical framework and is a valuable tool in to ensure that the police service complies with its obligations under the HRA.

**Recommendation 2:** The Bill should include a provision requiring the Scottish Police Authority to issue a code of ethics for the Police Service laying down standards of conduct and practice for police officers based on human rights principles and ECHR obligations.

### 3.3. Police oath

The Bill includes an updated declaration for constables upon appointment. The declaration affirms certain core principles and values which will guide them in the conduct of their duty. However, the new police oath makes no reference to human rights. In Northern Ireland, the PSNI attestation includes explicit references to “fundamental human rights and according equal respect to all individuals and their traditions and beliefs…according to law.”

**Recommendation 3:** The new police oath should contain an explicit commitment to upholding and protecting human rights and fundamental freedoms.

### 3.4 Police Authority

The Bill proposes to establish a body corporate to be known as the Scottish Police Authority, whose functions are listed in Section 2 of the Bill. Section 2(3) states that:

“The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.” (emphasis added)

The Commission believes that the reference to ‘try’ should be deleted from this provision as the Police Authority, a public authority, is required to act in compliance with ECHR rights.

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15 Police (Northern Ireland) Act 2000, s.32(4). The PSNI Code of Ethics has been fully integrated into the work of PSNI Professional Standards, incorporated within the new annual appraisal process and referenced in PSNI training materials. Further, all misconduct charges are worded to reflect the Code of Ethics and all outcomes of misconduct hearings are reported with reference to the specific article of the Code which was breached.

16 See, for example, Northern Ireland Policing Board, Human Rights Annual Report 2008, pp.78-79.

17 Canada is in the process of adopting a Values and Ethics Code for the Public Sector. Once the Code is in force all federal public sector employees, including members of the Royal Canadian Mounted Police, will be required to adhere to the Code as a term and condition of employment.

18 Bill, s.10(1) “I do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, according to law.”

19 Police (Northern Ireland) Act 2000. s.38
Section 33 of the Bill provides that the Scottish Ministers may determine the strategic police priorities for the Police Authority—relating to the policing of Scotland or the carrying out of the Police Authority’s functions—, having regard to the policing principles. Additionally, Section 5(1) of the Bill provides that the Police Authority must comply with any specific or general direction given by the Scottish Ministers. As a result, Scottish Ministers have a comprehensive power to direct the Police Authority. The Explanatory Notes to the Bill state that this is ‘a normal feature of public bodies created by the Scottish Ministers and is used very rarely’.  

It is the Commission’s view that the Scottish Ministers should only retain the power to set principles and broad overall objectives for policing and the Policing Authority should have the independence and power to set its own strategic policing priorities. The power given to Scottish Ministers in the Bill may pose a significant challenge to the independence of the Police Authority and the integrity of the police accountability framework.

**Recommendation 4:** The Police Authority should have the independence to set its own strategic policing priorities.

Sections 17, 34, 35 and 40 of the Bill enumerate the oversight powers of the Police Authority. While the Bill strengthens the oversight role of the Police Authority in relation to the current arrangements, the powers are not comprehensive to secure full efficiency and effectiveness.

In Northern Ireland, the Policing Board has an explicit obligation to monitor the performance of the PSNI in complying with the HRA. The Policing Board’s reports assess information from internal documents, external reports, operational observations, informed testimony, and commissioned surveys covering every aspect of policing where human rights are involved. The reports make recommendations about matters that require attention and track the implementation of recommendations made in previous annual reports. In consequence, the statutory oversight duties of the Northern Ireland Policing Board are more extensive than those proposed for the Scottish Police Authority.

It is important to note that the Northern Ireland Policing Board’s human rights monitoring process has been defined as ‘a model for the evaluation of the human rights performance of a police service’. Subsequently, the statutory duty to monitor the performance of the police in complying with the HRA was extended to all police authorities in England and Wales.

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20 Explanatory Notes, para.88.
21 Police (Northern Ireland) Act 2000, s. 3(3)(b)(ii). In December 2003, the Policing Board published a human rights monitoring framework and The Board has published human rights annual reports assessing the compliance with the Human Rights Act since 2005.
Recommendation 5: The Bill should include a provision requiring the Scottish Police Authority to monitor the performance of the Police Service in complying with the HRA.

In addition, the Northern Ireland Policing Board has a power to require the Chief Constable to report on any policing matter relating to the performance of his functions or those of the police service and the related power to order an inquiry into any matter upon which it has received a report if it considers the matter, or any related matter in the report, is grave or there are exceptional circumstances. The power is circumscribed by the ability of the Chief Constable to refer to the Secretary of State the Board’s request for a report or proposal for an inquiry on the grounds that the request or proposal concerns national security, sensitive personal matters, ongoing court cases, or matters which would prejudice the prevention or detection of crime. In these cases, the Secretary of State is required to make a determination, within 30 days, whether the Chief Constable should provide a report to the Board or whether the Board should conduct the inquiry.

The Commission suggests that consideration should be given to proposing the inclusion of additional powers for the Police Authority to require the Chief Constable to report on any policing matter relating to the performance of his functions or those of the police service and to order an inquiry into any matter upon which it has received a report if it considers the matter, or any related matter in the report, is grave or there are exceptional circumstances.

3.5 Independent Complaints and Investigation Mechanism

The Commission has previously expressed that there are a number of principles that an effective accountability framework must consider. The key principles include: independence, transparency, competence, promptness, public scrutiny and victim participation. This means that an effective accountability framework includes both internal accountability mechanisms, such as codes of conduct and professional standards as well as external accountability mechanisms, such as an independent police authority, an independent police complaints body and measures to facilitate public scrutiny. All of these mechanisms offer an important protection against impunity and ensure public confidence.

The Commission welcomes the establishment of the Police Investigations and Review Commissioner as a new independent investigation mechanism. The Commission considers that it is important in order to satisfy the procedural obligation under Articles 2 and Article 3 of the ECHR that the independence of the Police Investigations and Review Commissioner is strongly guarded and the Commissioner

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26 Police (NI) Act 2000 s.60.
27 Police (Northern Ireland) Act 2000, s. 59(3).
28 Letter to Cabinet Secretary for Justice, 31 October 2011.
is given adequate investigatory powers of disclosure of all relevant documents and other materials and the attendance of individuals as witnesses.\textsuperscript{30}

In Northern Ireland, the Police Ombudsman has an additional power to make reports to the Chief Constable and the Policing Board on matters concerning police practices and policies which the Ombudsman identifies from investigations.\textsuperscript{31} This power has been used to positive effect by the Ombudsman, providing the opportunity to conduct more general reviews to remedy systemic or repeated failings.\textsuperscript{32} The Commission notes that this would be a useful additional tool for the Police Investigations and Review Commissioner.

**Recommendation 6:** The Police Investigations and Review Commissioner should be given adequate investigatory powers of disclosure and attendance of witnesses.

3.6 Independent Custody Visiting

The Commission is a member of the UK’s National Preventative Mechanism (NPM) designated in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Commission welcomes Chapter 16 of the Bill and in particular the specific reference to OPCAT in section 90 and the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.\textsuperscript{33}

The placing of independent custody visiting in Scotland on a statutory footing in Section 91 is in line with OPCAT and best practice guidance, it also brings Scotland into line with the rest of the UK. This change would allow for independent custody visitors to be designated as part of the NPM.

The Commission welcomes the provisions in section 92 relating to the Subcommittee on the Prevention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. These provisions mirror those in OPCAT and are clear that the only time an objection may be made to a visit is in the very limited circumstances where there are urgent or compelling grounds of public safety, natural disaster or serious order that may prevent the visit.

The Commission is concerned, however, that at section 91(4) there is a much wider discretion given to refusing access to a detainee by independent custody visitors. Rather than setting out the grounds on the face of the legislation it will be for Scottish Ministers to determine the grounds upon which visits can be refused through issuing

\textsuperscript{30} The Scottish Ministers may by regulations make provisions regarding the investigations by the Commissioner.

\textsuperscript{31} Police (Northern Ireland) Act 2000 s. 63.

\textsuperscript{32} See, for example, the Police Ombudsman’s report, *Police Identification in Northern Ireland: A Report under section 60A of the Police (Northern Ireland) Act 2000*, March 2006. The Report made a number of recommendations related to improving police identification.

\textsuperscript{33} OPCAT is an international human rights treaty which was ratified by the UK in 2003 and is designed to strengthen the protection of people deprived of their liberty. It acknowledges that such people are particularly vulnerable to ill-treatment, and advocates that efforts to end ill-treatment focus on prevention through a system of regular visits to places of detention.
guidance. While the guidance setting out the grounds for refusal will be laid before Parliament, it will not be subject to any form of Parliamentary scrutiny. It is essential that in defining these grounds that they are drawn as narrowly as possible to ensure that the objective of OPCAT is not undermined.

*The Commission recommends that further consideration be given to how the grounds for refusal should be developed.*

The determination in relation to whether the grounds under section 91(4) are met is currently delegated to a constable of the rank of inspector. Given that the purpose of independent custody visiting is to prevent torture and other cruel, inhuman or degrading treatment or punishment while in police custody, the Commission is concerned that the decision to refuse access is being taken at an operational level, without any provision for authorisation or oversight. This would give the authority, for refusal of a visit, to the constable who is directly responsible for the treatment of the detainee. In order to meet the objectives of OPCAT further consideration should be given to the procedure for refusing access.

In addition, the Commission notes that while there is specific reference to OPCAT in the Police and Fire Reform (Scotland) Bill the Scottish Government is currently proposing to abolish prison visiting committees in favour of some form of advocacy service. The Commission welcomes the creation of a new advocacy service for prisons, but considers that this should run alongside the human rights protections that are currently provided by prison visiting committees. The Commission welcomed the Scottish Parliament debate on this issue on 2 February 2012*34* to which the Commission submitted a briefing to all MSPs.*35* While the role of prison visiting committees does not come within the scope of this bill, the Commission considers it important that there is a consistent approach to OPCAT and the protection of the human rights of all of those deprived of their liberty in Scotland.

Moreover the Commission endorses the submission that the NPM has submitted to the Committee and reiterates that in implementing *Chapter 16*, regard should be had to OPCAT itself as well as guidelines on NPMs published by the SPT*36*. In particular, governance arrangements for custody visiting in Scotland should ensure that independence, both actual and perceived, is maintained. The following points should be addressed to ensure the effective operation of independent custody visiting:

- custody visiting must be adequately resourced as required by Article 18 of OPCAT and set out in paragraph 11 of the SPT Guidelines;
- the terms of office of custody visitors should be specified (paragraph 9, SPT Guidelines);
- custody visiting should enjoy financial and operational autonomy (paragraph 12, SPT Guidelines);
- there should be a follow-up process between the police authorities and/or government and custody visitors to ensure recommendations are addressed (paragraph 13); and

• custody visitors should take into account human rights standards when carrying out visits (paragraph 36, SPT Guidelines).

4. Conclusion

The Commission believes that a focus on human rights needs to be integrated into and made explicit in the proposed Bill - human rights are not an additional benefit to policing, they are essential to achieving the fundamental purpose of the police. In this submission, the Commission makes six specific recommendations relative to the Bill – and its subsequent effective implementation. These are:

Recommendation 1: A commitment to upholding human rights should be explicitly included in the policing principles of the Scottish Police Service.

Recommendation 2: The Bill should include a provision requiring the Scottish Police Authority to issue a code of ethics for the Police Service laying down standards of conduct and practice for police officers based on human rights principles and ECHR obligations.

Recommendation 3: The new police oath should contain an explicit commitment to upholding and protecting human rights and fundamental freedoms.

Recommendation 4: The Police Authority should have the independence to set its own strategic policing priorities.

Recommendation 5: The Bill should include a provision requiring the Scottish Police Authority to monitor the performance of the Police Service in complying with the HRA.

Recommendation 6: The Police Investigations and Review Commissioner should be given adequate investigatory powers of disclosure and attendance of witnesses.

The Commission has also provided some specific suggestions that should be addressed to ensure the effective operation of independent custody visiting.

The Commission would be pleased to answer any queries that the Committee may have in relation to this policy submission and welcomes the opportunity to discuss this further.

Scottish Human Rights Commission
6 March 2012
Introduction

This written evidence is provided on behalf of the Scottish Institute for Policing Research (SIPR), a strategic collaboration between twelve of Scotland’s universities and the Scottish police service, supported by investment from the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Funding Council and the participating universities. SIPR’s key aims are:

- To undertake high quality, independent and relevant research;
- To support knowledge exchange between researchers and practitioners that improves the evidence base for policing policy and practice;
- To expand and develop the research capacity in Scotland’s universities and its police service.

Chapter 1 The Scottish Police Authority

We welcome the intention to secure and maintain ‘constabulary independence’ in respect of the role and functions of the Scottish Police Authority. In particular, Chap.1 s.5 embodies a fundamental principle that Scottish Ministers should not issue directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation. It is all the more important, therefore, that the SPA’s position in relation to Scottish Ministers is clearly established with regard to its administration. As well as being an independent governance body, it is essential that the SPA is independently serviced by its own staff so that its functions in relation to maintaining the Police Service, promoting and supporting continuous improvement in policing, and holding the chief constable to proper account are effectively and efficiently carried out.

The wording of the Bill is construed too loosely in relation to the functions of the Authority in s.2 (3). This states that the Authority ‘must try to carry out its functions in a way which is proportionate, accountable and transparent’ and in accordance with any principle of good governance ‘which appears to it to constitute best practice’. There is plenty of good research evidence on, and good practice in police governance on which the Authority can be reasonably expected to draw in a more positive manner.

Whilst it is appropriate that decisions on the internal structure and organisation of the new Police Service should be taken by the chief constable, it is likely that important aspects of police work will be undertaken at a national level. Policing initiatives at a Scottish level have grown considerably in recent years - for example the activities of the Scottish Crime and Drug Enforcement Agency – and these are likely to expand further under a single force in response to the changing nature of crime and the need for efficiencies. The proper emphasis on local policing arrangements means that less attention has been given to policing which operates beyond local council areas.

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1 This evidence was prepared by Professor Nicholas Fyfe (Director, SIPR and University of Dundee) and Dr Kenneth Scott (Associate Director, SIPR and University of West of Scotland).
It is important that recognition is given to the SPA’s role in monitoring those policing activities which operate at national and regional levels to ensure that these are held properly accountable.

Because the Police Service requires to interact with a wide range of stakeholders, it is important that the membership of the SPA is as broadly based as possible, in line with the requirement in Schedule 1 that Ministers ‘must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority’. Members who have knowledge and experience of local government and local communities, in particular those who have served as conveners of Police Boards, would have a contribution to make, especially in the initial period. A combination of local government representation along with independent public appointments would certainly reflect experience in other countries.

It is essential that members be provided with an early opportunity after appointment to be fully briefed and to receive appropriate and ongoing training and support to enable them to meet their important responsibilities, particularly so following the identification of this by Audit Scotland as a significant weakness in the current Police Board system.

Chapter 2 (s.10) Constables’ Declaration
The legal status of the office of constable embodied in the Bill is an important reaffirmation of the police officer’s role within society through the requirement to make a declaration before a sheriff of J.P. The wording of the declaration is significantly adjusted to include a number of ethical values – fairness, integrity, diligence, impartiality – which are in line with the best practice associated with the procedural justice model in a number of other jurisdictions and of the Scottish public’s high expectations of its police. It does raise, however, the issue of how such values are to be monitored in terms of disciplinary codes or complaints by the public so that their importance is duly recognised in the routine practices of Scottish policing.

Chapter 2 (s.17) The Chief Constable
The position of chief constable within the present tripartite system is maintained in terms of direction and control of the Police Service, although this is now a single position as opposed to one of several within Scotland. Selection procedures for, and terms of appointment of, a chief constable need to be robust to ensure that there is public confidence in the independence of the system.

The chief constable’s responsibilities are helpfully clarified in s.17(2) in terms of administration, strategic planning and reporting, and local policing arrangements. There appears to be an inconsistency in s.17(2)(f), however, where the chief constable ‘may be required’ to provide the Authority with certain information rather than ‘must’.

Chapter 2 (s. 19) Functions of Constables
The limitations of the traditional functions of constables as to ‘guard, patrol and watch’ having been long recognised, the general duties which the Bill lays out in s.20(1)-(2) present a much clearer statement of what police officers are expected to
do in line with the expanding policing agenda. A more explicit requirement on constables to exercise their duties in relation to the policing principles in s.32, which are in line with well-established evidence on the nature of contemporary policing, would further clarify these functions.

In accordance with modern constitutional practice, there should be reference to all police duties being carried out in compliance with the Human Rights Act 1998. In the appropriate section of the Bill, it would be important to include a requirement on the SPA to monitor, as does the Northern Ireland Policing Board, such compliance.

Chapter 2 (s.26) Police Staff
The value of a ‘mixed economy’ of police officers and police staff has been recognised as an important part of creating an efficient and effective workforce. Research carried out by SIPR on workforce modernization, for example, demonstrated the value of police officers working alongside civilian staff in investigations of volume crime. SIPR also works very closely with analysts employed by police forces who also play a vital role in providing an evidence-base for targeted interventions (via initiatives like the National Intelligence Model) and robust assessments of the impacts of operational activity. Against this background, a narrow focus simply on police officer numbers as a measure of the capacity and capability of the police service offers only a limited perspective on the scope of policing to intervene efficiently and effectively.

Chapter 4 Policing Principles
The recognition within the Bill that policing is about more than crime prevention and crime reduction is to be welcomed. The references within the Bill to the importance of policing in contributing to safety and well-being and playing a role in preventing harm and disorder creates scope for a much more inclusive understanding of the role of the police which explicitly recognises that some activities (such as community policing) cannot be measured simply in crime reduction terms. It is therefore important that the performance framework that is put in place to capture police activity adequately engages with this broader understanding of policing and uses a range of qualitative and quantitative indicators to demonstrate how policing contributes to broader objectives of enhanced well-being and harm reduction.

Chapter 7 Local Policing
The proposals in the Bill around local policing are to be welcomed. It has long been recognised by researchers that much crime and disorder is rooted in the characteristics of localities and police effectiveness in dealing with such problems is related strongly to levels of trust, cooperation and legitimacy at a local level. Furthermore, SIPR’s review of the evidence of the impact of police mergers in other countries highlighted the risks around declining citizen satisfaction with local policing in the initial period following force amalgamations. By placing obligations on the chief constable to make ‘adequate arrangements’ for local policing and on local commanders to ensure that local policing is delivered in close consultation with

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local authorities, there is the basis for developing a strong framework within which local policing can develop. Nevertheless, there are several areas where there are important questions as to how local policing will develop within the new Police Service for Scotland.

- **What is ‘local policing’?** The reconfiguration of policing associated with the reform programme means that there is now close scrutiny of how different aspects of policing are delivered, from specialist operations and training to tackling crime and partnership activity. As a result some activities and assets may be based nationally or at a regional level rather than locally. Against this background, it is important to achieve some clarity around what constitute ‘local policing’ matters and what are regional or national issues. To take a simple example: while providing a visible and accessible local presence and community engagement are clearly local policing issues, is providing an armed response, tackling drug dealing or searching for missing people, matters for local policing or the responsibility of more specialist regional or national units? Without some definitional clarity around what is meant by ‘local policing’, local authorities will be left unsure as to what they can expect in terms of resourcing local policing and what should be included in a local policing plan.

- **How will levels of local resources be determined?** Understanding what local policing is for is important because of the likely tensions between ‘national’ and ‘local’ around resources and assets made available at a local level. The Bill makes clear that this is a matter for the Chief Constable to ensure there are ‘adequate arrangements in place for the policing of each local authority’ (45(1)) but if there are disputes over the level of resources available at a local level, how will these be resolved and within what forum? A related issue is the determination of the rank of officer designated as a local commander. It is likely that this will vary across Scotland depending on the nature and complexity of the policing requirements of different areas but it may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank which may have implications in negotiations for resources;

- **How will local police plans be developed and evaluated?** The Bill makes clear the requirement on a local commander to submit a local police plan to the relevant local authority for approval. Given that such a plan must have regard to the national strategic police plan as well as priorities identified by local community planning there are areas of potential tension around the balance between a ‘bottom up’ and a ‘top down’ approach to setting priorities and objectives. Similar tensions may also exist in relation to performance measurement and performance reporting. For example, to what extent will national reporting requirements be allowed to shape local performance measurement?

- **How will the local authority execute its role in local policing?** The Bill clearly proposes that the local authority play a key role in setting priorities and objectives in consultation with the local commander. In order to execute this role effectively it is important that local authorities develop effective structures for engagement with their local commander and the capacity and capability to monitor and scrutinise local policing issues in ways which do not rely exclusively on information provided by the local police. In relation to structure,
the Policy Memorandum makes clear that it is for local authorities to
determine the most appropriate local mechanism for exercising their role.
Given that there already exist a number of local forums in which policing
issues are discussed with representatives of local authorities (for example,
Community Planning Partnerships, Community Safety Partnerships and
Community Councils) the challenge will be to ensure that there is not
duplication of effort nor the creation of a confusing and cluttered landscape of
different settings where police and local authorities interact. In relation to
issues of capacity and capability, local authorities need to develop the ability
to engage with their local communities in order to better understand their
policing needs and concerns over crime and disorder so that these can be
included in discussions about priorities and objectives along side information
provided by the local police.

- *What happens to local community policing initiatives?* There has been a
  significant revival of interest in community policing in Scotland over the last
  five years, prompted by a combination of the publication of the ACPOS Public
  Reassurance Strategy (2007), the Scottish Government’s Community Policing
  Engagement Principles (2009) and the Scottish Parliament’s Justice
  Committee report into community policing (2009). As a result, most police
  forces have made significant changes to the way community policing is
  organised, resourced and delivered. SIPR has undertaken a programme of
  research evaluating the operation of these different approaches so that there
  is now an evidence base that provides insights into the strengths and
  weaknesses of different community policing activity. What happens to the
diversity of community policing arrangements within a single police service
will be an important test of the relationships between the Chief Constable,
Scottish Police Authority, local commanders and local authorities. A single
service clearly creates opportunities to share ‘good practice’ but there may
also be local concerns about any attempts to impose a ‘top down’ approach to
community policing.

Chapter 10 Complaints and Investigations
The creation of the Police Investigations and Review Commissioner (PIRC) with its
own investigative capacity is an important advance, both because the present
procedure whereby police forces investigate complaints on their own is no longer
tenable where there is only a single force, and because best practice elsewhere,
including within the UK, points in this direction. This will also build upon recent
experience of the Police Complaints Commissioner for Scotland (PCCS) in
developing a learning culture in relation to handling public complaints.

There remain certain gray areas in defining those ‘relevant complaints’ with which
the chief constable must deal and those which are reserved to the Crown, but there
is sufficient clarity around PIRC’s areas of operation to demonstrate that it can have
a considerable effect on the public’s perceptions of independent complaints
investigation against the police and offers a more thorough and effective means of
dealing with such complaints.

The right to investigate ‘matters in the public interest’ [s.41C] is very important and
provides an area of truly independent initiative for the Commissioner in which to act.
It is particularly the inclusion of this ‘public interest’ clause which moves police
complaints in Scotland from a position in which it lags behind other comparable jurisdictions to one in which it potentially leads the field.

Chapter 11 HM Inspectors of Constabulary in Scotland
The arrangements for HMICS inspection reports to be lodged with the Scottish Parliament as well as the SPA is to be welcomed. The continuing involvement of Audit Scotland with policing bodies, which has been so fruitful, is also welcomed. There remain a number of questions around the role of Inspection in the context of a single police service: what forms will inspections take and who will decide; where will inspection teams be recruited from; and will there be any place in the new system for the appointment of a Lay Inspector to be fully involved in the inspection process. The underpinning issue is to establish who inspection is for. It obviously serves an important purpose for the SPA and the chief constable, but it should also be regarded as an important part of the public accountability structure for the Scottish Parliament, local authorities and, above all, the citizens of Scotland.

Chapter 16 Independent Custody Visiting
The decision to make Independent Custody Visiting (ICV) a statutory requirement is very much in line with the recommendations that SIPR made in its evaluation of custody visiting in Scotland carried out for the Independent Custody Visiting Association. This should ensure improved coverage of Scotland's detention facilities and provide a basis for consistent performance reporting mechanisms, and structures of accountability. However, it is important that ICV is properly resourced in terms of administrative capacity, perhaps by the appointment of a national support officer. Such an appointment could play a key role in raising the profile of custody visiting among the public and thus help achieve one of ICV's main aims of providing public reassurance about the treatment of detainees in police custody. Detailed consideration will also need to be given as to how a national body (the Scottish Police Authority) will execute its responsibilities in relation to the very local character of custody visiting which involves the recruitment and deployment of local volunteers and visits to local detention facilities.

Conclusions
There is much to be welcomed in the arrangements which this Bill makes for the creation of a Police Service of Scotland and for the legislative framework which it provides to support key principles of Scottish policing, such as policing by consent and local delivery of policing. At the same time, it is a starting point and there will be matters which require continuing attention as the new Police Service develops. In Appendix 1 (below) a set of issues and questions relating to how police reform aligns with key democratic criteria are set out to provide a framework within which the reform programme might be assessed in the future. More immediately, the reform programme will demand the development of effective leadership at all levels within an enlarged single force, ensuring that the Police Service establishes robust working with partners in a variety of contexts, and, most importantly, that a high level of public confidence is sustained through this period of transition and change.

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APPENDIX 1
Summary of key issues in relation to police reform and democratic criteria
The Bill involves a complex reconfiguration of the relationships between the police, national and central government and the citizens of Scotland. The table below attempts to summarise some of the key issues which the Bill raises and how these relate to a set of ‘democratic criteria’ that might be used to assess policing and police governance\(^5\) in Scotland in the future.

### Democratic criteria and the governance of policing in Scotland

<table>
<thead>
<tr>
<th>Democratic criteria</th>
<th>Questions raised by policy proposals</th>
</tr>
</thead>
</table>
| **Equity**<br>(Policing services should be fairly distributed between geographical areas, groups and individuals) | • How, and by whom, will decisions about the allocation of resources between local policing areas be determined?  
• How will conflicts between local and national views as to appropriate resourcing of local areas be resolved?  
• How will access to specialist expertise and resources be facilitated in an equitable manner? |
| **Service delivery**<br>(The police deliver appropriate services as efficiently and effectively as possible) | • How will the Scottish Police Authority determine what should be delivered nationally and locally and does consideration need to be given to an intermediate geography (i.e. regional level) for some services?  
• To what extent will delivery be shaped by centrally determined statistical targets and performance indicators, and what scope will there be for local democratic input in the setting of these? |
| **Responsiveness**<br>(As long as it is consistent with equitable policing, the police should be responsive to the views of representative bodies in determining priorities, the allocation of resources between different objectives and choice of policing methods) | • Against a background of declining responsiveness to local representative bodies and growing central government influence, how responsive will policing be to local preferences expressed through local elected representatives with only limited statutory powers?  
• What mechanisms will be in place to respond to the perceived needs of local communities directly (i.e. other than through local councils)?  
• At a national level, how responsive will the Scottish Police Authority be to the views of external bodies when its membership is selected rather than elected? |
| **Distribution of power**<br>(The power to influence and review policing policy should not be concentrated but should be distributed across a number of institutions and agencies) | • To what extent will the proposals address the centralisation of power that has occurred within the tripartite structure over the last 20 years?  
• Will the proposals around local consultation between the local commander and local authority be sufficient to address the democratic deficit that has emerged at a local level?  
• What powers, if any, will local councils have in relation to the local consultation proposals? |
<table>
<thead>
<tr>
<th>Information</th>
<th>• Against a background of growing concerns that unrefined police performance data in the public realm may have hindered rather than enhanced sophisticated debate about policing (Jones, 2008: 717), how will the different (but overlapping) information needs of police managers, local authority members, community groups and the public be addressed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redress</td>
<td>• What are the implications of the changes proposed for the investigation and review of complaints by the public against the police, including the replacement of the Police Complaints Commissioner for Scotland with the Police Investigation and Review Commissioner?</td>
</tr>
</tbody>
</table>
| Participation                                | • Are the proposals, which focus on increasing the quantity of locally elected councillor involvement in local policing, likely to improve the quality of the engagement between police and citizens at a local level? Who will have responsibility for ensuring engagement and participation between the police and other social groups so that their views on local policing are also heard?  
• At a national level, how best can the membership of the Scottish Police Authority be constituted in such a way as to properly involve as wide a range of interests as possible in discussions of policing policy? |
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Police Authorities Conveners Forum

1. Background

The ‘Police and Fire & Rescue (Scotland) Bill’ was introduced to the Scottish Parliament on 16 January 2012. The Justice Committee was designated as Lead Committee to oversee the Bill process and the Local Government and Regeneration Committee was designated as the Secondary Committee. While the Bill considers issues around both Police and Fire & Rescue Services, this submission deals only with issues pertaining to the Police and for ease of reference follows the Bill Chapters and headings with relevant comment immediately underneath.

2. Chapter 1 (including Schedule 1)

The principle of the SPA having the sufficiency of correct skills, experience and expertise to collectively govern and hold the Chief Constable to account is supported. However the Bill content does not remove a number of continuing concerns.

Section 2(3) indicates the SPA must carry out its functions in a way which is ‘proportionate, accountable and transparent and which is consistent with any principle of good governance….’. At this point there is no specific detail in regard to practical functionality or how it will conduct business. Presumably this means that the SPA will (in general) meet in public as police authorities do at present? It is expected that the detail of Standing Orders and Terms of Reference for committees etc will be agreed once the relevant appointments are made towards the end of 2012. The Scottish Government has responsibility for developing the workstream which will provide and recommend, to the Authority designate at this time, a framework for structure and functionality. Work is ongoing by them to develop a framework for structure and functionality and police authorities look forward to contributing to this workstream in due course.

In general terms the Bill structures the SPA as an NDPB. We cannot support this principle. The Authority should have a specific legal identity where it retains financial functions in terms of borrowing capability, reserves and carry forward facilities. The necessity of being able to hold, and utilise, reserves to smooth out unexpected operational demand is essential and well proven by current police authorities. In particular, the SPA simply must be able to recover VAT.

Schedule 1, section 2(1) indicates an SPA membership of 7 – 11 members. We believe that this possible range of members is too low, and in particular consider that a membership range of 13 – 18 members would be more appropriate arising from past experience within existing police authorities. Unfortunately, with the total absence of detail as to how the actual SPA business will be structured and conducted, this effectively introduces an element of guesswork into the process. In
terms of appointments to the Authority, the issue of appropriate levels of vetting required by members and staff has also yet to be considered.

The Chief Constable has responsibility under sections 17(1), 17(2)(e) and 45 to ensure ‘local policing arrangements’ and relevant oversight of such responsibilities rests with the Authority. Given this oversight duty we believe that a minimum of 50% of Authority members should be drawn from suitably experienced locally elected representatives.

Schedule 1, section 10 introduces the establishment of committees and sub-committees, and also the concept of membership of such committees by persons who are ‘not members of the Authority’. While non-members do not possess voting rights, we are against this particular principle. It serves to reinforce the current lack of detail as to how the Authority will actually conduct its business. For example, what levels of members and non-members are expected to constitute the different committees and sub-committees, and indeed, what numbers would constitute a quorum? Could it be that 1 member and a number of non-members could provide competency and quorum to a committee? It is unclear as to whom the non-members are there to represent, or as to whom, and how, they would be accountable.

Section 5, indicates that the Authority must comply with any direction (general or specific) given by Scottish Ministers. While section 5(2) seems to separate matters of operational policing and enshrine the independence of the Chief Constable in such matters, we do not agree with this overarching power being afforded to Ministers. If one aim of the Bill is to keep policing separate from Ministerial control, then the general or specific power of direction does not provide this essential separation. Such direction should, in principle, only be capable of enactment subsequent to relevant necessity arising from inspection processes, for example, by HMICS, as at section 78 of the Bill.

Chapter 2 - Police Service of Scotland

Section 7(a) indicates that the Authority must appoint the Chief Constable. Recent papers to the Scottish Policing Board indicated that different arrangements could be put in place whereby an Authority Chair designate and a panel may appoint the first Chief Constable. Subsequent discussion considered alternative proposals to effect as early an appointment as possible. In principle, should any future, workable proposals be put forward with the full support of all relevant parties, then we would be, generally, supportive of the process. That would of course be subject to any such alternative proposals being considered competent in terms of the Bill process and all relevant legislation.

Chapter 3 - Forensic Services

Section 31 sets out provision of forensic services by the Authority. While agreeing with the principle, no supporting detail is available at this time which makes it difficult to provide meaningful comment. In particular, it is unclear as to the practical implementation of procedures necessary for the Authority to ensure meaningful scrutiny of such services.
Chapter 4 - Principles, Priorities, Objectives and Plans

Section 34 introduces a duty on the Authority to make such arrangements as are necessary to obtain the views of relevant persons to assist in preparing a Strategic Police Plan. Section 35 sets out arrangements for Annual Police Plans and 36 sets out arrangements between the Authority and Chief Constable in this regard. These are new duties placed on a police authority and will require further detail in regard to how such arrangements will be effected in practice.

Chapter 6 - Annual Reports Accounts, Audit and Examination

Section 40 introduces a duty on the Authority to prepare and publish an Annual Report assessing the performance of both the Authority and the Police Service. Again, this is a new duty placed on a police authority. A workstream has commenced to consider what an appropriate performance regime might look like in respect of a single force and identify what performance indicators and outcomes would be necessary. While the Scottish Policing Performance Framework is utilised at present by police authorities, in conjunction with other measures, to assist in performance reporting by Chief Constables, we are unable at this time to indicate what a future performance model will look like.

Chapter 7 - Local Policing

[Note:- Before commenting on specific sections of the Bill, there are a number of general principles regarding the implementation of new local policing arrangements to consider. The SPA will have limited scope to address local accountability and scrutiny, compared to present arrangements and concerns have been expressed that the proposed new arrangements may simply become ‘talking shops’ without any real powers, which would result in a serious diminution of local accountability over policing. The role and powers of the proposed new local arrangements therefore need to be clearly defined to ensure that they have real impact, and can deliver effective local accountability. There are four key points:

1. clear recognition that the role of the local arrangements is to deliver local accountability and scrutiny of all policing activities provided in the local area, and this role complements the national scrutiny and accountability by the national authority (this point is particularly important given the limited number of councillors proposed for the national authority);
2. creating an effective mechanism for resolving disputes between the local body and the local commander, should they arise;
3. providing greater clarity on the balance between operational independence and scope for scrutiny;
4. creation of effective mechanisms to deal with issues over the distribution of resources.]

Section 46 sets out arrangements for the ‘local authority role’ in policing. Section 46(3) details what a local police commander must provide to a local authority and states ‘(3) a local commander must provide to the local authority such – (c) other information about the policing of its area, as the local authority may reasonably require.’ There is a similar provision at section 81(3) in respect of a reasonable
requirement by the Authority on the Chief Constable to provide reports or other information. However, sub-sections within section 81 then detail a process to define and arbitrate upon what ‘may reasonably require’ means in practice. There is a need to consider a suitable process of arbitration at a local policing level in terms of section 46(3). At present HMICS can provide professional advice to all police authorities should they so request it. While not explicit within the Bill, it begs the question as to whether this provision of professional advice is likely to be extended to local authorities, should they so request it, in terms of their ‘local policing arrangements’?

Section 48 sets out arrangements for Local Police Plans (LPP) and 48(1) and (4) indicates that the local authority must ‘approve’ an LPP prior to it being published. While appreciative of the principle of enhanced local accountability, the current lack of practical detail highlights concerns as to what procedures are available if ‘approval’ is not given? For effective scrutiny and accountability the relationship with the local commander must be positive and constructive while allowing scope for challenge. A point which should be clearly reflected in legislation.

The above two bullet points are relative to general concerns around local policing. It is unclear as to what formal links and procedures will exist between the local policing areas and the national Authority. While individual local authorities may monitor policing performance within their own areas, how will the Authority provide overall, meaningful scrutiny in terms of its overall accountability for ensuring delivery of all local policing arrangements? All of this is closely linked to resource allocation to local commanders which will (ultimately) determine what policing services local authorities will receive, and what remedies might exist should local authorities consider that they have not received an equitable allocation?

At paragraph 184 of the Financial memorandum, COSLA estimated a joint cost of £3m to £4m for local authorities to engage with local policing and Fire and Rescue services. However, this paragraph also indicates a believed, overall cost-neutral scenario will ensue given the savings occurring from the dissolution of current arrangements for joint police and Fire and Rescue Boards and unitary authorities. However, as the current funding available to local authorities in respect of these arrangements will cease on their dissolution, it appears more likely that local authorities will be in an overall net-loss position by losing funding yet having to support the new, incoming local arrangements? These new arrangements will carry fixed costs regarding meetings and professional support (for effective scrutiny) and it will be essential, for them to be effective, that funding is provided to local authorities to meet such requirements. Similarly, some police authorities run local schemes such as Diversity Lay Advisers and clarification is required as to how these successful schemes will continue to be resourced in the future? There is also the risk of losing expertise and specialist knowledge should staff be transferred to the new Authority requiring replacement at further additional cost. While understanding that various workstreams and projects are currently being initiated in regard to all aspects of a single police force, no detail exists to presently understand what local authority arrangements will ultimately look like. This is an area of overall risk to ensure meaningful democratic accountability.
Chapter 8 - Governance and Administration of Police

Section 49 refers to ‘regulations’ which will require to be made regarding the governance, administration and conditions of service of constables and cadets. While noting the requirement for regulations to be made, there is concern regarding the substantial volume to be produced within such a short timescale.

Chapter 9 - Police Appeals Tribunals (including Schedule 3)

[Note:- The Police (S) Act 1967, Schedule 3 currently sets out two different arrangements for Police Appeals Tribunals in respect of ‘senior officers’ (those appointed to Chief Officer rank) and those constables of Chief Superintendent rank and below. Membership of Tribunals, as proposed by the Bill, is different from either of the arrangements existing at present. It is understood that the Police Investigations and Review Commissioner (PIRC) will have responsibility for the future investigation of complaints against ‘senior officers’ in the single force, but with the lack of detail pertaining to future regulations yet to be made under section 49 of the Bill, it is not clear at this time how the two current sets of arrangements are going to be assimilated in any practical sense for future application across all ranks.]

Section 57 sets out the detail for Police Appeals Tribunals and Schedule 3, section 1(3)(a) and (b) introduces new arrangements for members. Specifically that all members must be practising solicitors or advocates in Scotland. We cannot support that principle and would seek membership to consist of three members, The Chair to be held by member from a list nominated by the Lord President and supported by a former Chief Constable and a retired constable of appropriate rank. Previous Tribunal hearings have resulted in expertise being retained by such members in terms of regulations, police procedures and practice with past decisions, in effect, providing a background of case law.

Section 58(2) intimates that either party may require that the representations (to the Tribunal) are to be made by way of oral hearing. We cannot support that principle. It does not seem fit and proper that either party can dictate to a Tribunal in what manner it will receive representation. It should be incumbent upon the Tribunal to determine the manner in which it will receive representation.

Chapter 10 - Complaints and Investigations

Section 61 introduces new arrangements in respect of complaints and investigations. While supportive of the principle of the new arrangements and the introduction of a PIRC we are aware that further work is presently ongoing to develop the arrangements.

Section 63(e) relates to functions imposed on the Commissioner under section 49 of the Police & Fire Reform (Scotland) Act 2012 (asp 00) in relation to procedures for dealing with constables whose standard of behaviour or performance in unsatisfactory. It is unclear what this will refer to as none of the relevant regulations to be issued under section 49 have been promulgated.
Again, the lack of detail at present makes it unclear as to the practicalities as to how the Authority will maintain suitable arrangements for the handling of complaints at both local and national levels. This is an area of concern given the significant amount of work presently undertaken by police authorities in respect of the monitoring of complaints under current arrangements, notwithstanding how a small, centralised Authority will cope with the enhanced complaints functions being developed in accordance with the Bill at section 61.

Chapter 16 - Independent Custody Visiting

Sections 90 and 91 introduces the purpose and arrangements for Independent Custody Visiting. While fully supportive of this becoming a statutory obligation in Scotland, there is no detail available as to how a small, centralised Authority will undertake the practical recruitment, training, management and co-ordination of Custody Visiting as currently exists across Scotland. The earlier consultation indicated a willingness to build upon ‘existing skills and experience’ and further information is currently awaited as to how this will be facilitated in practice in the future.

Schedule 4 - Transfer of constables, staff and property etc.

Schedule 4, section 10 identifies what individuals will be regarded as ‘police employees’ for the Authority, and section 10(3) specifically notes that the SPA will determine whether or not a police employee is to be a member of staff under the control and direction of the Chief Constable, or under the control and direction of the Authority. At this time there is no information available as to when such decisions may be taken, or to otherwise indicate the numbers, roles or functions of any staff under the control and direction of the Authority.

3. Conclusion.

In setting out the general powers of the SPA within the Bill, it is clearly limited in function and legal identity in comparison to the police authorities which it replaces. To fully reflect the tripartite safeguards currently enacted in legislation the Authority must, as an underlying principle, be wholly separated from government by virtue of having a stand-alone legal identity and not merely exist as a governmental, arms length body. The proposed lack of treasury function, ability to carry-forward reserve funding, constraints on borrowing capabilities, potential inability to recover VAT and being subject to general or specific Ministerial direction clearly do not achieve the essential separation from Scottish Ministers and the Authority will therefore remain too closely linked to government.

There are a number of high-level principles within the Bill that many will support. However the Bill is, in essence, merely enabling legislation. The concern at this time is the complete lack of practical detail as to how the proposed new Authority will actually function, in terms of structure and staff, and how it will practically conduct its business. With organisational and operational detail for the Authority to be considered and agreed upon at a later date in conjunction with a designate Chief Constable and Authority members, the Authority has the potential to be an entirely
different entity from that of police authorities as they are known and understood at present.

While understanding that a number of workstreams and projects are commencing to determine functional and operational details regarding the Police Service and Authority, there is real concern in regard to the extremely short timescale involved. This is particularly relevant in regard to achieving suitable arrangements around local policing and meaningful local democratic accountability. The Police Reform Sub-Group has a role in monitoring the progress of the various workstreams and efforts will be directed through this sub-group on an ongoing basis to alleviate the concerns and issues raised within this response.

Scottish Police Authorities Conveners Forum
28 February 2012
Thank you for the opportunity to comment on the Bill. The Scottish Police Federation (SPF) represents over 98% of all Scottish Police officers from constable to chief inspector and what follows are the views of their elected representatives.

In summary, the SPF’s view of the Bill is that it proposes changes to accountability and governance which would adversely affect operational independence. The SPF accepts that the current tripartite arrangement needs amendment to accommodate a single force and to provide balance between local and national interest, but it is vital that the chief constable’s operational autonomy is not unwittingly diminished by that amendment.

Part 1 Police Reform

Chapter 1 – The Scottish Police Authority

S. 5(2) – SPF has asked Scottish Government if this sub-section means:

“A direction may not be given in respect of any operation or on any issue which may affect an operational matter.”

SPF received a positive response that this was the meaning and therefore the Bill should be amended to state that precisely. It is vital that the unique position of the police in relation to operational independence is taken account of here.

Chapter 2 – The Police Service of Scotland

S. 11(5) – The Inquiry into Police Responsibilities and Rewards ¹ proposed the removal of the ranks deputy chief constable, chief superintendent and chief inspector despite opposition from every section of the service. The deputy chief constable rank was removed and replaced by an assistant chief constable designate for a period but was reinstated. The chief superintendent rank was replaced grades of superintendent temporarily, and the chief inspector rank was, in the event, left untouched. Change of this nature should be fully considered and factored through primary legislation not regulation. The explanatory note cites a potential reason for change as ‘operational efficiency’ but this is for chief constables to determine and they can already choose to use or not use ranks.

S. 17(2)(c) – The chief constable should prepare the strategic police plan not merely be ‘involved’ in its preparation. The strategic police plan should be subject to the approval of the Scottish Police Authority (SPA).

¹ The Sheehy Report 1993
S. 17(4) & (5) – These sub-sections are superfluous. To some extent they express the obvious but they also impinge on operational independence. Lord Denning said the chief constable was “not the servant of anyone, save the law itself.”\(^2\)

S. 20(a) – SPF would wish to see the iconic and memorable “guard, patrol and watch” inserted here.

S. 20(e) – SPF believes police should be responsible for the execution of warrants but not for service of citations or other legal documents.

S. 22(3) & (4) – SPF proposes that these sub-sections be removed. A new law in statute would achieve nothing that common law does not already accommodate. "It is a crime at common law for a public official, a person entrusted with an official situation of trust, wilfully to neglect his duty, even where no question of danger to the public or to any person is involved."\(^3\)

Chapter 3 – Forensic Services

S. 31 – The operational side of forensic services (scenes of crime/gathering of evidence) should be under control and direction of the chief constable as that is clearly part of constables’ duties\(^4\) with the analysis side of forensic services being a matter for the SPA. It should be noted that criticism of forensic services following the McKie Inquiry was not as a result of the chief constable having authority over scenes of crime/gathering of evidence. SPF is concerned about quality of service and bureaucracy and the costs incurred by the police if forensic services are not delivered properly and timeously.

Chapter 4 – Principles, Priorities, Objectives and Plans

Understanding precisely what this Chapter means depends largely on what is understood by, and the relationships between, the words in its title, “Principles, Priorities, Objectives and Plans" and also the phrases “strategic police priorities”; “strategic police plan”; “annual police plan” and “local police plans”. Fine differences in understanding can lead to confusion over who should do what, who or what has primacy and whether that amounts to appropriate change in the tripartite structure.

S. 32 – Wording here is largely non-police specific and seems to avoid core duties as expressed in S. 20.

S. 33, S. 34(5), S. 35, S. 36 & S. 37 – As stated above, these sections can be read as enabling a shift towards direct political control of policing. Effectively they cover setting priorities and various plans and prescribe how bodies should consult, submit, approve and publish these priorities and plans.

SPF believes these sections shift the mechanics of accountability and governance to the detriment of operational independence. Specifically, at:

\(^2\) R v Metropolitan Police Commissioner, ex parte Blackburn [1968] 2 Q.B. 118 at 136
\(^3\) Gordon, Criminal Law, 3rd Ed. Vol. II Chapter 44. q.v.
\(^4\) Section 20 (1)
S. 33(3) - It should include ‘chief constable’.
S. 34 – It should be the responsibility of the chief constable not the SPA to prepare the strategic police plan. It should be subject to the approval of the SPA.
S. 35 – Same comment as above.
S. 36 – As above.

Chapter 7 – Local Policing

The relationship between the SPA and local authorities and national policing priorities and local police plans must be clearly described or the police will be left in the middle uncertain as to how to balance and prioritise the two responsibilities.

S. 46 – Does this mean the local commander has primacy in setting priorities and objectives? Again, our concern here is operational independence. There is no provision for resolving disputes.

Chapter 8 – Governance and Administration of police

S. 53(2)(a)(iii) – References to performance and inefficiency should be removed as these are covered in efficiency regulations not conduct.

S. 53(2)(b) – The provision for suspension should extend to senior officers.

Insert after S. 53(2)(b),
- About the form and procedure of an investigation
- Imposing restrictions on the extent of any investigation
- Setting time limits within which matters must be investigated

S. 53(2)(d) – This should read ‘serious’ misconduct and should not include unsatisfactory performance. It should also be clearly separated from the arrangements for senior officers.

S. 53(3) – Add, ‘should include the sanctions at 53(2)(c)’.

S. 55(2)(a)(iii) Should read ‘the Joint Central Committee’.

Chapter 9 – Police Appeal Tribunals

S. 58(1)(a) Insert the word ‘and’ between the words ‘submissions’ and ‘or’.

S. 59(4) Remove the words from “to such extent…..for the purpose of”.

S. 59(4) & (5) – We are concerned this may introduce the concept of suspension without pay?

Schedule 3, paragraph 4, should have added;
- (d) the time within which the decision has to be delivered’.
Chapter 10 – Complaints and Investigations

S. 62 – Concerns over cost and staffing. The clamour for independence should not knock out the need for efficiency and effectiveness.

S. 63(1)(d) – Change ‘Commissioner’ to ‘Lord Advocate’.

S. 66 – Seems to be covered at S.63 – 33A(1)(d) and should be removed.

S. 67(2)(c) – Add after the word ‘procedure’ add ‘and reports’.

S. 67 41D(3) – Add Joint Central Committee and reference to other staff associations

S. 68 – Add new sub-section 4, “the Commissioner must not act in a manner which is likely to provide the name of any person or particulars which could identify any person without providing to that person or persons not less than seven days notice of that intention so to do.”

S. 70 – This seems anomalous when independence of investigations is considered.

Chapter 13 – Provision of Goods and Services

S. 83 – Add to this Section, “police services provided at a charge must not be provided to the detriment of normal public police services.”

Chapter 15 – Offences

S87 – Assault, resist, obstruct or hinder should be treated as three separate individually identifiable offences, given sub-sections of their own because, (a) they are different offences, and (b) separate sub-sections would allow a true record of assaults on police officers to be kept.

Chapter 17 Miscellaneous and General

S. 94 – The facility to discuss non-negotiable terms and conditions with other stakeholders is valuable. What is to replace PABS in this regard?

Schedule 1 The Scottish Police Authority

Part 1 Status, Structure and Governance (page 66 of the Bill)

Membership (page 66 of the Bill):
2(1) – To provide resilience and the capacity to service the Authority and its committees there should be 15 not 11. There should be elected representatives (no more than seven) and they should be selected through the same process and against the same criteria as other members.
Tenure (page 67 of the Bill):
4(3) – Add ‘subject to a maximum of two terms’. There should also be provision for suspension.

Committees and sub-committees (page 69 of the Bill):
10(1) – Replace ‘for any purpose’ with ‘in connection with its functions and roles’.
10(5) – Details of remuneration, allowances and expenses should be published.

Schedule 3 Police Appeals Tribunals (page 73 of the Bill):

Constitution and Membership
1(1) – After the word ‘appointed’, insert the words, “from the faculty of advocates”. The SPF believes the chair of the tribunal should be from the Faculty of Advocates as this would ensure it had a sufficiently high standing.

Add “1(d) timescales within which decisions have to be delivered.”

Schedule 4 Transfer of Constables, Staff and Property etc. (page 78 of the Bill):

Limitation on mobility of transferred constables
9(4)(b) – This condition was not included in the last round of police force amalgamations in 1975 and should be removed. Our members are clearly considering how the Police Service of Scotland will affect them and, overwhelmingly, their main concern is that they might be transferred to other parts of the country against their will. SPF has no difficulty with Schedule 4, paragraphs 9(4)(a) or (c) but (b), “is promoted to a higher rank”, would effectively mean that constables accepting a promotion to sergeant would lose their protection and could thereafter be transferred to any other in place in Scotland against their will. Of course movement will be necessary and will occur voluntarily but this reasonable protection should not be lost on promotion.

Equality Impact Assessment (page 32, paragraph 166/167 of the Policy Memorandum)
The Equality Impact Assessment addresses only the six strands of diversity. These have been replaced by the nine protected characteristics. The lack of detailed statistics is evidence of the poor compliance of recording within Forces and fails to address basic principles such as part-time workers.

Calum Steele
General Secretary
21 February 2012

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5 Equality Act 2010
Thank you for the opportunity to give oral evidence to your Committee on 28 February 2012. I would like to make a further submission to you on three aspects of the bill.

**Early Appointment of Chief Constable**

At a meeting of the Joint Central Committee of the SPF on 13 February 2012, serious concern was expressed about the appointment of the chief constable being scheduled for December 2012. It was felt that this was much too late to allow the new chief constable to appoint the other members of the service’s executive and for them to make important decisions about the shape and operation of the service. SPF fully understands that Scottish Ministers do not wish to exert undue influence on the appointment of a chief constable but believes an independent panel could be established to appoint him or her on this first occasion. SPF would like to see the appointment made as soon as possible.

**Police Investigations and Review Commissioner**

At your meeting on Tuesday 6 March 2012 when you heard evidence from Professor John McNeill and others, important issues were raised relating to the role and responsibilities of the Police Investigations and Review Commissioner (PIRC). On behalf of the SPF I want to make the following points:-

SPF does not agree with Professor McNeill (col 1069) that the bill should make referral mandatory in serious incident, serious injury and police use of firearms cases. SPF believes this can adequately be covered in the regulations.

SPF agrees with Professor McNeill (col 1069) that forensic services should be made available to PIRC at no cost.

SPF does not agree with Professor McNeill (col 1070) that the police service and the Scottish Police Authority should be ‘required’ or have a ‘duty’ to co-operate with PIRC. We believe the bill at s67 makes adequate provision in this regard.

SPF does not agree with Professor McNeill (col 1071) that the PIRC should have primacy where a single incident engenders both a criminal inquiry and a PIRC investigation. The Lord Advocate is the head of the systems of criminal prosecutions and investigations of deaths in Scotland and is independent of any other person. The chief constable has a duty to comply with instructions from the Lord Advocate, the sheriff principal or the appropriate prosecutor in relation to offences and prosecutions. SPF believes that situation should persist where such a double investigation is necessary and the Crown should direct how the investigations are organised. We agree with Andrew Laing HMICS (col 1072) that the general principle should be set out in the bill and the bill should not be overly prescriptive.
SPF agrees with Professor McNeill (col 1073) that the PIRC and a head of investigations should be appointed as soon as possible.

**Police Appeals Tribunal**

As we wrote in our initial submission, SPF agrees with the provision in the bill that three solicitors or advocates comprise the tribunal. Further, we believe the chair of the tribunal should be from the Faculty of Advocates to give it the gravitas and standing it deserves. Police officers losing their jobs are akin to doctors being ‘struck off’.

SPF has serious concerns about the way misconduct hearings are currently run with hearing chairs believing they can run them as they see fit. SPF also has serious concerns about disregard for processes including:

- the admission of statements in lieu of oral evidence where no agreement between the parties has been reached
- disclosure only of statements which support the ‘prosecution’
- subject officers or their representatives being prevented from testing ‘evidence’

SPF believes that a tribunal constituted in accordance with the provisions of the bill and with a chair from the Faculty of Advocates will assist in enforcing compliance with proper processes in these areas.

Calum Steele
General Secretary
16 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Police Services Authority

1. Overview

SPSA has responded to both of the consultation exercises which preceded the Bill and we are pleased to note that a number of comments made have been reflected within the Bill. We have also made separate recent written submissions to the Finance Committee (9th February) and to the Local Government & Regeneration Committee (10th February). In the latter we focussed on our experience of transferring staff into a new national body at the formation of the SPSA.

This paper summarises the key points covered within these documents which we believe are worthy of emphasis.

2. The Role of Police Staff

SPSA understands and welcomes the positive commitment to policing outcomes that lies behind the current policy to protect police officer numbers.

It is widely recognised that staff provide many professional functions in support of the police service, for example through HR, Finance and ICT specialists. However police staff also play a vital role within operational policing itself making the distinction between police officers and police staff less clear than it might seem in that:

- not all police officers are currently employed on the “front line” or in roles that require the use of warranted powers;
- many police staff are employed in roles that, while not requiring warranted powers, are at the “front line” of policing for example within Forensic Services and often as the first point of contact with the public.

This has been recognised by forces over recent years with a healthy and efficient balance of police officer and staff roles achieved. There is a significant danger that this balance and inherent efficiency will be degraded under current constraints.

SPSA hopes that Reform will provide an opportunity for the single police force to review its resourcing requirements to achieve efficiency, effectiveness and flexibility through an appropriate blend of police officers and police staff, skills, experience and rank or grade profile.

3. Forensic Services

In our response to the consultation published on 8th September 2011 we commented that:

“We welcome the proposal for Forensic Services and the management of related information and databases (specifically DNA and Fingerprint (IDENT1)) to report and
to be directly accountable to the new Scottish Police Authority. Forensic Services plays an invaluable part in the investigation of crime and protection of its impartiality is considered of paramount importance...

...We recommend that, within this model, there would be appropriate service level agreements between Forensic Services and the force and that Forensic Services would be “maintained” by the single force in the delivery of its corporate and support functions.”

We stand by that view and are pleased to note that the Bill makes provision for Forensic Services to be directly accountable to the new Scottish Police Authority (SPA) whilst continuing to serve Scottish Policing and maintaining the “crime scene to court” approach which was introduced at the formation of the SPSA in 2007. Clear demonstrable impartiality is important in maintaining confidence in forensic evidence presented within the criminal justice system and also protects the police from any impression of undue influence.

Since 2007 we have made a range of efficiency improvements and changes to working practices in all areas of the Forensic Service, including crime scene examination. We see this work, which is based on close working with and feedback from our partners in policing, continuing as we move into the single service.

We also support the intention that the Forensic Service will have arrangements in place for corporate resources (for example, HR and Finance) to be provided by the Chief Constable.

4. The Financial Case

Overall, our view is that the savings associated with Reform seem reasonable as a proportion of the overall costs of policing in Scotland. We believe that it is essential that these savings are delivered through genuine efficiency rather than top down cost-cutting and that priority is given to driving down non-staff costs.

SPSA is concerned by the assumption that the reduction to staff numbers will be achieved through natural attrition and voluntary redundancy. While this may be achievable in theory, these are blunt instruments and unlikely to result in the optimum skill, experience and grade profile. This could, for example, constrain the ability to reduce expensive, senior staffing levels where excess capacity is most likely.

SPSA does not have access to the forces projections of out-turn for 2011/12 but believes that it is essential to model the 2011/12 efficiency delivered by forces and review the profile of future savings in that context.

5. ICT

ICT is a key enabler of Reform. SPSA remains concerned over the current assumptions relating to the cost of ICT. SPSA agrees that there is potential to divert spend from existing projects – although this requires robust re-prioritisation by ACPOS and forces. However, we believe that significant ICT spend is likely to be
required to support changes to business processes. As such SPSA believes that, even with the 100% optimism bias provided for ICT costs within the Financial Memorandum, the cost of change relating to ICT may be under-stated.

In this context, SPSA is also pleased to note that the Financial Memorandum recognises that the detail and profile of cost and savings may change as the programme progresses.

6. Conclusion and SPSA Contribution

The SPSA supports the conclusion of the Outline Business Case that there are opportunities for substantial efficiencies and greater effectiveness across support services and Scottish Policing in general.

The set up of the SPSA, 5 years ago, represented the most substantial change in Scottish policing in decades. Much of our work since set-up has been based on a model of national service provision with appropriate local delivery – effectively mirroring the broader plans for Reform. This recent experience positions us well to apply the lessons learnt and fully support the next stages of Police Reform.

SPSA
22 February 2012
Foreword

Scottish Women’s Aid (“SWA”) is the lead organisation in Scotland working towards the prevention of domestic abuse. Established in 1973, we play a vital role campaigning and lobbying for effective responses to domestic abuse.

We provide advice, information, training and publications to our members and non-members.

Our members are local Women’s Aid groups which provide specialist services, including safe refuge accommodation, information and support to women, children and young people with experience of domestic abuse.

An important aspect of our work is ensuring that women, children and young people with experience of domestic abuse get the services they need, both from local Women’s Aid groups and from the agencies they are likely to contact.

Introduction

SWA welcomes the opportunity to comment on the reforms within this Bill to police services in Scotland. The establishment of a Single Scottish Police Force (“SSPF”) will substantially impact upon the way police services are delivered in Scotland, and, our interest is how the police response to women, children and young people experiencing domestic abuse will be maintained and improved across the new Single Force.

For SWA and our local Women’s Aid groups, the most important outcomes arising from the establishment of a SSPF will be consistency of police response and approach to domestic abuse across Scotland, coupled with better accountability and meaningful consultation and participation in forming that approach. Women, children and young people experiencing domestic abuse need consistency through delivery of the same high quality response, regardless as to whether that response comes from Wick or from Edinburgh.

We note that the Bill is intended to increase local transparency, accountability and wider links with local authorities, strengthen the connection between services and communities and provide a clearer purpose for policing, focused on prevention and early intervention to improve outcomes.

However, in terms of local responses, while the Bill sets out governance arrangements and the framework for the new SSPF, there are is no clear sense of how the service and planning will be managed and delivered at an operational level. This is an important matter of relevance and concern, not just to SWA but also other partners, as was highlighted in the evidence given to the Scottish Parliament’s Local
Government and Regeneration Committee of the 8th February and 21st February 2012, respectively.

SWA and our local Women’s Aid groups delivering direct services to women, children and young people across Scotland have established a close working relationship with ACPO(S), Scottish police forces and the Scottish Government in relation to the development of local and national strategy on policing domestic abuse and have worked with Scottish forces in taking this forward.

Considerable advances have been made in the police response to domestic abuse and any diminution of the response or the work being done with expert partners such as SWA and Women’s Aid groups will have a detrimental effect on the safety of women, children and young people experiencing domestic abuse and their confidence in the police.

It is, therefore, essential that any national and local arrangements, partnerships and working relationships which SWA and our local Women’s Aid groups currently have with ACPO(S) and Scottish police forces continue across to new SSPF, so that we may work with, and support, the SSPF, in whatever local configuration, in developing and strengthening its response to domestic abuse.

This underlines the necessity of clarity in how the new SSPF will operate at both local and national level and of having appropriate local arrangements in Local Command Areas in relation to domestic abuse;

- Existing local initiatives, joint working and protocols in place between local Women’s Aid groups, Violence against Women Multi-Agency Partnerships and police forces must be retained and re-shaped appropriately to formalise and encourage collaboration, liaison and regular contact between the Women’s Aid groups, the Partnerships and those officers within the 32, or otherwise, Local Command Areas.
- There must be consistent, Scotland-wide, standard policies, procedures and guidance in handling, tagging and responding to domestic abuse, for all police officers, from the local response of officers on the beat through to the strategic response from higher ranks, to ensure continuity.
- Of particular relevance is the “In Partnership, Challenging Domestic Abuse”, a Joint Protocol between COPFS and ACPO(S) which outlines the procedures and practices that will be followed by the Scottish Police Service and the Crown Office and Procurator Fiscal Service in relation to the investigation and prosecution of domestic abuse in Scotland. The reforms are an opportunity to give this document a more formal status in terms of SSPF adherence to the procedures outlined therein.
- Nationally, a planned programme of general awareness-raising on the causes, effects, dynamics, and legal responses to domestic abuse should be available to all officers, along with Continual Professional Development “refresher” training for civilian staff and all police, similar to that instigated by

the Metropolitan police who put in place training for 33,000 uniformed officers and support staff.

Having a clear, Scotland-wide standard response and procedures in place supported by relevant national and local protocols and training and partnership working with local Women’s Aid groups, will improve the response and accountability of the SSPF and support it in attaining set goals in the delivery of service improvements, at both local and national levels across Scotland.

Commentary on the Bill

We note that the numerous sections concerned with the making of regulations and plans state that the body responsible for these, be it Scottish Ministers, the Scottish Police Authority, Local Area Commander or local authorities, must consult various persons and bodies specifically referred to and “other such persons as they consider appropriate.”

This “catch all” is too vague and discretionary to inspire confidence that public consultation and engagement on important matters in the Bill will actually happen. Furthermore, there are several important sections where there is no obligation placed on them to consult with any party whatsoever.

In the spirit of transparent and accountable decision-making which the Bill is seeking to promote, it is only right that the public and partner organizations should be consulted whenever important decisions which impact on them are being made, either locally or nationally. We have therefore made particular reference to those relevant sections which, we consider, should explicitly state that public consultation will be undertaken and that the draft documents will be publicly published for public scrutiny.

Section 1 - Scottish Police Authority (“the Authority”)

In terms of the Authority membership, we would reiterate the comments made in our response to the earlier consultation paper that "The members of the Scottish Police Authority must be able to reflect local experiences and also have experience and skills in relation to determining strategy on responses by the police to victims and witnesses.”

In terms of the overall independence, accountability and decision-making powers of the Authority, we would question how this will be maintained if Ministers are to have a power of direction over the Authority, regardless of how little this power would be used in practice.

We would also comment that there is no mechanism within the Bill to allow a local authority to have engagement with this national body.

Section 5 - Directions

This section provides that the Authority must comply with any direction (general or specific) given by the Scottish Ministers. The section should explicitly state that
Scottish Ministers must publish any such direction(s) for public scrutiny and comment.

Section 17 - Chief Constable

There is no indication of how it is intended that the Chief Constable be directly accountable to communities and partner organisations and we would want to see this process clearly set out in the statute.

Section 33 - Strategic police priorities

This is an important section since it grants Scottish Ministers power to determine strategic priorities for the Authority and instructs Ministers how they should consult on these as part of the determination process.

Firstly, the section must explicitly state that public consultation will be undertaken by Ministers and the draft documents will be publicly published for public scrutiny.

It is concerning that this section does not place an obligation on Scottish Ministers to have regard to any comments received during their consultation exercise, the obligation on simply being “to consult.” To address this omission, the section must include wording stating that Ministers must “invite comment on the draft priorities within such reasonable period as Ministers may specify, and have regard to any comments received within that period.”

Section 34 - Strategic Police Plan

This section places an obligation on the Authority to prepare a strategic police plan, which will be reviewed every three years, and to consult when preparing this plan.

Therefore, it is, once again, concerning that such an important section does not provide explicitly for public consultation on the content of this plan.

In relation to the initial strategic plan, and any amended/replacement plan produced as a result of their obligatory tri-annual review, subsection 4 must state that the Authority will undertake public consultation and that the draft documents publicly published for public scrutiny.

Similarly subsection 6(a) must state that the final, approved strategic plan will be similarly publicly published for public scrutiny.

Section 35 - Annual Police Plan

In addition to the overall strategic plan, the Authority must produce an annual police plan. Subsection 3 of section 35 must state that the annual plan will be published for public scrutiny and comment.
Section 38 - Best Value
Section 39 - Best value: further provisions

These clauses refer to the Authority and Chief Constable’s duty to make arrangements in relation to determining “best value” in the cost and quality of SSPF services. Under subsection 39(a) they must have regard to guidance issued by Scottish Ministers and subsection 39(3) obliges Scottish Ministers to consult before issuing this guidance.

Referring to our comments above, section 39(3) must explicitly state that public consultation will be undertaken by Scottish Ministers on this guidance and the draft documents publicly published for public scrutiny.

Section 40 - The Scottish Police Authority’s annual report

Subsection 40(5) must state that the draft document will be publicly published for public scrutiny.

Section 41 – Accounts

There is no duty on the Authority in this section to provide their accounts to anyone other than Scottish Ministers and the Scottish Parliament. Therefore, the section must state that that the statement of accounts will be publicly published for public scrutiny.

Section 43 - Examination of Police Service by Auditor General

This clause gives the Auditor General discretion as to whether to publish the results of any examination carried out by them into both “the economy, efficiency and effectiveness of the Police Service” and the “best value” arrangements made by the Chief Constable under section 38(2).

In the interests of transparency and accountability, this section must place an obligation on the Auditor General to publicly publish the results of any examination for public scrutiny.

Section 46 - Local authority role in policing
Section 48 - Local police plan

We have emphasised above the importance of national and local arrangements, partnerships and working relationships in making the new SSPF.

However, as we discuss below, the Bill does not allow for communities and partner organizations to have a role in developing of local policing, nor does it acknowledge that there must be a relationship and framework for consultation between the local authority, Local Area Commander and the community. In this regard, we would echo the comments of those witnesses who gave evidence to the Local Government and Regeneration Committee on 21st February 2012, as referred to above.
During the session on 21st February, Chief Constable Kevin Smith, (Association of Chief Police Officers in Scotland) in his evidence at pages 647 and 658, stated, *inter alia*, “There are a number of issues. The national board will be a very important part of the new structure. The one thing that has been missing from the discussion so far and is missing from the bill is the part that the citizen plays in it. There is no reference to the connectivity between the national authority and the citizen, nor is there any direct reflection in the bill of the relationship with the citizen and the local authority. To ensure that the process is democratic, there must be some form of compulsion on the police authority to have a consultation process with the citizen so that it is informed by what the people of Scotland think....There absolutely must be a link between the local and the national; the bill is currently silent on that and must clearly define the link. It must also set out the requirement for consultation with citizens, to ensure that citizens’ voices are heard.”

Further, on page 651, in response to a question from David Torrance MSP as to how “... will the bill affect community engagement and community planning partnerships? Will it restrict such engagement? How are we going to engage with the public who, after all, will be the first to complain to us? They are certainly the most concerned about the issue”, Councillor Iain Whyte of the Scottish Police Authorities Conveners Forum, stated “This is a very difficult area and the bill does not give us much of a clue about how any of the local arrangements will be taken forward and—critically—gives us no clue about how the Scottish police authority will deal with the public. There has to be a direct relationship in that respect...”.

Our comments on the individual sections impacting on these matters are as follows:

**Section 46 - Local authority role in policing**

The section requires that the Local Area Commander “involve the local authority in the setting of priorities and objectives for the policing of its area...” and further provides that “(2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander— (a) its views on any matter concerning or connected to the policing of its area, and (b) any recommendations for the improvement of the policing of its area that it thinks fit.”

While a local authority is given a number of rights in relation to how priorities and objectives for local policing are set, including the right to formally monitor and provide feedback and recommendations on policing of its area, there is neither an equivalent right for the local community and partner organisations to be involved, nor any obligation on the local authority and Local Area Commander to engage with the community and relevant partners and to develop a process to facilitate this.

There is no obligation at all on the local authority to consult, publicly or otherwise, and involve partners in setting priorities and objectives for policing. In shaping priorities and objectives in the Local Police Plans, local authorities must be obliged to consult and involve partner organisations, such as Women’s Aid groups and the local Violence against Women Multi-Agency Partnerships, and not simply the Community Planning Partnerships alone, as the earlier consultation proposed.
Previous consultation papers made reference to Local Policing Plans setting objectives and priorities for policing in the area in the context of local priorities, such as those set out in the Single Outcome Agreement (“SOA”) and the Scottish Policing Plan. This is predicated on the assumption that each local authority has fully developed their SOA to include action to address domestic abuse and violence against women, a situation which does not exist. We have attached, as part of our written evidence, a link to *Scottish Women’s Aid Analysis of Single Outcome Agreements*[^4], a report we prepared identifying priorities and outcomes in the SOA. From our analysis it is not clear how the implementation of national policy at a local level is monitored and evaluated or how local authorities and their Community Planning Partners can be held to account.

Giving more local elected members extended powers in relation to deciding policing priorities must not lead to any diminished commitment to address domestic abuse against women, children and young people. We would hope that this closer alignment between police and local authorities will develop closer working relationships between them, SWA, local Violence against Women Partnerships and local Women’s Aid groups in terms of developing local policing policy and local authority responses to domestic abuse.

Consequently, there is a need to establish consistency across Scotland on how local authorities develop local police services and Plans, to avoid a piecemeal approach resulting in little or no consultation and accountability in some areas, and to inspire public confidence, transparency of process and reflect the views of communities and practitioners.

A suitable framework for accountability and consultation must be enshrined in this Bill through an obligation on the local authority to both consult with the public and partners and to determine how it will achieve this.

We would also comment that there is no mechanism for the local authority to have engagement with the Chief Constable, in addition to their engagement with the Local Commander for their local authority area, and this must also be written into the Bill.

**Section 48 - Local police plan**

The section requires the Local Area Commander to prepare a Local Police Plan, submit it to the local authority for approval and to consult such persons as they “*consider appropriate*” when preparing the plan.

Again, while a local authority has a number of rights in relation to how this local police plan (or plans) is drawn up, including the right to formally comment, there is no equivalent right for partners and the local community to comment, no obligation on the local authority and local commander to publish local plans for public comment and no commitment to developing a process for consultation and the lodging of comments and objections.

The earlier consultation document stated that the Local Area Commander’s duty

would be to “provide reports to, and answer questions from the Council on performance against the plan and other issues bearing on the safety and well-being of local communities”. Given the wide impact of local policing plans, this reporting and accountability function must be extended beyond local authorities alone, to encompass not only partner organisations, such as Women’s Aid and the Violence Against Women Multi-Agency Partnerships, but also the public as service users.

We would reiterate our comments on section 46 above on the matter of consultation, in that to achieve public confidence, transparency of process and the views of communities and practitioners, section 48 must both place an obligation on the Local Area Commander to both undertake consultation with partners and the public in the preparation of a local plan and to publicly publish such a plan for public scrutiny.

Section - 61 Complaints handling

The section states that “(2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.” It must further explicitly state that public consultation will be undertaken and the draft documents publicly published for public scrutiny.

Section 67 - Investigations, etc

This section seeks to amend section 41 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, a section which makes provision on the conduct of investigations undertaken by the Police Investigations and Review Commissioner (“the Commissioner”).

Specifically, it gives powers to Scottish Ministers to make regulations as to how the Commissioner will conduct investigations. These regulations will govern, inter alia, the circumstances in which the Commissioner must, must not or need not carry out an investigation; may discontinue an investigation; the form and procedure of an investigation; and may impose restrictions on the extent of any investigation.

Again, stating that Scottish Ministers may consult “such other such persons as they consider appropriate” is not enough to allow for public consultation and the section must explicitly state that public consultation will be undertaken by Ministers when making regulations and that the draft documents will be publicly published for public scrutiny.

The section must explicitly state that any report prepared by the HMICS under this section will be published for public scrutiny.

This section allows the Authority to authorise the Chief Constable to make arrangements to provide and charge for police services. In granting this authorisation, the Authority must comply with any code about charging for police services issued by the Scottish Ministers.

The section does not set out the process that will be undertaken by Ministers in drawing up these codes. Therefore, it must make explicit reference to the
consultation process that Scottish Ministers will undertake, including publishing the code for public comment.

SWA welcomes the opportunity to comment on these important reforms to policing in Scotland and we look forward to working further with the Scottish Government, police and local authorities in taking these reforms forward.

We are happy to provide the Committee with any further information they may require in relation to our submission.

Scottish Women’s Aid
2 March 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Society of Local Authority Chief Executives

Summary

The main points of the submissions can be summarised as follows:

Solace believes that the new national services could be designed as partnerships between national and local government, rather than NDPBs (or 'quangos') as currently proposed. This would bring a number of positive benefits, not least the element of democratic accountability to localities at the highest level of governance within the new structures. It would also avoid the serious disadvantages of NDPBs, such as liability for VAT.

While Solace welcomes the fact that the basic 'building block' of the new services is to be the 32 local authority areas, each of which is to have its own local police/fire commander and local policing/fire plan, there also needs to be a strong connection between local government and the senior or regional command level of the new services. As stated above, one key element of this should be having local government as an equal partner with national government in the membership of the police authority and fire board. However, in addition to this and the locality arrangements, there should be a clear senior or regional command lead for manageable groups of localities. This is essential for proper police/fire engagement in community planning and for cross-agency collaborative working on important matters such as resilience and public protection that by their nature are not likely to fall within the delegated authority of local area commanders.

In the same vein, the duty to participate in community planning must apply to the whole of the new national services, not simply the local area commanders as the bill is currently drafted.

In the spirit of national/local partnership, Solace believes that a way should be found to continue an element of local government funding of police and fire services. Without some responsibility for (or at least influence over) allocation of resources, local accountability might be more theoretical than real. Again, this goes to the very core of the approach to creation of these new national services.

Solace appreciates that the bill sets out the broad framework for the new services and that much will depend on the organisational design of the services as this is developed. However, getting the national/local relationship right is critical to the success of the reform. Solace therefore believes that there needs to be more on the face of the legislation to prescribe the extent of delegation/authority of the local area commander and how this fits into the command/management structure of the national services.
Police Reform Consultation

1. The Scottish Government has now announced its intention to legislate for the creation of a single National Police Service for Scotland, replacing the current eight regional Police Forces that have existed since 1975. A consultation document has been published setting out the Government’s proposals and responses are sought by 2nd November 2011. This paper sets out Solace’s response.

2. Solace’s position in responding to the original consultation on options for reform of Policing in Scotland was that reform was to be welcomed where it would improve outcomes and efficiency and where the costs and potential disruption associated with reform would be outweighed by these benefits. Solace remains unconvinced that a strong enough case has been made for the proposed move to a single National Police Service. The business case is deficient in many respects. It is not clear how the proposed reform will improve outcomes that are already very impressive (eg. lowest recorded crime levels for over 30 years). The claimed efficiency savings (circa £130M) rest upon some questionable assumptions, but even if accepted Solace questions whether they are sufficient to warrant the likely cost and disruption involved in moving to the new National Police Service.

3. That said, the political decision to legislate for the establishment of a single Scottish Police Service has been made and Solace is committed to working with the Government to ensure that the transition to the new Service is successful. There are a number of key concerns regarding the establishment of the new Service that Solace believes need to be addressed through this further period of consultation and in framing the legislative framework to ensure that the new National Police Service effectively balances national and local policing priorities so as to maximise its potential to achieve improved outcomes while delivering efficiencies. Of equal concern is that the transition to the New National Police Service and the way it is structured and operates is such that the potential for disruption to local Community Planning and other critical cross-agency partnership working arrangements is minimised.

4. Central to these concerns is the essential nature of the new National Police Service and the extent of real local government influence in the new Service. Policing is currently a local government function (albeit funded to the extent of 51% by direct Police Grant from the Scottish Government). It is accepted that the decision has been taken that Policing should no longer remain with local government. However, Solace would question whether it necessarily follows that the only alternative is the centralisation of Policing in a new quango under a board wholly appointed and funded by Scottish Government as set out in the consultation paper. Drawing from experience of what works elsewhere (eg. London Metropolitan Police), the new Service could be designed as a genuine partnership between national and local government. The board could be appointed on a 50/50 basis by Scottish Government and by local government. Funding could continue on the current basis with Police Grant being paid direct to the board and the balance coming from local government.

5. It is appreciated that there are some complex and detailed issues that would have to be satisfactorily worked through in designing such a model (eg. how would
the local government members of the board be appointed? and how would funding flow from local government to the Service?) but Solace believes these issues can be resolved if there is the will to establish a genuine national/local partnership at the heart of the new Service. The question is: to what extent is there that will, or has it already been determined that the new Service will be a wholly national function with some minority (tokenistic?) representation on the board for Local Government and Local Government’s influence in effect confined to the locality?

6. Solace believes that the case for a genuine national/local partnership on Policing is compelling. Both from a Police and a Local Government view, there are many critical issues that do not neatly fit into a simplistic categorisation as either ‘national’ or ‘local’ policing and therefore effective partnership working between national and local levels, between the strategic and operational leadership of agencies and also across agencies at both national and local levels is essential if these critical issues are to be addressed effectively.

7. For example, the consequences of serious and organised crime at the national (or indeed international) level are drug dealing, drug dependency, petty crime, dysfunctional family units, disruptive individuals, chaotic lifestyles and other social problems in localities. Important intelligence critical to combating serious and organised crime is gathered in localities.

8. Critical issues such as public protection and community resilience are both national and local in scope. The Scottish Government has set out a range of social policy objectives such as Early Years Framework and GIRFEC. The recent Comprehensive Spending Review called for increased focus on outcomes and a shift of spending and action to Early Intervention and Prevention. Successful delivery of all of this requires effective local partnership working across Police, Local Government and other agencies. Further, partnership working must exist at both the strategic and operational levels. For example, all inspections of services to protect children have stressed the need for good partnership working across Social Work, Education, Health, Police and others and that this needs visible, committed, consistent leadership from Chief Officers.

9. For all these reasons, Local Government’s role and influence in the new National Police Service cannot be confined to the proposed arrangements for accountability of local policing. There also must be strong connections between the strategic leadership of local authorities and that of the National Police Service, as well as between operational service management in local authorities and the command of policing in localities. To ensure all that of this works effectively Solace would argue there must be real Local Government influence at the national level of the new National Police Service. This can best be achieved by establishing the new National Service as a real national/local partnership as suggested above.

10. Solace welcomes the proposal that the basic building block of the new Service will be the 32 local authority areas, each constituting a local policing area headed by a local area commander. Solace believes that the framework should allow for voluntary combinations of local authority areas to form larger local policing areas.
11. Solace has concerns about the level of seniority and degree of local autonomy of the local area commanders. These issues are inter-related. The proposal is that the local area commander could be any rank from Chief Superintendent to Inspector, depending on the size of the local policing area. This is an unacceptably wide range of seniority that could result in significant divergences in the degree of autonomy of local area commanders. Solace believes this poses risks to effective partnership working in local policing areas. To address this concern, Solace believes the legislative framework should provide for a formal scheme of delegation that will entrench the local operational autonomy of the local area commander. Consideration should also be given to the minimum rank for local area commander.

12. As stated above, partnership working is most effective when the commitment exists at both the strategic and operational levels. Therefore, in addition to the local area commander, Solace believes there should be a designated senior officer, probably one of the Assistant Chief Constables, for every local policing area. This senior officer should be a signatory to the proposed Local Policing Plan, along with the local area commander, and both should be accountable to the Local Authority for its delivery.

13. As regards the Local Policing Plan, the consultation document is unclear whether the local authority role is envisaged as de facto ‘Local Police Authority’ to approve the plan and then hold the local area commander to account for its delivery, or is merely that of a local consultee whose views on the Local Policing Plan should be taken into account before it is finalised. Solace believes that if genuine local accountability for policing in localities is an objective, then role must be the former. As the proposals are taken forward in legislation consideration will need to be given to how a local authority’s refusal to approve a Local Policing Plan is resolved.

14. It is appreciated that the consultation document sets out a number of specific questions on which views are sought. Solace has determined to focus its response on governance and accountability, as set out above. Turning to the specific questions Solace would add further comment as follows.

15. As regards Question 1 (purpose of policing) Solace believes the purpose should include ‘to improve the safety and well-being of individuals, families and communities in Scotland’ and there should be an explicit requirement on the new National Service to participate fully in Community Planning, in particular public protection and community safety. This may be an opportune moment to introduce a legislative requirement on the Police Service to deliver Best Value and to participate in Community Planning.

16. As regards Question 3, Solace notes the proposal to consult on the future relationship between the new National Service and Strategic Coordinating Groups, including a possible restructuring of SCGs. Solace believes that the existing SCG structure provides effective coordination of contingency planning, resilience, contingencies response and recovery activities, however the move to a National Police Service affords the opportunity to review current arrangements. Again, the critical issue will be how best to achieve the most appropriate balance between national and local interests.
17. As regards Questions 4, 5, 6 and 7, Solace would argue for the national/local partnership model suggested above. If this is not acceptable to Scottish Government, then Solace believes consideration must be given to how best to ensure that Local Government has real influence at the national level as well as the local. This cannot be achieved simply by reserving a minority of places for Local Government on the National Board. Consideration should be given to ways of making the National Board accountable to Local Government as a whole, in addition to its formal accountability to Parliament through Scottish Ministers. In terms of local accountability (Question 6) Solace’s position is set out in paragraphs 10, 11, 12 and 13 above. As regards, Question 7 (funding), as set out about, Solace believes that some control over an element of funding is essential to ensure real Local Government influence over matters of local concern – these being wider than simply local operational policing. Short of that element of control, there needs at the very least to be complete transparency around the allocation of resources to policing in localities and the ability for local authorities to question and challenge this.

18. Solace hopes that the above response to the consultation document is helpful and looks forward to continuing to work with Scottish Government officials as the legislation giving effect to the new National Service is developed and taken forward through the legislative process.

Solace Scotland
2 November 2011
Fire and Rescue Services Reform Consultation

1. The Scottish Government has now announced its intention to legislate for the creation of a single National Fire & Rescue Service for Scotland, replacing the current eight regional Fire & Rescue Services that have existed since 1975. A consultation document has been published setting out the Government’s proposals and responses are sought by 2nd November 2011. This paper sets out Solace’s response.

2. Solace’s position in responding to the original consultation on options for reform of Fire & Rescue Services in Scotland was that reform was to be welcomed where it would improve outcomes and efficiency and where the costs and potential disruption associated with reform would be outweighed by these benefits. Solace remains unconvinced that a strong enough case has been made for the proposed move to a single National Fire & Rescue Service. The business case is deficient in many respects. It is not clear how the proposed reform will improve outcomes that are already very impressive. The claimed efficiency savings rest upon some questionable assumptions, but even if accepted Solace questions whether they are sufficient to warrant the likely cost and disruption involved in moving to the new National Service.

3. That said, the political decision to legislate for the establishment of a single Scottish Fire & Rescue Service has been made and Solace is committed to working with the Government to ensure that the transition to the new Service is successful. There are a number of key concerns regarding the establishment of the new Service that Solace believes need to be addressed through this further period of consultation and in framing the legislative framework to ensure that the new National Fire & Rescue Service effectively balances national and local priorities so as to maximise its potential to achieve improved outcomes while delivering efficiencies. Of equal concern is that the transition to the new National Service and the way it is structured and operates is such that the potential for disruption to local Community Planning and other critical cross-agency partnership working arrangements is minimised.

4. The consultation document poses a number of specific questions and Solace’s response to these is set out in the following paragraphs.

5. Question 13 (Purpose): Solace suggests that the purpose of fire and rescue should include ‘to improve the safety and well-being of individuals, families and communities’ and that the new National Fire & Rescue Service should be subject to a statutory requirement to deliver Best Value and to participate fully in Community Planning.

6. Questions 16 and 17 (National Board): Solace believes there is an opportunity to establish the new National Fire & Rescue Service as a real national/local partnership with an appropriate balance of the national and local interests, rather than as a centralised service constituted as a new quango. A strong and influential role for Local Government at the national level is essential if the proposals for enhanced local accountability are to work well. Local Government representatives should be appointed by Local Government and should comprise at least half of the proposed National Fire & Rescue Board.
7. Question 18 (Governance/Accountability): Solace welcomes the proposal that the basic building block of the new National Service will be the 32 local authority areas. The legislative framework should allow for local authorities to combine together to form larger local fire and rescue areas. Solace believes that the legislation should provide for clear delegation of powers to and accountability of the proposed Local Senior Officer and that this officer should be required to work closely in partnership with the local authority and other partnership agencies in the locality within the context of Community Planning. The local authority should have the role of approving the Local Fire & Rescue Plan, rather than simply being consulted about it. Consideration needs to be given to how any refusal by a local authority to approve the plan is to be resolved. In addition, effective partnership working requires leadership commitment at both the strategic and operational levels. Therefore, in addition to the designated Local Senior Officer, Solace believes there should be a designated senior officer at the Chief Officer level for every local policing area. This senior officer should be also a signatory to the proposed Local Fire & Rescue Plan, along with the designated Local Senior Officer, and both should be accountable to the local authority for its delivery.

8. Question 19 (Funding): In the spirit of comments above about establishing the new National Fire & Rescue Service as a real national/local partnership, Solace believes that Local Government should continue to have a significant role in funding the Service. Without this, the influence of Local Government on the new National Service will be limited, possibly to the detriment of the objective of enhancing local accountability for local fire and rescue. At the very least there must be full transparency of the allocation of resources to localities and the ability to scrutinise, question and challenge resource allocation and use.

9. Solace hopes that the above response to the consultation document is helpful and looks forward to continuing to work with Scottish Government officials as the legislation giving effect to the new National Service is developed and taken forward through the legislative process.

Solace Scotland
2 November 2011
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from Stonewall Scotland

1. Introduction

1.1. Stonewall Scotland was established in 2000. Since then we have been campaigning for equality and justice for lesbian, gay, bisexual and transgender (LGBT) people living in Scotland. We work to improve LGBT people’s lives at home, at work, and at school.

1.2. We welcome the commitment to ensuring that front-line policing and fire and rescue services remain at a high level whilst acknowledging the severe financial pressures faced by the public sector in the current economic climate. A single police service and single fire and rescue service will have many benefits for Scottish society and for the services themselves, allowing the best practice from each current service to be retained within a more efficient and effective service.

1.3. We acknowledge that an Equality Impact Assessment has been developed for the Police and Fire Reform (Scotland) Bill and we welcome this commitment to ensuring that equality and diversity issues are not overlooked during the reform process. We are pleased that the concerns we expressed as part of our initial consultation response have been taken into consideration, and we present further evidence in this submission.

2. Hate crime reporting and recording

2.1. A hate crime is an incident committed against a person or property that is motivated by malice or ill will towards people because of their sexual orientation, transgender identity, disability, race or religion. When an incident is identified as a hate crime, the law treats it as an aggravated offence, meaning a judge will take the motivation behind the crime into consideration when deciding on the type or length of sentence given. This is a good way of monitoring the number of hate crimes that take place in Scotland, but there is currently a disparity in how each of the police forces records hate incidents and hate crimes reported to them.

2.2. In June 2011 Stonewall Scotland made a Freedom of Information request to each of the eight police forces, requesting details of reported hate crimes and hate incidents between March 2010 and March 2011. This was done to allow comparison with the Crown Office and Procurator Fiscal Service releasing figures on the number of homophobically aggravated charges in 2010-11 in May 2011. The difference in the level of detail provided by each force was significant.

2.3. One force could not supply separate figures for hate crimes and hate incidents. Three forces stated that their recording of hate incidents was too unreliable to give accurate figures, and one force did not allocate a specific code to homophobic incidents and issued Stonewall Scotland with a refusal notice.
2.4. Amalgamated police and fire and rescue services will make it easier to entrench best practice in hate crime reporting across Scotland, with central leadership providing clear guidance on how to support victims of offences inspired by actual or perceived sexual orientation or transgender identity. Reviewing the discrepancy in practices of Scotland’s current police forces will help in this process.

2.5. Consistent hate crime reporting standards and central collation of data will be a real asset to a single Scottish police service. However it will be important to be able to compare figures between areas, to identify local areas that are experiencing particularly high rates of hate crime. Senior officers responsible for local areas must promote the need for accurate hate crime reporting, to encourage officers and other police staff to be aware of hate crime issues and to encourage victims of homophobic and transphobic hate crime to report these incidents to the police.

2.6. There is still a long way to go when it comes to reporting and recording hate crime, and it is a process which will be further challenged by the anticipated increase in reporting of hate incidents as the confidence of LGBT people in the police improves. It is only with clear and consistent statistics on homophobic and other hate-related crimes that the police in Scotland can hope to combat local or regional ‘pockets’ of discrimination and hate crime and commit to the principles of the Equality Act 2010 and the accompanying public duty.

2.7. A single police service with a single, comprehensive system for collection and collation of hate crime and hate incident information would improve statistics & allow more useful comparison between different regions of Scotland, as well as ensuring that crimes of hatred are recorded more efficiently. Best practice in hate crime recording should be collated from each current system to ensure that the most useful standard is upheld. Stonewall Scotland are happy to advise on this.

3. Workforce and community engagement

3.1. The single police service and single fire and rescue service should be fully equipped to recognise the diversity of the people they work with and who work for them, including front-line staff and officers, ‘backroom’ staff, victims of crime, witnesses and perpetrators.

Stonewall Scotland has worked with all of the police and fire services across Scotland and enabled them to develop good practice in dealing with LGBT equality issues. The consolidation of services is a fantastic opportunity for this knowledge to be shared and best practice to become standard practice across Scotland. We would strongly recommend that the single police and fire services work closely with Stonewall Scotland through the Good Practice Programme and Diversity Champions programme, to ensure that both public service delivery and HR practices meet the needs of LGBT people in Scotland and the employees of the single services.

3.2. 10 of Scotland’s 16 police and fire services have worked with Stonewall Scotland’s Diversity Champions Scotland programme and Good Practice Programme. These services have set clear objectives to work towards improving LGBT equality and are aware of the benefits of inclusive policy and practice, which are advantageous for both LGBT staff and members of the public. Differing levels of
engagement with Stonewall Scotland and differing uptake of resources has led to inconsistencies between forces in the level of understanding and proactive work undertaken towards LGBT issues in community policing, tackling hate crime and inclusive workforces.

3.3. All emergency services received copies of Stonewall Scotland’s groundbreaking community safety research, How Safe Are You? in 2010. This research report examined LGBT people’s experiences of community safety initiatives and their experiences of reporting hate crime. The research found that community safety messages, such as home fire safety checks and the existence of remote reporting and third-party reporting schemes, were not always getting through to LGBT people and many would not use these services due to perceptions and fears of discrimination from police officers and from firefighters. This indicates that there is still work to be done around raising awareness of community engagement offered by the emergency services and demonstrating real inclusive services. A consistent approach to this across the board would go towards making sure there is a real change, and continued engagement with national and local LGBT organisations will be necessary to ensure this is achieved.

3.4. Many emergency services attend Pride marches and festivals, with publicity stalls in community venues and officers marching in uniform. Services which operate in areas with established Pride events obviously have more opportunities for this kind of community engagement, but there needs to be a commitment to maintaining this kind of engagement with a single force. Police and fire officers with local area responsibilities must ensure that they engage with local and community partner organisations to make sure this engagement happens with the full support of local agencies, and that engagement is developed in areas that do not currently have strong networks.

3.5. Equality and diversity information and resources such as robust policies, diversity training and diversity monitoring will benefit from a single service with centralised development, collection and distribution of these resources, but the ability to use and promote this at a more local level will also be useful. This will require buy-in from the senior police and fire officers who are designated to each local authority area to promote LGBT equality in their own areas and be a role model for the staff they lead and manage. Stonewall Scotland works with public bodies to advise and guide on LGBT issues, how to meet the requirements of the public sector equality duty, and encourage best practice sharing between organisations in the same sectors or local areas in order to make LGBT inclusion more efficient and effective. We welcome the proposal to include multiple agencies in setting priorities and objectives in each local area, which will go towards strengthening local engagement and partnership working around equalities in the public sector. We would strongly recommend that specific equality and diversity targets should be set within each area’s local plan, taking into account the needs of each specific area and the networks available to support local equality targets.

4. **Staffing**

4.1. Stonewall Scotland anticipates that the consolidation of police and fire services could lead to a reduction in staff numbers, particularly in key office-based ‘backroom’ roles with an equalities remit. There is a danger that the reduction in staff numbers could lead to a loss of expertise, both in terms of equality issues and local knowledge, and the breakdown of relationships with vulnerable service users, especially in the LGBT community.

4.2. Diversity units are well established within the Scottish emergency services and the community work carried out by LGBT liaison officers has been valuable in developing the relationship between the police service and the LGBT community, which has historically been a difficult one. Equality and diversity units within the fire and rescue services have been equally valuable in developing relationships with the LGBT community, especially after negative publicity around firefighters’ refusal to attend Pride in 2006. One area where a lot of progress has been made is firefighters’ home safety checks. Inviting someone into your home takes courage and confidence in their behaviour, especially for LGBT people, many of whom have previously experienced discrimination in public services, and it is crucial to ensure that such progress is maintained and extended across Scotland. Whilst a move to a single service would ideally retain current best practice within LGBT liaison work and with equality and diversity in the service, there is a risk that the proposed new model will overlook this need.

Stonewall Scotland
6 March 2012
Chapter 16

1. The National Preventive Mechanism (NPM) is a group of 18 organisations which monitor places of detention across the United Kingdom in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The NPM would like to comment on Chapter 16 of the Bill concerning independent custody visiting. We welcome Chapter 16 and the placing of independent custody visiting in Scotland on a statutory footing and are pleased to see OPCAT and its requirements so explicitly referenced in the Bill. We have some concerns about section 91(4).

Background

2. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international human rights treaty designed to strengthen the protection of people deprived of their liberty. It acknowledges that such people are particularly vulnerable to ill-treatment, and advocates that efforts to end ill-treatment focus on prevention through a system of regular visits to places of detention.

3. OPCAT requires States Parties to have in place a ‘national preventive mechanism’ (NPM), the role of which is to visit places of detention, including prisons, and monitor the treatment of and conditions for detainees. At a minimum, OPCAT requires that NPMs have the power to:
   - regularly examine the treatment of people deprived of their liberty in places of detention;
   - make recommendations to the relevant authorities with the aim of improving the treatment and conditions of detainees; and
   - submit proposals and observations concerning existing or draft legislation.

4. To enable NPMs to exercise these powers, they should have:
   - access to information concerning the number of people deprived of their liberty, the number of places of detention and their location;
   - access to information about the treatment and conditions of detainees;
   - access to all places of detention;
   - the opportunity to conduct private interviews with detainees and any other relevant person; and
   - freedom to choose which places they want to visit and who they want to interview.

5. OPCAT sets out certain key criteria that NPMs should meet. Perhaps the most important of these is that NPMs should be independent. The NPM must also be adequately resourced to carry out its role and its personnel should have the
necessary capabilities and expertise. There should also be a gender balance among the personnel and they should be representative of ethnic and minority groups.

6. The UK ratified OPCAT in December 2003 and designated its NPM in March 2009. Instead of designating one body as the NPM, the UK government chose to designate 18 existing inspecting and visiting bodies which already carried out roles similar to that of the NPM as envisaged in OPCAT. The NPM is coordinated by HM Inspectorate of Prisons. A list of the members of the UK’s NPM is appended to this letter. Further information about the UK’s NPM can be found in its annual reports.¹

Custody visiting in Scotland

7. Throughout the UK, visits to police custody are carried out by independent custody visitors. Their role fits well with the spirit of OPCAT – that independent and regular visits to places of detention are carried out for the purpose of monitoring the treatment of and conditions for detainees. When designating the NPM, the UK Government designated the Independent Custody Visiting Association (ICVA) for England and Wales, and the Northern Ireland Policing Board Independent Custody Visiting Scheme. No separate designation was made in respect of independent custody visitors in Scotland. Custody visitors in Scotland are, however, members of ICVA and so they have been treated as part of the NPM.

8. For the sake of clarity, however, for the independent custody visitors in Scotland themselves, for the other members of the NPM and for external stakeholders, it would be advantageous for the custody visitors in Scotland to be designated separately as a member of the UK’s NPM. The current situation, whereby custody visitors in Scotland perform much the same role as those in England, Wales and Northern Ireland but are not designated in their own right, is anomalous. There appears to be no objection in principle among relevant stakeholders to the custody visitors in Scotland being designated as the 19th member of the NPM.

9. OPCAT itself and best practice guidance does, however, dictate that NPMs have a statutory basis. This guarantees their right of access to places of detention and to detainees. Article 18(4) of OPCAT requires that, when designating NPMs, States should give due consideration to the Principles relating to the Status of National Institutions (the Paris Principles). Principle 2 states that, “A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.” In addition, guidelines published by the Subcommittee on Prevention of Torture, the treaty body established by OPCAT, state that, “The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text.”

10. Although custody visiting in Scotland enjoys Scottish Government support at present, and multiple visiting schemes are in operation, to ensure compliance with OPCAT and the SPT’s guidelines, custody visiting in Scotland should be placed on a statutory footing.

¹ Available online at http://www.justice.gov.uk/about/hmi-prisons/preventive-mechanism.htm.
11. The NPM is therefore pleased that Chapter 16 of the Police and Fire Reform (Scotland) Bill does exactly this. Moreover, we are pleased that OPCAT and its requirements are replicated in the Bill and are explicitly referenced. This will provide a solid foundation for a strengthened custody visiting scheme in Scotland. In particular, the emphasis on independence in section 91(2) is welcome. We anticipate that once the Bill is passed, custody visitors in Scotland will be designated as a separate member of the NPM by the UK government.

12. We are concerned at section 91(4) and the possibility that custody visitors may be refused access to detainees. This provision is not reflected in OPCAT which instead envisions unfettered access for NPMs. It is worth noting for example, that other NPM members have no equivalent provision in their statutory remit. While we appreciate that there may be, in exceptional circumstances, grounds for refusing access to a particular detainee, such grounds should be very narrowly drawn and the refusal should be made of someone of higher rank than currently suggested. Section 91(4) can be compared unfavourably to section 92(4) which provides for access to a detainee to be denied to the SPT only in narrowly prescribed circumstances and with Ministerial authority. We therefore suggest that custody visitors’ access to detainees should only be denied in similar circumstances and that further consideration be given to the appropriate rank of the person authorised to refuse access (e.g. superintendent). The exceptional nature of any refusal of access should be made clear in guidance and there should be a memorandum of understanding between custody visitors and the police service regarding how operational issues will be dealt with and how necessary security measures will be taken.

Implementing the Bill

13. In implementing Chapter 16, regard should be had to OPCAT itself as well as guidelines on NPMs published by the SPT. In particular, governance arrangements for custody visiting in Scotland should ensure that independence, both actual and perceived, is maintained. The following points should be addressed to ensure the effective operation of independent custody visiting:

- custody visiting must be adequately resourced as required by Article 18 of OPCAT and set out in paragraph 11 of the SPT Guidelines;
- the terms of office of custody visitors should be specified (paragraph 9, SPT Guidelines);
- custody visiting should enjoy financial and operational autonomy (paragraph 12, SPT Guidelines);
- there should be a follow-up process between the police authorities and/or government and custody visitors to ensure recommendations are addressed (paragraph 13); and
- custody visitors should take into account human rights standards when carrying out visits (paragraph 36, SPT Guidelines).

Should the Committee require any further information about OPCAT and the role of the NPM, please do not hesitate to contact me.

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2 SPT, *Guidelines on national preventive mechanisms* CAT/OP/12/5 (9 December 2010).
Nick Hardwick CBE
HM Chief Inspector of Prisons, on behalf of the UK’s National Preventive Mechanism
6 March 2012

Members of the UK NPM

England and Wales
- Her Majesty’s Inspectorate of Prisons
- Independent Monitoring Boards
- Independent Custody Visiting Association
- Her Majesty’s Inspectorate of Constabulary
- Care Quality Commission
- Healthcare Inspectorate Wales
- Children’s Commissioner for England
- Care and Social Services Inspectorate Wales
- Office for Standards in Education

Scotland
- Her Majesty’s Inspectorate of Prisons for Scotland
- Her Majesty’s Inspectorate of Constabulary for Scotland
- Scottish Human Rights Commission
- Mental Welfare Commission for Scotland
- Scottish Commission for the Regulation of Care (now the Care Inspectorate)

Northern Ireland
- Independent Monitoring Boards (Northern Ireland)
- Criminal Justice Inspection Northern Ireland
- Regulation and Quality Improvement Authority
- Northern Ireland Policing Board Independent Custody Visiting Scheme

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3 Although the Independent Custody Visiting Association is listed as an organisation operating in England and Wales, its membership includes independent custody visitors who operate in Scotland.
Introduction
UNISON Scotland welcomes the opportunity to respond to the call for written evidence from the Scottish Parliament’s Justice Committee regarding the above Bill.

UNISON is Scotland’s largest trade union representing over 162,000 members working primarily in the public sector in Scotland, and represents police staffs as well as Fire and Rescue control room and support staff in Scotland.

UNISON Scotland’s Response
UNISON Scotland submitted a response to both Scottish Government consultation exercises on this Bill and responded to the Calls for Evidence from both the Scottish Parliament’s Finance and Local Government Committees. This response highlights some key issues of concern to UNISON Scotland and its members.

Reform of Public Services
The Christie Commission specifically commented on the reform of the Police and Fire & Rescue Services in their report on public sector reform. The Commission raised a number of specific concerns relating to their criteria for public sector reform including whether any new arrangements:

- can be shown to lead to the achievement of better outcomes for the people and communities of Scotland;
- ensure that services are required to account to the people and communities of Scotland, both directly and through their democratically elected representatives, so that public confidence in and support for the delivery of services can be maintained; and
- support the local integration of service provision.

The Christie Commission called on the Scottish Government and other partners to address these issues in further discussion of the reform of police and fire and rescue services; and to give an account of how any specific proposals for reform can meet these criteria. UNISON Scotland does not believe that this Bill meets that test. The Christie Commission’s priorities included recognition “that effective services must be designed with and for people and communities – not delivered ‘top down’ for administrative convenience”. It seems to us that these proposals are exactly the sort of ‘top down’ approach the Christie Commission warned against.

Accountability
It is unclear as to why there are to be two policing bodies in the new structure, the SPA and PSS. In addition forensic services have a further degree of separation from the SPA and PSS. From a police staff perspective we are even unclear who will be the employer of our members.
The reform to the police service highlights that there could potentially be 32 local commanders – one for each local authority area. However, local commanders may not be all the same rank and this could lead to some commanders having more power and influence within the new police force than others. Local authorities may also feel that they deserve the same ranked commander as neighbouring authorities or the same number of police officers as their neighbours, creating an unhealthy competition between councils unless a clear criteria is set on the distribution of resources.

UNISON Scotland is also concerned that this could lead to police staff being redeployed to other areas, possibly at short notice and disruption to work life balance.

The Bill also doesn’t set out how the relationship between local commander and local authority should operate locally- leaving it up to each local authority to determine. This also raises the question of who is the local commander answerable to – is it the local authority for the area he/she covers and which may argue for one thing on behalf of its electorate, or the chief constable who may have other priorities? Police and to a lesser degree fire services are managed primarily on a command and control model, very different from other services. Unless there is much stronger local discretion it is inevitable that central control will interfere with local priorities.

Similarly, there are concerns about the democratic accountability of a single police force, how much representation will be afforded to areas such as the Highlands and Islands which have to cover a large land mass but has a lower population. There is a concern that any board meetings would be difficult for representatives from all across Scotland to attend and that many areas would have insufficient representation. This would break the link between communities and their local police force.

At a national level being subject to general or specific Ministerial direction does not in our view achieve the essential separation from Scottish Ministers and the SPA, giving the impression of political control of the police. There is a tradition in the UK of policing as a local service while recognising the legitimate interest of central government. A national police force could still be a local government body and this would provide a better governance model that that proposed in this Bill.

Finance
It is difficult to assess whether the estimated costs and savings provided within the Financial Memorandum are either reasonable or accurate. The paper highlighted a wide range of figures for both costs and savings, depending on what assumptions are made. For instance, in the case of police reform the costs range from £137million to £163million, while the potential savings range from £1.135billion to £621million. Similar variations are identified in the more detailed breakdowns later in the report, highlighting potential cashable and non-cashable savings, with some savings potentially coming from increased productivity but no comment on how this will actually be achieved. It is our understanding that the figures have been generated as a ‘top down’ requirement and task groups have been told to find the savings.
This approach results in optimistic assumptions about the effectiveness of shared services and simply passing even more support staff tasks onto operational staff through cost displacement. Others have also expressed concerns over the savings estimates, particularly in areas like IT. Experience of past reorganisations has rarely justified the scale of optimism shown in the current plans.

UNISON Scotland is also concerned that local authorities may end up with additional budgetary pressures paying for the scrutiny of complaints, training for members, or even the administration of a local police board and local fire and rescue board – when this should come from the SPA/Scottish Fire & Rescue Service resources rather than from local authorities' own funding streams.

There is also a concern regarding the VAT liability for both new organisations, as highlighted within the report. This issue needs early clarification. If there is no VAT exemption then this will be a recurring cost on both budgets (approx £22 million per annum for the police and £4 million per annum for Fire and Rescue).

**Police Staff**

As the Government has a target to maintain police officer numbers, the focus of the savings are concentrated on police staffs. This is in contrast to the report by the National Police Improvement Agency in England and Wales, which examined how forces could save resources by removing the use of a warrant card for some jobs where there is no need for one, and having a better workforce mix between civilian and uniformed staff. Scotland is already some way behind modern police practice in this regard. Police staffs includes properly qualified civilian personnel delivering a wide range of routine, complex and specialised functions that are central to modern day police forces, while allowing uniformed officers to concentrate on operational policing duties. Taking trained operational police officers off the streets to perform administrative or specialist tasks – at greater cost, is economic madness. Together with the cost savings this will return the police service in Scotland almost to the 1980’s, with inefficient and outdated police practice.

UNISON Scotland is concerned about a number of issues relating to workforce planning particularly for staff who may be currently employed by local authorities but are working for police forces. This could include staff in shared services, such as camera safety partnerships and elsewhere, who may be employed primarily with a local authority or other agency. The Bill states that such staff will be transferred, subject to a staff transfer scheme but there is little detail about this within the Bill.

UNISON Scotland would like further clarification on whether police staffs, once transferred to the new bodies, would be subject to the Scottish Government guidance on non-compulsory redundancies. There is a concern that the projected savings from the move to a single police force will be mainly achieved by drastically reducing the number of police staffs – a recent ACPOS paper indicated as many as 2,000 posts were under threat. UNISON Scotland would like further clarification on this issue. This is causing anxiety and uncertainty around staff transfer.

S26 provides for the appointment of police staff “to assist constables”. This is a very outdated view of the role of police staffs. Many police staff perform their duties in their own right without “assisting” any constables. S26(2)(b) also refers to individuals
being appointed under arrangements with a “third party”. There are separate provisions in the Bill for contracting, so the purpose of this section is unclear.

The Bill has separate provisions (s28-30) for Police Security and Custody Officers (PCSO). The certification and ‘fit and proper person’ test could result in double jeopardy situations for the police staff concerned and the necessity for such arrangements are unclear.

Police staffs are also included under the s21 powers of the Chief Constable to direct and control the service. Police staffs are correctly explicitly excluded from police regulations because they are appointed through a contract of employment. That contract should determine the relationship, not a statutory provision that could conflict.

The staff transfer scheme in Schedule 4 is inadequate and does not cover the full range of matters staff would expect in a statutory transfer scheme. Previous statutory reorganisations have at least covered the main provisions of TUPE (e.g Water industry (Scotland) Act 2002). S27 also refers to the establishment and administration of pension schemes. Is it really intended that a new pension scheme should be established rather than remain as a scheduled body to the LGPS?

We welcome the inclusion of police staff in s87 offences.

With regards to the new Scottish Fire and Rescue Service, UNISON Scotland would like clarification on whether control room staff and support staff, once transferred to the new body would be subject to the Scottish Government guidance on non compulsory redundancies. There are similar issues in the staff transfer arrangements in relation to fire and rescue staff.

Conclusion
UNISON Scotland believes that the centralisation of police services in Scotland is wrong in principle and contrary to the principles of public service reform as described by the Christie Commission. Accountability is confused and the balance of powers between local commanders and the Chief Constable are insufficient to ensure genuine local policing. National direction could be perceived as political direction of the police.

The financial arrangements are sketchy to say the least. They have not been built up from service delivery need. Instead target savings appear to have been randomly allocated and staff told to fit services to those figures. This is a recipe for service chaos with the inevitable cost dislocation that goes with this ‘top down’ approach.

The provisions for police staff will turn back the policing clock in Scotland by decades. Police officers will be performing duties they are not qualified to undertake at greater cost. The aim should be to ensure the maximum number of police officers ‘on the street’, not substituting for police staff roles. The provisions in the Bill regarding police staffs reflect this outdated approach to policing. Finally the staff transfer arrangements are inadequate and unclear.

Dave Watson
Bargaining & Campaigns team
22 February 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from Victim Support Scotland

Victim Support Scotland is pleased to respond to the Police and Fire Service Reform (Scotland) Bill and to build on our previous submission to the consultation on the future of policing in Scotland of 5th May 2011. Victim Support Scotland welcomes the Bill which sets out the framework and structures for a new single police service in Scotland. In particular, we welcome the policy objectives set out in the Bill, which seek to: protect and improve local services; create more equal access to specialist support and national capacity; and, strengthen the connection between services and the community. We look forward to the implementation of the reforms set out in the Bill and have only one key area which we wish to influence; that is, in relation to the principles, objectives and strategic direction of the new service, both at a local and national level.

Victim Support Scotland currently enjoys close partnership working and dialogue with the police in Scotland, both nationally and at local level with all eight Scottish forces. This close partnership engagement has been of significant importance for ensuring the interests of victims, witnesses and communities are placed at the heart of police planning, practice and processes; most notably through the establishment of robust Scotland-wide referral protocols which allows all victims of recorded crime being safely and securely referred to our services. These robust referral protocols are of vital importance for achieving a wider national objective of providing all victims of crime equal access to support and information services in the aftermath of crime. The Bill provides for new arrangements for strengthening local engagement and partnership working, and increasing powers for local authorities in relation to policing of their local areas and development of local policing plans. We hope that these reforms will have the effect of enhancing, rather than weakening, opportunities for Victim Support Scotland to influence the strategic direction, development and implementation of practical police service delivery, by ensuring policymakers and those responsible for local implementation continue to proactively engage with us at both national and local level.

Maintaining this close partnership engagement is vital for ensuring the interests and needs of victims and witnesses are firmly integrated into consistent Scotland-wide policing policy and practice. Victim Support Scotland calls for victim and witness issues and interests – as set out in our Manifesto¹, the Scottish Strategy for Victims², the draft

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EU Directive Establishing Minimum Standards for Victims of Crime \(^3\) and the Scottish Government’s forthcoming Victims and Witnesses Bill – to feature prominently in the content of strategic policing priorities, the policing principles, and the annual and local police plans which the Bill provides for.

The safety and wellbeing of victims and witnesses is of upmost priority to Victim Support Scotland. Consistent national referral arrangements and minimum rights and standards which ensures everyone equal access to support in the aftermath of crime is vital to achieving this outcome. We hope this will be clearly reflected and understood within the principles, priorities and strategic direction underpinning the new police service. Victim Support Scotland both urges and welcomes the opportunity to contribute to the detailed development of these national and local plans and processes at the appropriate time.

 Victim Support Scotland
2 March 2012

Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from Robert Wyllie

Summary

1. This submission will cover the provisions of the Bill which cover independent custody visiting and police complaints management.

The custody visiting provisions

2. Chapter 16 of the Bill provides for a custody visiting scheme to be maintained. I understand the custody visitors shall form a national preventive mechanism for the purposes of Article 3 of the Optional Protocol to the UN Convention Against Torture (OPCAT).

3. Part IV of OPCAT provides minimum standards against which national preventive mechanisms must comply. The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) published further standards in November 2010\(^1\), which will be referred to in this submission as “the Guidelines”.

4. In my view, Chapter 16 falls short of the requirements of OPCAT and the Guidelines in several respects. I outline my main concerns below.

5. The first and main problem is that the Bill does not provide for a comprehensive visiting scheme. It allows for access to be denied to custody visitors. This is inconsistent with Articles 19(a), 20(c) and 20(e) of OPCAT together with paragraphs 24 and 25 of the Guidelines.

6. The justification for this is unclear, especially given the unlimited powers of access which are given to other bodies.\(^2\) If the supposed justification for the provisions is that access to detainees could prejudice security, this is inconsistent with practice elsewhere. For example, the Mayor’s Office for Policing and Crime in London have a cadre of suitably vetted custody visitors who are allowed to access high-security custody suites where terrorism suspects are detained.

7. If the supposed justification is that access should not be given in circumstances where a serious incident is taking place, this too is inconsistent with practice elsewhere. For example, Independent Monitoring Boards in England and Wales must have an emergency plan so that they may safely exercise their powers to observe how the prison service deals with emergencies including concerted indiscipline or hostage taking.\(^3\) Indeed, it can be argued that it is precisely when serious incidents take place that custody visiting is most required.

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\(^1\) United Nations. 9 December 2010. Guidelines on National Preventive Mechanisms. CAT/OP/12/5

\(^2\) e.g. the Scottish Commission for Human Rights Act in section 11 and Schedule 3 of the Scottish Commission for Human Rights Act 2006 (asp 16)

\(^3\) Ministry of Justice. Independent Monitoring Board Reference Book for Prisons. Part 35.
8. The next problem is that the relationship between custody visitors, the Scottish Police Authority and Scottish Ministers is unclear. Whether the custody visitors form a part of the Authority is unclear. Precisely to whom the custody visitors are accountable is unclear. The extent of control both the Authority and Scottish Ministers have over visitors is unclear.

9. The danger with this lack of clarity is that the arrangements which emerge could be inconsistent with Article 18(1) OPCAT and paragraph 12 of the Guidelines which require that the NPM should enjoy independence when carrying out its functions. The Committee should guard against this by appropriate amendments to the Bill.

10. As an illustration of the problems which arise from the excessive discretion which is given to others by the Bill, paragraph 9 of the Guidelines say that the relevant legislation should specify the period of office of a member of a NPM and any grounds for their dismissal. But such provision is not made in the Bill.

11. In a similar vein, Article 18 OPCAT states a NPM must be granted the power to undertake visits and make recommendations. Paragraph 7 of the Guidelines makes clear that these powers should be granted in a constitutional or legislative text. But the proposed scheme by which powers will be granted to custody visitors is neither and is therefore inconsistent with the requirements of OPCAT.

The SPT and CPT

12. Although the bill recognises the role of the SPT, it fails to acknowledge that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) performs a similar role under Article 7 of the relevant international law.4

13. The Committee should consider whether the rights given to the SPT in the Bill should also be given to the CPT.

The relationship between the Complaints and Review Commissioner and prosecutors

14. The response of the Police Complaints Commissioner for Scotland to the Committee is excellent and covers many of the points I wanted to make. But two structural points remain.

15. The Bill gives extensive powers to the Lord Advocate to determine the course of investigations against the police. In many ways, this is a continuation of the present situation. I believe the Committee should consider whether this is an appropriate separation of powers, and whether this gives the Commissioner true independence.

16. In doing so, the Committee should be mindful of international opinion. The Council of Europe Commissioner for Human Rights gave a formal opinion about how police complaints should be handled.5 He referred to the potential for an impression

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4 contained in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126

5 Council of Europe. 12 March 2009. Opinion of the Commissioner for Human Rights concerning
of bias to be given from how complaints systems organise prosecutions against police officers and presented a solution:

85. In some member states there is concern that the close working relationship between the police and prosecution authority in standard criminal proceedings may undermine independence and impartiality in prosecution practice. A major cause of concern is that co-operation between police investigators and prosecution lawyers may tarnish the independence of prosecutors when working on cases against police officers. In an attempt to deal with this problem specialist criminal prosecution authorities with their own investigators have been established in some jurisdictions to investigate complaints against police officers and conduct criminal proceedings.

86. This type of independent police prosecution system could be adapted to a police complaints system which functions under the auspices of an [Independent police Complaints Body or IPCB]. Following the example of certain European ombudsman institutions which possess powers to bring charges before the court on their own authority, the IPCB could be granted similar powers to press criminal charges after completion of its complaints investigations. Naturally, the constitutional and legal system prevailing in each member state would play an important part in gauging the feasibility of such an arrangement. Particular consideration would also need to be given to the availability of safeguards and protecting the rights of police officers as defendants in criminal proceedings.

17. In my submission, the constitutional and legal system in Scotland is amenable to the PCRC having prosecution powers which means the solution the Commissioner suggests could be pursued. This is because prosecutions not involving the Crown Office or Procurator Fiscal Service have been possible for some time, so the principle has been conceded.

18. In particular, section 43(2) of the Education (Scotland) Act 1980 provides that prosecutions for contraventions of that Act may be brought by a local education authority without reference to a Procurator Fiscal. That no attempt has been made to repeal this provision illustrates how innocuous it is. More recently, in the context of reserved matters, section 28(1) of the Counter-Terrorism Act 2008 provides that offences connected to terrorism committed in Scotland may be tried in any jurisdiction in the United Kingdom. So again, prosecutions can be brought without reference to a Procurator Fiscal.

19. My second concern relates to the independence of the Commissioner himself. The Bill proposes no significant changes to Schedule 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which deals with the Commissioner’s appointment, dismissal, status and funding. This is a missed opportunity to change the legislation to enhance the independence of the Commissioner and increase Parliament’s role.

Independent and Effective Determination of Complaints against the Police. CommDH(2009)4. It should be noted this is an extremely useful yardstick by which to judge the police complaints proposals in the Bill as a whole, and should be carefully considered by the Committee.
20. For example, given the Government considered moving functions of police complaint management to the Scottish Public Services Ombudsman, it plainly thought it was feasible to move to a legislative structure similar to that which governs the SPSO. To do so would bring several benefits in providing the protection of Parliamentary control over decisions which at present can be done by Ministerial fiat. Such a relationship has been considered\textsuperscript{6} to be a powerful tool to ensure the independence of agencies monitoring integrity of public officials, and I see no reason why this cannot apply in the policing context.

Robert Wyllie
1 March 2012

\textsuperscript{6} see for a recent discussion Wettenhall, R. (2012) Integrity agencies: the significance of the parliamentary relationship. Policy Studies. 33(1) p.65-78
About Zero Tolerance

1. Zero Tolerance is a small national charity promoting innovative policy and practice to address the root causes of male violence against women and children. We are focused on preventing violence and abuse and changing social attitudes and values.

Our general comments on this Bill

2. We welcome the opportunity that police and fire reform offers for developing improved consistency in responses to violence against women. A single police force would be well placed to learn from the best practice in addressing violence against women happening in various pockets in Scotland (such as the Strathclyde Police Domestic Abuse Taskforce) and ensure this practice becomes the norm across the country.

3. Evidence from leading agencies such as Scottish Women’s Aid suggests that there are many positives in the police response to domestic abuse (e.g. the police are becoming more proactive in taking cases forward, responses are generally positive, police believe women and take them seriously). However, and alarmingly, there is still no overall consistent position across police forces, or even between divisions in forces, in the attitude and understanding of the individual officers attending an incident, despite the considerable work done by forces in this regard. The creation of a single force is an opportunity to address this and achieve consistency and excellence in the delivery of police services across Scotland in relation to domestic abuse and all other forms of violence against women.

4. The creation of a single force also creates the opportunity for the police to address inconsistent views towards policing prostitution and trafficking, and in particular the ‘blind eye’ approach of the Lothian and Borders force in relation to the existence of saunas which we know are in fact operating as brothels. This approach is very much tied into a local approach and a historic arrangement with the local authority, but it is anomalous and does not fit with the national policy approach to prostitution, which is defined by the Scottish Government as a form of violence against women. It may be that a single force is able to deliver greater consistency between national policy objectives and local policing.

5. It is essential however, that any national and local arrangements, partnerships and working relationships that organisations supporting women who have experienced violent crime (e.g. national and local women’s aid groups, rape crisis centres etc) have in place with ACPO(S) and the current Scottish police forces continue, so that these groups can support the new single force in developing and strengthening its response to violence against women.
6. There are particular benefits that could accrue as a result of the creation of a single force in terms of data collection, as forces do not currently have a consistent approach to collecting data on certain forms of violence against women e.g. sexual offences.

7. If there is a single national force, it will still be important for police officers to be involved in local partnerships and fora, such as Violence Against Women partnerships, organised through local authorities, and such partnerships should be involved in the planning, implementation and evaluation of any new local police initiatives in relation to violence against women, to ensure a consistent message which accords with national protocols and policies.

8. We would support the continuation and extension of the local 'champions' model, whereby local Fiscal offices have 'Champions' whose remit is taking forward Crown policy in relation to the prosecution of rape and sexual assault; this scheme could be extended to taking forward policy in relation to the police response to domestic abuse, prostitution, trafficking, forced marriage and other forms of violence against women.

9. The creation of a single Fire Service offers the same opportunities for consistency as mentioned in relation to policing. Fire can be used as a means of attack and a weapon, and can be a factor in domestic abuse cases, so a consistent understanding of the links between fire and gender-based abuse and a consistent national response would be welcome.

10. We have no comments on the specifics of the Bill at this time.

Jenny Kemp
Coordinator
6 March 2012
At its meeting on 24 January, the Justice Committee considered a letter from the Convener of the Finance Committee in which he expressed concern regarding the proposed timetable for Stage 1 consideration of the Bill.

The Justice Committee agreed to forward the correspondence directly on to you for consideration and a copy is therefore attached.

I hope this is helpful.

Christine Grahame MSP
Convener, Justice Committee
Dear Christine

POLICE AND FIRE REFORM (SCOTLAND) BILL

At its meeting yesterday the Finance Committee considered its approach to its scrutiny of the Financial Memorandum (FM) accompanying the Police and Fire Reform (Scotland) Bill, which was introduced in the Parliament on 16 January.

The Committee agreed to write to the Justice Committee, which is expected to be designated as the lead committee on this Bill, raising its concerns regarding the very tight timescale within which the Committee will be able to conduct its scrutiny of the FM. In order to be able to report its views to the Justice Committee in advance of the evidence session with the Cabinet Secretary for Justice, the Finance Committee has a very limited time within which to obtain and consider written evidence and will have only one meeting at which it can take oral evidence.

The Committee would be grateful if you could raise these concerns with the Cabinet Secretary for Justice.

Kenneth Gibson MSP
Convener
Thank you for your letter of 24 January, forwarding on a letter from the Convener of the Finance Committee about the timescale for its consideration of the Police and Fire Reform (Scotland) Bill.

As you are aware, the purpose of this Bill is to create a single police service, and a single fire and rescue service to protect and improve local services despite financial cuts, create more equal access to specialist support and national capacity, and strengthen the connection between services and communities.

Both Services have done good work in recent years to contribute towards safer and stronger communities. The unprecedented public sector cuts imposed by the Westminster Parliament mean that we need to take early action to ensure that we can protect the achievements made to date. A move to single services will remove unnecessary and costly duplication across the eight police and eight fire & rescue services, freeing up resources for frontline services. It is the view of both services, shared by the Scottish Government, that it is critically important that we set up the new services as soon as possible. This will maintain the momentum of reform and allow us to begin to reap those benefits and ensure that the police and fire rescue services are in the best possible shape to meet the demands of the 21st century and the expectations of Scotland’s communities.

The Scottish Government believes that the earliest date the new services could be in place is April 2013, but that will be dependent on the Bill successfully completing its Parliamentary passage before summer 2012 recess. That in turn means that Stage 1 will have to be completed by early May and the Parliament has agreed to impose a Stage 1 deadline of 4 May for the Bill to facilitate this. I understand that will be challenging, but I hope we can work together to achieve it while of course ensuring thorough scrutiny of the Bill.

Secondly I understand my officials provided the Committee with an informal briefing on the provisions in the Bill on 24 January. I though it would be helpful for the opening statement provided on that day to be placed on the formal record and I therefore enclose a copy with this letter.

I am of course happy to provide any information or other assistance which might assist any of the Parliamentary committees considering the Bill in their deliberations.

I am sending a copy of this letter to the Clerk to the Justice Committee, and to the Convenor and Clerk of the Finance Committee.

Kenny MacAskill MSP
Cabinet Secretary for Justice
7 February 2012
OPENING STATEMENT PROVIDED TO JUSTICE COMMITTEE BY SCOTTISH GOVERNMENT OFFICIALS ON 24 JANUARY

Police and Fire Reform (Scotland) Bill

I thought it would be helpful to provide the Committee with a brief overview of the provisions in the Bill before answering questions.

The purpose of this Bill therefore is to create a single police service, and a single fire and rescue service to deliver the following aims:

- To protect and improve local services despite financial cuts, by stopping duplication of support services and not cutting front line services;

- To create more equal access to specialist support and national capacity – like murder investigation teams, firearms teams or flood rescue – when and where they are needed; and

- To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.

The Scottish Government has consulted widely both on the principle of single services and on how those services will operate. This has been done through 2 formal consultations – the first from February – May last year and the second in September and October and through detailed engagement with key stakeholders and practitioners.

Police and fire reform forms part of the Scottish Government’s wider public service reform programme focussing on improving service outcomes for the people of Scotland.

The Bill is in 3 parts. Part 1 deals with police, Part 2 deals with fire and rescue, and Part 3 deals with general provisions. The Police (Scotland) Act 1967 is over 40 years old. Part 1 of the Bill therefore largely repeals that legislation and puts in place a new modernised framework for policing. The regulatory framework for fire was updated in the 2005 Act. Part 2 amends the Act to establish the Scottish Fire and Rescue Service and transfers to it fire-fighting, fire safety and other functions under that Act.

As a result the Police provisions are more wide-ranging that the fire ones. It has been necessary to re enact in a modern form a number of provisions in the 1967 Act relating to the employment of police officers. So sections 7 -16, 19 – 30 and Chapters 8, 9, 11 and 15 largely replace equivalent provisions in the 1967 Act. However for the most part the bill puts in place consistent arrangements for both police and fire.
In summary the Bill:

- Establishes the Scottish Police Authority to maintain and govern the new Police Service of Scotland under the direction and control of the Chief Constable
- Establishes the Scottish Fire and Rescue Service Board with a chief officer.
- Provides a clear statutory framework for national governance for both services including clear roles and responsibilities for the Scottish Ministers, the Scottish Police Authority, the Scottish Fire and Rescue Service, and the Chief Officers;
- Provides for the first time a number of opportunities through the planning and reporting arrangements for Parliamentary scrutiny of the services;
- Sets out a modern purpose and principles for the police service and updated oath for constables. For fire, the Scottish Government intends that a new purpose will be included in a new fire and rescue framework;
- clear powers for local authorities in relation to the provision of fire and rescue services and the policing of their area;
- effective and appropriate scrutiny and oversight arrangements;
- clear funding arrangements; and
- arrangements for the transfer of existing officers and staff and the appointment of new officers and staff to both services.

The Bill also places the arrangements for independent custody visiting on a statutory footing to ensure that independent custody visiting in Scotland complies with the Optional Protocol to the Convention against Torture.

The Bill provides the framework for the administration and governance of the new single services –the detailed managerial and operational delivery of the new services will be for the services themselves to decide not for legislation.

To conclude the Bill establishes single services for Scotland to ensure that the police and fire and rescue services are in the best possible shape to meet the demands of the 21st century and the expectations of Scotland’s communities. Through reform the Government seeks to ensure that the services remain strongly rooted in and are responsive to those communities and that resources are focussed on supporting the front line.

We would now be happy to respond to questions.
I am writing further to my appearance before your committee on 27\textsuperscript{th} March as part of your Stage 1 consideration of the Police and Fire Reform (Scotland) Bill.

During the evidence session, John Finnie MSP asked a question about mutual aid and pensions and we undertook to provide the committee with a more detailed response.

On the issue of cross border aid, Scottish Government officials are currently engaging with those in the UK Government to identify and agree amendments required to UK legislation, (and related legislation in Scotland) as a consequence of police and fire reform. This includes provisions for cross-border mutual assistance between the Scottish Fire and Rescue Services and fire and rescue services in England and Wales. Some amendments will have to be made under Scotland Act orders at Westminster. While those discussions are ongoing, we are not in a position to set out the detail of the amendments required, but would emphasise that work is underway to ensure that the legislative framework allows those invaluable reciprocal arrangements to continue. I can confirm that we expect the amendments to provide any necessary clarity.

On pensions more generally, there are no plans to change the current benefits for pension scheme members as a result of the reform of Scottish fire and rescue services. Separately, Scottish Government is continuing to work closely with stakeholders, including the trades unions, on the implications of the UK Government’s proposed pension changes.

Kenny MacAskill MSP
Cabinet Secretary for Justice
10 April 2012
Justice Committee

Police and Fire Reform (Scotland) Bill

Response from the Chief Inspector of Fire and Rescue Authorities

You will recall that I gave evidence to the Committee on Tuesday 13 March in relation to the above Bill. During that session I was asked to comment on the rescue role of the Fire and Rescue Service.

Following on from that session, I would like to draw the Committee’s attention to my Inquiry into the 2008 Galston Mine incident, which I have very recently submitted to Ministers and which was laid before Parliament on Thursday 29 March. Amongst other things the report considers, in detail, the matter of specialist rescue and makes specific recommendations to Ministers and the Service. Ministers are now considering their response to the report, but the pertinence to the Committee’s scrutiny of the Bill and the questions I was asked is clear.

The specific wording of the two relevant recommendations is as follows:

**Ongoing Development of Rescue Functions**

150. The arrangements for providing an integrated ‘blue light’ emergency response are well documented. However, my review of this incident suggests that practical implementation is not properly embedded and requires further development. As part of the reform of the Service, there is an opportunity for the new Scottish Fire and Rescue Service to champion specialist rescue and joint working with the Scottish Ambulance Service and Scottish Police - with good links to voluntary sector rescue organisations, Strategic Coordinating Groups and local authority emergency planners. Part of that response might include a centre or centres of excellence for specialist rescue, including co-location and a close working and training relationship between staff, coordination of supervisory and strategic management and shared policy development.

The Fire and Rescue Framework published by Scottish Ministers should set out an expectation that the Scottish Fire and Rescue Service acts as a champion and coordinator of specialist rescue.

**Legal definition of duty**

152. Alongside the legal duties and expectations set out by Scottish Ministers, it must be open to the Service to define, within its community risk planning process, what it can and cannot reasonably be expected to do. The Service should use this definition to organise its response and, in particular, to ensure that commanders are well prepared to deal with unusual and difficult to define circumstances.

The Fire and Rescue Framework published by Scottish Ministers should direct the Scottish Fire and Rescue Service to define the parameters of
its operational functions, and should explicitly recognise the need to adapt and improvise in unusual and difficult to define circumstances. All of this should fall within the scope of the community risk planning which fire and rescue services undertake.

I thought that it might be useful to set out in more detail the thinking behind those recommendations.

Within the Inquiry report, I set out my view that multi-agency working between Scotland’s emergency services at specialist rescue incidents is not as good as it could be, and that the relationship with voluntary bodies is weak. My recommendation is that the Fire and Rescue Service acts as a champion of specialist rescue and works with the other services and voluntary bodies – perhaps through a centre or centres of excellence. I believe that there is an opportunity to make very significant improvements in the provision and coordination of specialist rescue within Scotland if this were adopted. It would be helpful, I believe, if a general recognition of the rescue role and functions provided by Scotland’s fire and rescue services could be made in a way which would support and encourage the new Service to take up that champion role.

The definition of duty part is very pertinent to the evidence I gave on 13 March. Importantly, I am trying to argue that, beyond a general recognition of the rescue function, to absolutely define in legislation a detailed range of duties for the Fire and Rescue Service may be counter-productive, as the key challenges arise when incidents are unusual and hard to define. This was the case at the Galston Mine incident. To be clear, I am arguing against any suggestion of changing the existing functions set within the 2005 Act and the Additional Functional Order but in favour of a much broader mandate. The specifics of planning for functions, excluding specific functions and preparing for the unusual and hard to define should be for the Service itself.

I would suggest that all of this can be dealt with through the provisions of the Fire and Rescue Framework – which would allow Ministers to set out their expectations of the new Service.

In summary, I am saying:

1. It would be appropriate to give a general recognition of the rescue role of the Fire and Rescue Service. That would, in one sense, recognise the reality on the ground but could support and encourage the Service if it were to take on a championing role;

2. It would be wrong to try to absolutely define a range of incidents types either in law or through guidance – definitions should rest with the Service itself as part of its risk planning process. Most importantly, the Service should plan and prepare for the unusual and hard to define.

3. This can be dealt with through the provisions of the Fire and Rescue Framework and by allowing Ministers to set appropriate expectations.

Steven Torrie
Chief Inspector of Fire and Rescue Authorities
Head of the Scottish Fire and Rescue Advisory Unit
11 April 2012
As we move towards the start date for the new single Scottish Police and Fire Services, we will all need to work together to ensure we protect the services our local communities depend on. We will all want to give the new Services the best possible start, and we are grateful for the constructive approach Boards have taken to engaging fully in the reform process - for example, by freeing up high level representatives from the services to lead on many of the strands of the reform process.

It is particularly important that we approach all decisions over the period from now to the start of the single Services with a common end-point in mind. We know that Boards and the Services already have in place arrangements to make sure that decisions on, for example, promotion, the use of assets, capital investments and so on, are in line with the developing thinking about the needs of the new Services. We wanted both to express our appreciation for this approach, and stress the importance we place on all spending decisions between now and 1 April 2013 being fully in line with reform and the proposed move to a single police and fire and rescue service.

You will know that, in the current financial climate with growing pressures on all public spending, it will be particularly important to ensure that all spending decisions are open, transparent and value for money in the wider public sector context. We are also aware that Audit Scotland will scrutinise the expenditure in the lead up to reform.

Boards will be aware of recent discussions between Scottish Government and COSLA around the level of reserves and how reserves will be treated at the time of reform. Whilst we understand the frustration Boards feel that reserves cannot be carried forward into the new service, it is important for Boards to understand that there is now an agreement between Scottish Government and COSLA on how the reserves will be treated. At a national level, we have agreed that all remaining uncommitted reserves at the date of establishment of the Single Services will be divided between central and local government back to constituent authorities and 51% of police reserves to the Scottish Government. This also means that emerging underspends against the Service budgets agreed by Boards should accrue to Boards reserves and be shared equitably between local government and the Scottish Government in line with the agreement. We are grateful for the detailed information your officials have been sharing with us, and we would welcome early confirmation of provisional outturn data for 2011-12 and the state of reserves at the financial year end as soon as this becomes available.

This agreement has been reached following discussion and a review of current reserves based on information provided by Board Treasurers. Now that budgets
have been set for 2012-13, which will include any planned drawdown from reserves, we would not expect to see any further allocations made from Reserves. It is therefore important that should the position on reserves change for any reason, then the Scottish Government and COSLA are informed of this. We understand that the Board is legally responsible for decision making until the existing service transfers and would hope that you understand that this request is more about collective working on behalf of the public sector rather than us directing the decision-making of the Board.

We hope that this letter clarifies the position on reserves, but more importantly about the overall spending expectations ahead of reform as we jointly work together to create new services for the benefit of the people of Scotland. We will issue further guidance on the process to be followed in passing reserves back to councils after the establishment of the Single Services in due course.

Pat Watters
President
COSLA

Kenny MacAskill MSP
Cabinet Secretary for Justice
Scottish Government

12 April 2012
Local Government and Regeneration Committee

5th Report, 2012 (Session 4)

Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill

Published by the Scottish Parliament on 19 March 2012
# Local Government and Regeneration Committee

## 5th Report, 2012 (Session 4)

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Local Government and Regeneration Committee

Remit and membership

Remit:

To consider and report on a) the financing and delivery of local government and local services, and b) planning, and c) matters relating to regeneration falling within the responsibility of the Cabinet Secretary for Infrastructure and Capital Investment.

Membership:

James Dornan
Joe Fitzpatrick (Convener)
Anne McTaggart
Margaret Mitchell
John Pentland
Kevin Stewart (Deputy Convener)
David Torrance

Committee Clerking Team:

Clerk to the Committee
Eugene Windsor

Senior Assistant Clerk
Euan Donald

Assistant Clerk
Seán Wixted

Committee Assistant
Fiona Ives
INTRODUCTION

Procedure

1. The Police and Fire Reform (Scotland) Bill ("the Bill") was introduced by Kenny MacAskill MSP, Cabinet Secretary for Justice ("the Cabinet Secretary"), on 16 January 2012. The Bill is accompanied by Explanatory Notes (SP Bill 8-EN), which include a Financial Memorandum, and a Policy Memorandum (SP Bill 8-PM), as required by the Parliament’s Standing Orders.

2. On 25 January 2012, the Parliament agreed to motion S4M-01814, which designated the Justice Committee as the lead committee, and the Local Government and Regeneration Committee as a secondary committee, for consideration of the Bill at Stage 1. The Parliament agreed a deadline of 11 May 2012, for completion of the Stage 1 process. Under Rule 9.6 of the Parliament’s Standing Orders, it is for a secondary committee to report to the lead committee on the general principles of those parts of the Bill referred to it by the Parliament.

Purpose of the Bill

3. According to the Policy Memorandum, the primary policy purpose of this Bill is to create a single police service, and a single fire and rescue service in Scotland to achieve the following aims:

   • To protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and by not cutting front line services;

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1 Police and Fire Reform (Scotland) Bill - Policy Memorandum SP Bill 8-PM. http://www.scottish.parliament.uk/S4_BusinessTeam/pm-v1n47-S4.pdf
To create more equal access to specialist support and national capacity – such as murder investigation teams, firearms teams or flood rescue – when and where they are needed, and

To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.

4. To that end, Part 1 of the Bill establishes a new national police service, to be known as the Police Service of Scotland (“the PSS”), which will be headed by a Chief Constable. Part 2 of the Bill establishes a single national fire and rescue service, to be known as the Scottish Fire and Rescue Service (“the SFRS”), to be headed by a Chief Officer.

5. The Bill also establishes two new national authorities to oversee the governance, funding and accountability arrangements for the new services. A new Scottish Police Authority (“the SPA”) will have oversight of the PSS, and a new Scottish Fire and Rescue Service Board (“the SFRS Board”) will perform a similar role in relation to the SFRS.

6. Police forces in Scotland are currently established under the Police (Scotland) Act 1967 (“the 1967 Act”). Part 1 of the Bill will largely repeal the 1967 Act, and replace it as the principal statutory basis for policing in Scotland.

7. The legislative reorganisation of fire services, as set out in the Bill, differs from the approach being taken to police reorganisation. Currently, the principal statutory basis for fire and rescue services in Scotland is the Fire (Scotland) Act 2005 (“the 2005 Act”). Part 2 of the Bill will amend the 2005 Act so as to provide for the new national structures for the SFRS.

Committee consideration

8. At its meeting on 25 January, the Committee agreed to focus its consideration specifically on those parts of the Bill which relate to the arrangements for local authorities, and the implementation of local policing and fire service arrangements.

9. The Bill will have major implications for the governance, accountability and structure of each service, and how they will engage at a local level with local authorities and local communities.

10. Sections 45 to 48 of the Bill set out structures for local policing and establish a duty on the PSS to engage in community planning. Sections 112 and 113 of the Bill set out similar provisions in relation to the SFRS. The Bill also places a duty on the Chief Constable and the Chief Officer to designate for each local authority area, a Local [Police] Commander and a Local Senior [Fire] Officer respectively, who will lead on the various aspects of local engagement and community planning.
11. The Bill also makes consequential provisions for the funding and audit accountability structures for the new services; provisions in relation to shared resources; transfer of staff and workforce issues; and provisions for the continued independent oversight and inspection by the existing police and fire inspectorates.

Written evidence

12. In order to meet the timetable set down by the Parliament for Stage 1 consideration of the Bill, the Committee agreed to seek written evidence only from those organisations from which it would take oral evidence. The Committee issued a call for written evidence, targeting key stakeholders, seeking evidence on—

- the proposed structures of local democracy and accountability for the PSS, the SFRS and local authorities, including the relationship between local authorities and the Scottish Police Authority and the Scottish Fire and Rescue Service Board;

- the implications for community policing and community planning partnerships and the development of local police and fire plans, including issues such as shared resources between CPPs and the new national services;

- the issues of transfer of police and fire and rescue staff, and potentially some associated local authority support staff, from the employment of local authorities to the new national services.

Oral evidence

13. On 8 February, the Committee took oral evidence from Christie Smith, Head of Police and Fire Reform Division, Liz Sadler, Head of Policy and Legislation Unit, Police and Fire Reform Division, and Stephanie Virlogeux, Policy and Legislation Unit, Police and Fire Reform Division, Scottish Government.

14. On 21 February, the Committee took oral evidence from Councillor Barbara Grant, Community Safety Spokesperson, COSLA; Bob Jack, Spokesperson on Community Safety, Justice, Police & Fire, Society of Local Authority Chief Executives (SOLACE); Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland (ACPOS); Councillor Iain Whyte, Chair, Scottish Police Authorities Conveners Forum; Andrew Laing, Her Majesty's Inspector of Constabulary for Scotland; Professor John McNeill, Police Complaints Commissioner for Scotland; Gillian Campbell, Director of Human Resources, Scottish Police Services Authority; Chief Superintendent David O'Connor, President, Association of Scottish Police Superintendents; Donald Urquhart, Chair, Scottish Community Safety Network; Calum Steele, General Secretary, Scottish Police Federation; George McIlvaine, Vice-Chair, UNISON Scottish Police Committee; Professor Nicholas Fyfe, Director, Scottish Institute for Policing Research, University of Dundee; Councillor Bob Band, Scottish Fire Conveners Forum; Alex Clark, Chair, Chief Fire Officers Association Scotland and John Duffy, Scottish Secretary, Fire Brigades Union.
STRUCTURE OF THE NEW SERVICES

The Police Service of Scotland

15. The 1967 Act established the “tripartite” sharing of responsibility for policing in Scotland between the Scottish Ministers, the police authorities or joint police boards, and the Chief Constables of the respective forces. For over 40 years, policing in Scotland has been provided by eight territorial police forces: Central Scotland Police; Dumfries and Galloway Constabulary; Fife Constabulary; Grampian Police; Lothian and Borders Police; Northern Constabulary; Strathclyde Police and Tayside Police.

16. The geographical cover of these force areas corresponded with the regional tier of local government introduced in Scotland in 1974, although the Lothian and Borders force covered two regional council areas, Lothian Regional Council and Borders Regional Council. Regional councils were the police authorities for their respective police forces and were responsible for their governance, oversight and administration.

17. Following the most recent reorganisation of local government in Scotland in April 1996, which abolished the regional and district councils, replacing them with 32 single-tier local authorities, the direct link between local government boundaries and police services was, in most cases, severed. However, Dumfries and Galloway Council and Fife Council continued as the police authority for their respective forces, as their council areas continued to correspond with their geographical police force area.

18. The Scottish Government intends that the eight existing forces will cease to exist on 1 April 2013 and all police officer, staff and resources will transfer to the newly established PSS. This will see the merger of the existing command structures of the police, with the appointment of a single Chief Constable, who will be the head of the PSS.

The Scottish Police Authority

19. The Bill also establishes a new separate governance authority for the PSS, the SPA. The SPA will be responsible for holding the Chief Constable to account and for the governance, oversight and administration of the PSS. It will also be responsible for the provision of forensic services for police investigations. The SPA will also, among other things, recruit and appoint the Chief Constable of the PSS, and other senior officers, with the approval of the Scottish Ministers.

20. Funding for the PSS will, under the new arrangements, come directly from the Scottish Government to the Scottish Police Authority. The SPA will set, in agreement with the Chief Constable, the strategic priorities for policing in Scotland, which will require to be approved by the Scottish Ministers. The SPA will also hold the Chief Constable to account for the management of the PSS (and expenditure of public funds, currently approximately £1.37 billion per annum).

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2 Policy Memorandum.
3 SPICe briefing on the Police and Fire Reform (Scotland) Bill.
21. The SPA will consist of between seven and 11 members, appointed directly by the Scottish Ministers, in accordance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland ("the public appointments code"). The SPA will also have its own budget and staff to support the discharge of its functions.

Local police commanders

22. Under the Bill, the Chief Constable must ensure that there are “adequate” arrangements in place for the policing of each local authority area. The Chief Constable will be required to appoint a local commander for each of Scotland’s 32 local authority areas. The same officer may, however, be appointed as local commander for more than one local authority area. The Bill does not specify any particular rank of police officer to occupy the role of local commander. In the accompanying documents to the Bill, the Scottish Government states that local commanders may vary in rank across the country, depending on the size of the local authority, or authorities, for which they are responsible.

23. The local commander will have primary responsibility for policing within his or her area, and will be the person who has the statutory duty to participate in community planning and engagement with the local authority and other key stakeholders. The local commander will, subject to the approval of the local authority, draw up the local policing plan. Local plans must take account of the strategic police plan set by the SPA. The local commander will also set out priorities and objectives for policing in their area, in consultation with the local authority.

24. The Scottish Government believes that the Chief Constable’s broad duty under the Bill to ensure adequate arrangements for local policing, together with the responsibilities of the local commander to deliver these services locally, will act together to ensure that the service balances national and local priorities.

The Scottish Fire and Rescue Service

25. Following Scottish local government reorganisation in 1974, eight territorial fire services were also established, corresponding to the regions at the time: Central Scotland Fire and Rescue Service; Dumfries and Galloway Fire and Rescue Service; Fife Fire and Rescue Service; Grampian Fire and Rescue Service; Highlands and Islands Fire & Rescue Service; Lothian and Borders Fire and Rescue Service (which covered two regional council areas); Strathclyde Fire and Rescue Service and Tayside Fire and Rescue Service.

26. The most recent reform and modernisation of services in Scotland came as a result of the 2005 Act. The main objectives of that legislation were to define the role of the modern Fire and Rescue Service in Scotland; ensure that the fire and rescue authorities had clear national and local priorities and objectives; improve the protection offered to communities; and revise existing fire safety legislation. The 2005 Act, however, left the overall structure of the fire service in Scotland unchanged, with eight separate fire and rescue services, each with their own separate management and accountability structures.
27. Part 2 of the Bill amends the 2005 Act to create a national fire and rescue service for Scotland, the SFRS, which a single command and management structure. The SFRS will be headed by a Chief Officer.

28. The Scottish Ministers will appoint the first chief officer and the SFRS Board will appoint subsequent chief officers, subject to approval by the Scottish Ministers. The Chief Officer will not be a member of the SFRS Board. As an employee of the SFRS, the Chief Officer will be held to account by the SFRS Board.

The Scottish Fire and Rescue Service Board

29. The SFRS Board will be established under the Bill, again with seven to 11 members appointed directly by the Scottish Ministers, in accordance with the public appointments code. The SFRS Board will perform broadly the same functions in relation to the fire and rescue service as the SPA will perform in relation to the police service, namely the governance, oversight and administration of fire and rescue services.

30. Funding for the SFRS will, under the new arrangements, come directly from the Scottish Government to the Board. The SFRS Board will set, in consultation with the Chief Officer and other stakeholders, the strategic priorities for fire and rescue services in Scotland, which will require to be approved by the Scottish Ministers. The SFRS Board will also hold the Chief Officer to account for the management of the SFRS (and expenditure of public funds of approximately £372 million per annum currently).

Local senior fire officers

31. As with the requirements for the police, the SFRS will be responsible for appointing a local senior officer for each of Scotland’s 32 local authority areas, a function which will be delegated to the Chief Officer by the SFRS Board. The local senior officer will head the fire and rescue service in that council area and will have the statutory duty to participate in community planning and engagement with the local authority, and other key stakeholders. The local senior officers will, with the approval of the local authority, draw up the local fire and rescue plan, which will set out the priorities for fire and rescue services in that area. Local fire and rescue plans must take account of both the national framework document set out by the Scottish Ministers under the 2005 Act, as well as the strategic plan set by the SFRS Board.

NATIONAL GOVERNANCE AND ACCOUNTABILITY

The SPA and the SFRS Board

Composition of the SPA and the SFRS Board

32. As previously set out, the Bill provides that members of the SPA and the SFRS Boards will be appointed by the Scottish Ministers, on the basis of relevant skills and expertise, with each board having between 7 and 11 members. Various witnesses made representations to the Committee on the issue of the proposed size of the boards. Written evidence received from witnesses argued that the proposed size of the boards was insufficient for both policy and practical reasons.
33. In its evidence to the Committee, COSLA noted its concerns about local authority representation on the national boards, and proposed that a majority of board members be elected council members, nominated by COSLA. In oral evidence to the Committee, Councillor Barbara Grant of COSLA stated:

“…we do not believe that the proposal for a national board with seven to 11 members, with possibly three or four of them elected members, is appropriate for something this large. We have suggested that a national board should have at least 15 members, with a majority of elected members.”

34. The Scottish Community Safety Network also expressed concern about the make-up and size of the boards, arguing that, “with 32 local authorities and related local partners, both in community planning partnerships as well as community safety partnerships, this may not be sufficient to allow for appropriate representation.” In oral evidence to the Committee, Donald Urquhart of the Scottish Community Safety Network reiterated this point, reflecting concerns, that a SPA board of up to 11 members would not provide sufficient flexibility to allow for representation of key policing partners, such as the community safety networks:

“The proposed size of the police authority board will not enable appropriate representation that reflects all 32 local authorities or local community safety partnerships. Although we would not expect one board member per partnership, a larger board might better reflect the variation across Scotland and enable that to be reflected more accurately in some of the board’s decisions.”

35. UNISON Scotland also expressed concern that the proposed size of the SPA and the SFRS Board, might act to restrict the ability of representation from areas such as the Highlands and Islands, stating—

“There is a concern that any board meetings would be difficult for representatives from all across Scotland to attend and that many areas would have insufficient representation.”

36. George McIrvine of UNISON Scotland expanded on this point in oral evidence to the Committee:

“The numbers proposed—seven to 11 members—are not enough to cover a national board; we should be thinking about 15 plus. One of the key principles of the Christie commission on the reform of public services is that a service is built around the people and the community in which they reside. Public reassurance could be affected if the board is seen to be small and not

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5 Scottish Community Safety Network submission.
7 UNISON Scotland submission.
reflective of the community, and that may have a negative effect on democracy and the democratic process. "

37. The Association of Scottish Police Superintendents also commented that it "would welcome clarity over the status of the part or full time nature of the Board members as well as the qualifications of those members to lead and manage the circa £1.4 billion critical public service that they will be responsible for".

38. Councillor Bob Band of the Scottish Fire Conveners Forum also argued that an SFRS Board of up to 11 members would be too small, for practical reasons. He stated that there should be “at least 15 members on the board to allow for illness, other commitments and any other issue” which might prevent sufficient numbers of board members from attending meetings.

39. In contrast to the views of the majority of the witnesses, Gillian Campbell of the Scottish Police Services Authority contended that the proposed board was of a sufficient size:

“By and large, the SPSA is comfortable with the proposed numbers [of SPA members]. Over the past four to five years, [the SPSA] has usually operated with a board of eight members—currently seven—and with the sub-committees there has been consistent delivery of output and governance at a strategic level. We do not have the same policing organisation that sits underneath the SPSA, nor do we have the interface at a local level, but I am conscious that many multinational and highly complex organisations run with a board of between seven and 11 people.”

Conclusion

40. The Committee notes the concerns expressed about the size and make-up of the national boards.

41. The Committee agrees with the views expressed by the majority of witnesses that the Scottish Police Authority and Scottish Fire and Rescue Service Board should consist of 14 to 16 members each. This will provide the flexibility to allow for sufficient democratic and regional representation, as well as allow for practical considerations, such as vacancies or absences.

42. The Committee also notes the comments of the Association of Scottish Police Superintendents on the need for clarity over the status of the part or full time nature of the Scottish Police Authority members, and on the skills and experience required by those members, to lead and manage a national police force with an annual budget of approximately £1.4 billion. The

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9 Association of Scottish Police Superintendents submission.
Committee recommends that the Justice Committee consider this further and seek clarity from the Cabinet Secretary for Justice on these matters.

**Relationship between the national boards and local government**

43. One of the principal issues the Committee considered as part of its evidence taking was the proposed relationship between the new national boards for the police forces and fire services, and local government in Scotland.

44. As stated previously, currently police and fire services in Scotland are provided under a system of joint boards, comprising elected council members appointed by the constituent local authorities to which the respective police forces and fire services are theoretically accountable.

45. Policing and fire services will now, however, be accountable both to a national board and to local authorities.

46. In oral evidence to the Committee, Christie Smith, head of the Scottish Government’s Police and Fire Reform Division, stated that he did “not expect conflict between national and local priorities” in terms of the priorities set by the SPA and SFRS Board, and those set at local level by local commanders and local senior officers, with local authorities.\(^\text{12}\) He went on to inform the Committee—

> “Scottish ministers can set strategic priorities for policing or fire and rescue services, but they must consult local authorities before doing so. The Scottish police authority and the Scottish fire and rescue service must prepare strategic plans for policing and fire and rescue, and they must consult local authorities before doing so. Those bodies will have explicit duties to maintain and improve local policing and local fire and rescue. The local plans that are prepared in each locality need to be consistent with and take account of the strategic plans and so on. Finally, the local commanders and local senior officers will both be part of a national structure, but they will also be accountable for performance locally and will provide a mechanism for resolving any issues of priority.”\(^\text{13}\)

47. Councillor Iain Whyte, of the Scottish Police Authorities Conveners Forum, also reflected a general concern about a possible disconnect between a national level police board and local government, suggesting that there was a risk of placing too heavy an emphasis on “centralised national issues” to “the detriment of local policing”.\(^\text{14}\)

48. Her Majesty’s Inspector of Constabulary for Scotland, Andrew Laing, recognised these concerns, but stated that efforts to develop a model of police governance which fairly balanced local needs with those of the national level had been on-going for fifty years. He went on to state—


“...the need to strike a balance between democracy—the democratic will of the people on behalf of the citizen—and governance and accountability with the competence and capability to quiz intuitively and call policing to account, taking into account the fact that policing is a professional and specialised area. Much of what is seen at the moment at board level is the superficial face of policing—the public-facing bit. What is often not seen is the bit behind the scenes—the intelligence and the information that is not widely or publicly available. The notions that are contained in the bill suggest to me that the future board, as proposed, could be a mix of democratically elected members and others with competences in the specialisms of policing, finance, resource management and corporate governance. That would be a positive benefit.”

49. Several witnesses, however, expressed concern at what they saw as the potential disconnect between the national governing bodies of the new services, the SPA and the SRFS Board, and the structures for scrutiny of police and fire services established at a local level.

50. The need for a more defined relationship between the SPA and local authority policing structures was highlighted by the Association of Chief Police Officers in Scotland (“ACPOS”). Chief Constable Kevin Smith drew a comparison between the proposed structure as set out in the Bill, and the current position which exists in the Police Service of Northern Ireland—

“I spent some time in Northern Ireland looking at the governance set-up there. The one thing that became clear was the void between the district policing partnerships and the national policing board. In policing, there is no clear delineation between the local and the national; it is a continuum and a mosaic. Clarity between the two does not exist for us. We must ensure that the local informs the national and the national informs the local.”

51. Andrew Laing set out what he saw as the important aspects of accountability in a system of national police governance—

“Within the notion of a single board, some effort must be put into defining what we mean by accountability. In purist terms, I suggest that accountability comes with consequence and that consequence within a linear structure—within a chief constable’s responsibility for day-to-day management—must go down through the organisation. If we get to a position where there are two or more seats of accountability with consequence, we will be in a very difficult position. That has been drawn out, over recent years, in evidence from best-value reviews. The short answer to your question is that, in terms of structure and where accountability is placed, the proposals are positive but need to be taken into a context of local reporting and local answerability where the consequences are drawn back through the top.”

52. One of the benefits suggested by the Scottish Government in selecting a model of governance under which all board members are appointed by ministers, is the ability to ensure the board has the "relevant skills and expertise to govern the services and hold the Chief Constable and Chief Officer to account". This benefit was stressed by the Police Complaints Commissioner for Scotland, Professor John McNeill. In his evidence to the Committee Professor McNeill stated—

"My primary concern is whether any police authority is competent to hold the command team to account. I do not subscribe to the view that the current arrangements are uniformly robust, and I therefore welcome the proposal to establish a police authority whose members will be appointed on the basis of their competence. There is another issue here, which is that at least some of the members will need to be security cleared to a fairly high level if they are to hold the chief constable and his or her team to account. I am fond of saying that there is a world of difference between hearing an account and holding to account, and for me the primary role of any police authority and the acid test of its performance will be whether it actively and successfully holds the command team to account."  

53. Alex Clark of the Chief Fire Officers Association stated that board members with the necessary skills could be drawn from many different sectors. He said that, including local authority members "who have experience of the fire and rescue service’s activities can add strength to the board’s scrutiny of the new service’s activities.” However, he emphasised it would be essential that board members placed their efforts in the appropriate direction—

"What is fundamental is the skill set and the view that board members represent the fire and rescue service’s interests and not other interests when they participate in the board—they must leave any prejudices or other influences at the door. The fundamental role that they will perform within the framework of the board will be to contribute to ensuring that the service delivers the right outcomes for the communities of Scotland."  

54. The Fire Brigades Union ("FBU") underlined the need to ensure that the SFRS Board was both accountable for its oversight of the fire and rescue service, and able to effectively scrutinise the efficient delivery of fire and rescue services by the SFRS. Central to this, the FBU stated, was the need for the SFRS Board to have access to sufficiently well informed advice and research that was independent of the SFRS management structure. John Duffy of the FBU was critical of the oversight of fire services carried out by the current joint fire boards. He stated—

"The current set-up of six joint boards and two unitary authorities has been regularly criticised by Audit Scotland for board and authority members' lack of understanding of the service and their overreliance on chief fire officers. We
can relate to that, but that is not a criticism of the individuals who are involved, because the system was flawed almost from its inception. The chief officer is the board’s adviser but is also given the task of developing and implementing policy and reporting on how well the service has done. The new service and the new board should avoid that dangerous closed loop. To open up the closed loop, the board must have some way of getting external expert—for want of a better word—advice and other opinion. Perhaps that is where the link into local government is significant, because there must be a way to undertake what was earlier called dispute resolution. There must be a place to voice any difficulties between local government and the national board and to bring in an external view.”

55. In written evidence to the Committee, the Scottish Fire Conveners Forum highlighted the need for more clarity on how the relationship between the SFRS Board and local authorities would operate, stating—

“We need to be clear on whether the service is a national service delivered locally or 32 local services delivered within the context of a national framework. It cannot be both. Local scrutiny and engagement arrangements are currently being piloted to test a range of mechanisms e.g. blue light committees through which elected members may play a direct and formal role in shaping local priorities and scrutinising performance however we need to guard against drawing the FRS away from the multi-agency approach which has been proven to work.”

56. The Scottish Police Authority Conveners Forum, and Society of Local Authority Chief Executive (“SOLACE”), contended that a minimum of 50% of board members should be locally elected representatives. ACPOS also expressed concern with regard to the balance on the boards between appointed and locally elected members, stating in written evidence—

“There should be a number of locally elected members on the SPA … their contribution on ‘local’ issues will be as important to the SPA as the other corporate disciplines brought by independent members.”

57. In evidence to the Committee, COSLA stated that the majority of both national boards should be comprised of local authority members, so as to ensure a strong connection between national and local accountability. In its written evidence to the Committee COSLA stated—

“For COSLA, councillor representation on the National Boards is fundamental to ensure there are the diverse skills, experience and expertise required for the two national boards to perform their roles effectively. As long as the new local arrangements retain responsibility for ensuring the delivery of local police and fire outcomes, it is a prerequisite that there should be strong

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22 Scottish Fire Conveners Forum submission.
23 ACPOS submission.
representation from local authorities through membership of locally elected members on the two national boards. It is difficult for members to feel anything else would be as meaningful in directly linking national and local accountability given the desired outcome of continuing, and improving, local fire and police services in the context of local community safety.\textsuperscript{25}

58. Both the Association of Scottish Police Superintendents, and the Scottish Police Federation, supported ACPOS' view that a national police authority required to have some element of local democratic accountability as part of its structure. However, the Scottish Police Federation stated that the views expressed by the Police Complaints Commissioner for Scotland on the professional requirements necessary for membership of the SPA were also important, and did not “consider the two points of view to be in any way contradictory”.\textsuperscript{26} Those witnesses who gave evidence on the establishment of the SFRS Board stressed the need to ensure that the board reflected the right mix of skills and accountability. Alex Clark of the Chief Fire Officers Association stressed the importance of ensuring that the structure of the SFRS Board included the necessary skills set, so as to ensure the proper scrutiny of the service’s activities.\textsuperscript{27}

59. In response to a question on how the national-local relationship of the SFRS Board might work, Councillor Bob Band, of the Scottish Fire Conveners Forum, said he saw “no reason why the fire and rescue service board should not have a representative of the uniformed staff” as a board member.\textsuperscript{28}

Conclusions

60. It is clear to the Committee that many stakeholders held the view that there was a lack of clarity in the Bill, in relation to the operation and functions of the Scottish Police Authority and the Scottish Fire and Rescue Service Board, especially in terms of ensuring that there is a sufficiently robust and structured relationship between the boards and local authorities.

61. Local authority representation on the national boards is clearly a key priority for many stakeholders such as COSLA, ACPOS, the Chief Fire Officers Association and the Scottish Community Safety Network. However, there are varying views as to whether local authority membership should constitute a majority, or minority, of the total board membership and how such representatives should be selected for appointment to the boards.

62. Such proposals must be considered in the context of the evidence provided by witnesses such as the Police Complaints Commissioner for Scotland, HM Inspector of Constabulary in Scotland and the Fire Brigades Union, that Scottish Police Authority and Scottish Fire and Rescue Service Board membership must be based on merit, ensuring that the members have the skills and abilities necessary to carry out the effective oversight and

\textsuperscript{25} COSLA submission.
scrutiny of the Police Service of Scotland and Scottish Fire and Rescue Service. The national boards must also act in an effective corporate manner, ensuring that they have the necessary independent advice, research and support to discharge their duties effectively and impartially in order to hold the chief constable and his team to account.

63. The Committee notes the evidence referring to best value reports, indicating the mixed performance of current joint police and fire boards. The Committee agrees that local authority membership of the Scottish Police Authority and the Scottish Fire and Rescue Service Board is necessary and, so far as reasonably practicable, local authority members of the Scottish Police Authority and the Scottish Fire and Rescue Service Board should be appointed on merit through the public appointments process rather than nominated by local authorities or COSLA. In the view of the Committee, it is not necessary for a majority of board members to be local authority members.

Disputes between local authorities and national boards

64. Several submissions to the Committee, such as those from the Scottish Police Services Authority, the Scottish Police Federation, SOLACE, the Scottish Fire Conveners Forum and the Chief Fire Officers Association Scotland, noted concerns with regard to a lack of detail in the proposals on how disagreements between local authorities, local commanders/local senior officers and the national service would be resolved.\(^{29}\)

65. The submission from the Chief Fire Officers Association Scotland highlighted that within the new arrangements “it is entirely possible that conflict could arise if any given local authority does not feel that the local plan is sufficient for its purposes in terms of resource allocation, engagement in local initiatives or indeed the role of the local senior officer”.\(^{30}\)

66. The Scottish Police Authority Conveners Forum argued that this was “an area of concern given the significant amount of work presently undertaken by police authorities in respect of the monitoring of complaints under current arrangements”.\(^{31}\)

67. During oral evidence-taking, the Committee examined the lack of detailed proposals with regard to dispute resolution, and questioned witnesses on whether the Bill should seek to establish a formal dispute resolution procedure to address such issues.

68. In response to concerns about the absence of a dispute process, Chief Constable Kevin Smith of ACPOS stated—

“I think that we want dispute prevention. We suggest that a formal relationship between the local and the national will be key; the local must inform the national, and vice versa. We want dispute prevention, rather than

\(^{29}\) Written submissions.
\(^{30}\) Chief Fire Officers Association Scotland submission.
\(^{31}\) Scottish Police Authority Conveners Forum submission.
a complicated process of dispute resolution. If a process of dispute resolution exits, my concern is that it will be used. My mantra is, “For the vast majority of policing, you will see no difference.” Things will happen the way they happen just now—through effective relationships and through being able to speak to the next person up the chain. That person will still exist, although in most cases, they will not be a chief constable. Many things will be resolved in the way that they are today—through effective dialogue and good relationships.”

69. Councillor Iain Whyte of the Scottish Police Authorities Conveners Forum echoed these sentiments in his evidence—

“I am not sure that we need a formal [disputes resolution] system, but there probably needs to be a way of bringing in some outside advice and help for such situations. At the moment, it is partly the job of Mr Laing [HM Inspector of Constabulary Scotland], who is sitting on my right, to provide independent, professional policing advice to the Government and police boards. I think that that would be an appropriate place to start in considering whether a policing plan is appropriate on a professional basis.”

70. A similar view was expressed by witnesses giving evidence on arrangements for the SFRS Board. John Duffy of the FBU stated that his preference was for local authority members, and representatives of the uniformed staff of the fire and rescue service, to have a formal place within the national structure of the SFRS Board, as opposed to establishing a dispute resolution system to mediate between the various levels of the service.

71. Referring to the role of local authorities in developing local fire and rescue plans, and the need for these to be aligned with the national strategic plan set by the SFRS Board, Alex Clark of the Chief Fire Officers Association called for “some clarity around the mechanism for achieving a resolution” for possible disputes, especially “with finances and budgets set by the SFRS Board and devolved to the local authority areas”. He continued—

“There must be some clarity around the mechanism for achieving a resolution of such a dispute. If local needs cannot be met because of a lack of provision, how do we square that off? We need clarity in the bill on how to resolve such situations.”

Conclusions
72. The Committee notes the concerns raised in relation to the lack of mechanisms to resolve disputes between the Scottish Police Authority and
the Scottish Fire and Rescue Service Board and local authorities as regards local and national priorities.

73. Central to these concerns, the Committee considers, is the relationship which will exist between local authorities, the Police Service of Scotland and Scottish Fire and Rescue Service - primarily through the role of the local police commander and local senior fire officer – and the national authorities in the form of the Scottish Police Authority and the Scottish Fire and Rescue Service Board. While highlighting the importance of flexibility and pragmatism in these relationships, the Committee encourages further work to be undertaken to clarify their nature.

74. The Committee agrees with the view expressed by police and fire service witnesses that any formal dispute resolution mechanism included in the Bill may encourage the use of formal channels for addressing such disputes.\(^{37}\)

75. The Committee considers that it is preferable that flexibility be retained in terms of finding agreement on issues of concern. The Committee believes that there is no need for any formal dispute resolution structures to be set out in the Bill.\(^{38}\)

\(^{37}\) Margaret Mitchell dissented.

\(^{38}\) Margaret Mitchell dissented.
COMMUNITY POLICING AND FIRE SERVICES

The role of local police commander and senior fire officer

Relationship with local authorities and the community

76. The Bill proposes that local authorities have the right to be involved in the setting of local policing and fire priorities and objectives for their area. The Chief Constable will, for each local authority area, designate a local commander who will have primary responsibility for policing within his or her area. The SFRS Chief Officer will also designate a local senior officer for each local authority area, who will have primary responsibility for fire and rescue services within his or her area.

77. Some witnesses expressed concern about the lack of detail regarding the relationship between the local commander or local senior officer and their respective local authority. Highlighting these concerns, Councillor Barbara Grant of COSLA stated—

“One of the difficulties is that there is a huge gap in the information about how such aspects of the bill will work. From what we have seen of it, it is not at all helpful on how we will engage. We are okay with what will happen at the very lowest level and, perhaps, with the person at the very top, but we do not have enough information about that huge gap in the middle. Unfortunately, what we have is all far too sketchy to be able to give you a definitive answer, which is what I would like to do.”

78. In relation to policing, UNISON Scotland stated in written evidence that the Bill did not “set out how the relationship between local commander and local authority should operate locally – leaving it up to each local authority to determine. This also raises the question of who is the local commander answerable to.”

79. The Scottish Police Federation expressed similar concerns—

“Unless some definition is created the local authority role in policing could be subject to thirty two different interpretations and potentially place an undue burden on local commanders. Not doing so could create enormous bureaucracy and at significant cost to policing.”

80. Commenting on the concerns expressed regarding the development of the relationship between local commanders and local authorities, Chief Constable Kevin Smith of ACPOS stated that it was “not unreasonable to be concerned that the advent of the new force could mean that all the good local policing will stop all of a sudden.” However, these fears, he felt, would not be realised as “local community policing is in our DNA.”

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40 UNISON Scotland submission.
41 Scottish Police Federation submission.
81. Chief Superintendent David O’Connor of the Association of Chief Superintendents highlighted what he saw as the important factors to be considered in the development of the relationships the local commanders must build on. He said there is a—

“…need for links into local community and strategic planning. There has been a great deal of focus on and discussion about local commanders—potentially 32 of them—being involved in community planning, but we must consider that some problems will transcend boundaries and consequently we may need to consider community planning arrangements across a number of local authority areas. I sense that some of our discussions will need to go in that direction.” 44

Rank and skill set of local commanders and local senior officers

82. Central to some of the concerns expressed on how the role of the local commander and local senior officer would operate was the view that the influence these officers might have within their respective service might depend on the rank of the officer.

83. Specifically, with regard to the police, some submissions also expressed concerns about the proposal that the local commander could be any rank from Chief Superintendent to Inspector, depending on the size of the local policing area. Professor Nicholas Fyfe said that this “may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank which may have implications in negotiations for resources”. 45

84. SOLACE also contended that the potential variation in rank between local commanders could result in “significant divergences in the degree of autonomy”, which could have a negative impact on some local authority areas. In oral evidence to the Committee, Bob Jack of SOLACE went on to say—

“I would have thought that all 32 local area commanders could not by definition be of the same rank, because they will be looking after areas of considerable difference in size, geography and so on. There is an issue around how we deal with that. We certainly felt that a span of four ranks was unacceptable, because the smallest authority’s local area commander could be an inspector and the largest authority’s commander could be a chief superintendent, which is a huge difference in seniority and authority. The system will work best if there is at local level someone of sufficient seniority and authority to build a relationship with the local authority and the local community. There is a question in that regard that must be resolved as the organisational structure is progressed.” 46

85. However, witnesses representing police bodies informed the Committee that the role of police in community engagement was an integral part of policing in

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45 Professor Nicholas Fyfe submission.
46 SOLACE submission.
Scotland and the issue of the rank of local commanders was not the most important factor in this area. Chief Constable Kevin Smith of ACPOS described this issue as a “red herring”. He went on to state—

“There is also concern that people at a lower level cannot draw down resources. We have a fairly sophisticated tasking and co-ordinating process, which means that, if the smallest is having the biggest problems, we, as the biggest gang in Scotland, will go and help and ensure that the resource gets drawn down to assist. Serious and organised crime and counterterrorism happen in places such as Clackmannanshire and the Highlands and Islands, and the beauty of the new service is to do with retaining what is best about the current service and developing the capacity and capability that we want for the more specialist services across Scotland.”

86. Responding to the concerns that the effectiveness of local policing in a given local authority area could be influenced by the rank of the local commander, Chief Superintendent David O’Connor of the Association of Scottish Police Superintendents told the Committee that it would be—

“wholly wrong to focus on the ranks of local commanders. We need to consider the span of command and control within the different local authority areas.”

87. Calum Steele, of the Scottish Police Federation, argued that the most important element in successful community engagement between police and local authorities, community groups and the public was the relationship that officers had with such stakeholders, and not the rank of the police officer or his or her perceived influence within the police force. He stated—

“If any partnership or relationship is built on the rank of the officer, it is built on the wrong thing. Relationships and partnerships surely work most effectively because of the personalities of the individuals involved. I have not yet found a situation where the rank of one person makes them any more informed or better placed to take their place in a partnership than any other individual.”

88. An important factor in the development of the role of local commanders and local senior officers will be the development of the skills set necessary for the post. Central to this consideration will be the level of training support provided to post holders to allow them to engage fully with all aspects of their role. This will assist them in adapting quickly to the new structures of engagement with local authorities and community planning partners.

89. Gillian Campbell of the Scottish Police Services Authority, responding to questions on the potential for officers to receive training, stated—

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“We look at training for all the ranks, and just now we are looking at what will be needed for change management to help to skill and prepare officers of all ranks for the significant change that they will need to deal with. It is well understood that there will need to be a real focus on the training agenda and what needs to be delivered, which continues to evolve as we understand how the picture is evolving. Significant work and thought has already gone into what the training requirements will be for skilling and ensuring that we have the right structure.”

90. Concerns over the issue of rank, in relation to local senior officers in the fire service, were also dismissed by Alex Clark of the Chief Fire Officers Association. Highlighting what he saw as an important factor to be considered in relation to the role of local senior officers, he stated—

“The rank of the local senior officer is not particularly important. However, from the fire and rescue service point of view, there is an additional complexity, in that the service has put in place role maps, which align a person’s responsibilities and activities with a pay grade, for example.”

91. Mr Clark went on to state that a more important consideration for local senior officers was ensuring that they had “the skill set that enables them to build the relationship and contribute effectively to the outcomes that they are expected to achieve through local engagement.”

Conclusions

92. The role of the local commander, and local senior officer, will be key to the success of the new system, as they will be the key point of interface between local authorities and the services.

93. The Committee believes there is a need to provide more clarity on how local authorities will engage with local commanders and local senior officers. Further clarity should also be provided on how local commanders/local senior officers will engage with their colleagues in other local authority areas. This will be important in relation to issues such as co-ordination of strategic community planning policy across multiple council areas, or, where the same officer is designated the local commander/local senior officer for more than one local authority area.

94. Clarity on the structures of engagement which will support the relationship between local commanders/local senior officers, senior force management and local communities would also be welcome.

95. The Committee agrees with the views expressed in evidence that rank is not an issue in terms of the local commanders and local senior officers. Rather, it is the skill set of these officers that will be central to their success,
especially in engaging with local communities and community planning partners. Specific consideration should be given to the training support provided to local commanders and local senior officers so as to ensure that their skill set is sufficient for the role they will play in the new system.

Community planning and the development of local plans

96. Central to the relationship between local commanders and senior officers, and their role in the engagement with local authorities and other community planning partners, will be the development and implementation of local policing and fire and rescue service plans.

97. The Bill places the local commander and local senior officer under a statutory duty to participate in community planning for the local authority area for which they have responsibility. One of the central aspects discussed in relation to the development of such local plans is how they will take account of both local and national priorities. In written evidence to the Committee Andrew Laing, HM Inspector of Constabulary for Scotland, stated—

“If expectations are realistic and the span between national ministerial policing priorities and local policing priorities is not too great, then the policing contribution to community planning partnerships should continue to be strong and effective.”

98. SOLACE questioned whether the statutory duty placed on the local commander and senior officer to engage with community planning should, rather, be a duty on the whole of the new police force, and new fire and rescue service. SOLACE suggested that the Bill should be amended to address this issue because, in relation to community planning, “it cannot just be left at the local area commander level, because some community planning issues are handled above that level.”

99. Bob Jack of SOLACE sounded a note of caution in relation to the reliance on the role of the local commander, or local senior officer, as the primary basis for the engagement of police and fire services in the local community. During oral evidence to the Committee he argued that the risk inherent in “the somewhat simplistic division” of national and local policing was that this “obscures the issue” of effective community planning. He cautioned that “local policing is not the same as community planning in the locality as it operates at the moment”, stating—

“Nowithstanding how the organisational structure of the new force develops, the idea that the local area commander will be the be-all and end-all of the police’s engagement with community planning is fraught with risk and danger…..We suggest that, as well as the local area commander, there will have to be some engagement between local government and the strategic

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54 HMICS submission.
55 SOLACE submission.
senior command of the police force; otherwise, for important issues that are currently handled in most of the country, perhaps excepting Strathclyde, at chief officer level, where are we to find the point of connect?\(^{58}\)

100. Councillor Iain Whyte, of the Scottish Police Authorities Conveners Forum, noted that some current police boards in Scotland were more effective at community engagement than others—

“Indeed, community planning works in different ways in different local authority areas. My biggest concern about community planning is that, even when it is working well, it is not open to very much democratic scrutiny, and there could certainly be improvements in that area.”\(^{59}\)

101. The Scottish Police Authority Conveners Forum questioned whether or not local initiatives and partnership working would be maintained under the new structures. In its written evidence to the Committee, it stated that some police authorities currently run local schemes, such as the Lay Diversity Advisers Scheme.

102. This scheme offers opportunities for people with relevant knowledge and expertise to play a role in influencing police activities, critical incidents and policy development that impacts on equality and diversity, together with the regular monitoring of hate crimes. The Scheme aims to cover the nine "protected characteristics" required by the Equality Act 2010: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race (which includes colour, nationality, ethnic or national origin); religion or belief; sex and sexual orientation.\(^{60}\) The Forum called for clarification on how successful schemes such as this would be able to continue to be resourced in the future.\(^{61}\)

103. While reflecting a view that local systems of accountability for policing should not be so over-burdensome that local commanders find they spend a disproportionate amount of time “servicing those bodies,”\(^{62}\) HM Inspector of Constabulary in Scotland expressed confidence that the current structures of community planning would continue under the new arrangements as set out in the Bill. In oral evidence to the Committee, Andrew Laing stated—

“Part of the issue about community planning partnerships and the relationship between local commanders and local bodies centres on governance and accountability. Community planning partnerships work reasonably well, but each of the constituent organisations, such as police and social work, housing and other local authority agencies, is functional in its make-up. In the context of what the bill describes, those partners will need


\(^{60}\) Lothian and Borders Joint Police Board: Available at: [http://www.lothianandborderspoliceboard.org/info/3/volunteer/12/lay_diversity_adviser_scheme/1](http://www.lothianandborderspoliceboard.org/info/3/volunteer/12/lay_diversity_adviser_scheme/1) [Retrieved 29 February 2012].

\(^{61}\) Scottish Police Authority Conveners Forum submission.

and require to continue to participate—there is no lack of clarity about that. I think that the community planning arrangements that are in place will be perpetuated under a local commander.  

104. Donald Urquhart of the Scottish Community Safety Network stressed the need to strike a balance between ensuring local commanders were not overburdened by systems of accountability, while also ensuring that any new structures enhanced the effective working of existing partnership systems—

“There are a number of established local partnerships, such as child protection committees, alcohol and drug partnerships, community planning partnerships and community safety partnerships. Their make-up and effectiveness vary significantly. We would like a means of engagement that is effective and improving, so that services such as community safety are delivered much more effectively locally.”

105. Chief Superintendent David O’Connor of the Association of Scottish Chief Superintendents highlighted the need for the new community planning and engagement model to ensure that a wider, more strategic area-based planning system would be needed as “some problems will transcend boundaries and consequently we may need to consider community planning arrangements across a number of local authority areas.”

106. Alex Clark of the Chief Fire Officers Association, referring to the role of the SFRS in community planning and the development of local fire and rescue plans, stated that—

“The ambition is for local authorities to be fully involved in developing the local plan, because there must be that engagement early on if the fire and rescue service is to respond to local needs. Without that, the situation will become one of the fire and rescue service saying that it knows best and telling local authority how it will deliver the local plan to meet local needs, without there having been a dialogue to determine what those needs are.”

107. John Duffy of the FBU stressed the importance of ensuring that information gathering systems that drive the development of local fire and rescue plans, were operated at the lowest possible level in the service—

“I suggest that a key point is how we drive down the level at which community planning partnerships work, so that fire stations and their crews are much more involved with other agencies at their level, because that is where the snippets of information can be gathered and utilised. During the bill process we will be looking for as much as possible of the responsibility within

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the service to be devolved to local stations and local areas, so that they can best use the knowledge that is gained from being within structures such as community planning partnerships.67

Conclusions
108. The Committee believes that the establishment of the new services is a good opportunity to further develop and strengthen community planning structures in terms of police and fire and rescue services. However, there needs to be early and robust engagement with all community planning stakeholders in the run up to the establishment of the new services, to ensure that community planning is embedded in the new structures and to provide clarity to stakeholders on the role of the new services. This will be central to the effective development of local police and fire plans.

109. The Committee notes the view expressed by COSLA that the statutory duty to engage in the community planning process should apply both to the new police service and fire service, and their respective governing authorities, and not just to specific holders of local police commander and local senior fire officer posts.

Public and stakeholder engagement

Engagement with the public and community groups
110. Concerns were raised in evidence about the extent to which, in the future, community groups and the public more generally would be able to shape the development of the new fire and police structures and to engage with the services.

111. In his submission to the Committee, Professor Nicholas Fyfe, Director of the Scottish Institute for Policing Research at the University of Dundee, stated that it was important for local authorities to have the “capability to monitor and scrutinise local policing issues in ways which do not rely exclusively on information provided by the local police”.68

112. The Scottish Community Safety Network also believed that it was important for the services to have “strong links with local communities”.69 In his evidence to the Committee, Donald Urquhart argued that there was a need for strong systems of engagement with the public when referring to potential changes to the delivery of community policing under the new force structure. He stated—

“There is no doubt that communities would be concerned if they were to see a significant reduction in the numbers of police staff, which includes police officers and support staff, who fulfil an important function. One of the issues that we will have to come to terms with, against the backdrop of significant financial reductions, is how we will engage with communities so that they police themselves more effectively with the support of the proposed new police authority and a number of local partnerships that are in existence already….we are where we are, but we undoubtedly need more detail. We

68 Professor Nicholas Fyfe submission.
69 Scottish Community Safety Network submission.
need to start thinking about how we can put what is proposed into effect in the most beneficial way for communities. We need to reassure people that although there may be reductions in police staff, there are better and more effective ways of delivering safer communities for Scotland. That would be one of the things that partnerships would seek to achieve.”

113. The Scottish Police Federation expressed concern that there was “no reference in the Bill to any requirement for engagement between the SPA, local authorities and the public”. The Federation argued that this had “the potential to create a disconnection” that might “harm local policing.”

114. Councillor Iain Whyte of the Scottish Police Authorities Conveners Forum also argued that the Bill should specify how the SPA would consult and engage with the public on the strategic development of policing in Scotland, stating that there was a need for there to be a “direct relationship” between the SPA and the public.

Conclusions
115. Joint police and fire boards have existing structures for liaising with the public, local partners, local communities and other stakeholders. Best value reports from Audit Scotland and HM Inspector of Constabulary for Scotland, have provided guidance on developing and improving these structures, and this should form the basis of future engagement.

116. The Committee believes that it is critical for local police commanders and senior fire officers to develop clear strategies for engaging with the public on policing and fire services. These strategies should set out ways in which input and feedback from members of the public and from officers and staff of the new services will help to shape the strategic planning and development of policing and fire service priorities.

Relationship with the Scottish Parliament
117. John Duffy of the Fire Brigades Union raised the issue of the potential relationship between the SFRS Board and the Scottish Parliament. In oral evidence to the Committee he stated—

“The key priority is the scrutiny by and democratic accountability of the new board. The current arrangements lack oversight above the local fire board level. In my time in the Fire Brigades Union, I have been involved in preparing submissions and briefing notes for a number of parliamentary debates on the fire service. It is clear that the Parliament has an interest in the fire service operating and functioning properly. A key point that we look

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71 Scottish Police Federation submission.
for is that the new board should be answerable to the Parliament, which is the right place for ultimate public scrutiny of the fire service.”\textsuperscript{73}

118. The Policy Memorandum states that the provisions for scrutiny of police and fire service functions by the Parliament would be enhanced—

“The Bill provides the Scottish Parliament, for the first time, the opportunity to have a formal role in scrutinising the police and fire and rescue services. The current structural framework for policing in Scotland pre-dates the establishment of the Scottish Parliament and, with the exception of the SPSA and the SCDEA, the Scottish Parliament currently has a limited role in the scrutiny of policing. The Scottish Parliament passed new legislation for fire and rescue in 2005 and has a role in approving the strategic priorities set by the Scottish Ministers in the Fire and Rescue Framework. This will be augmented in the Bill. The Scottish Parliament will approve the budget for the Scottish Police Authority and Scottish Fire and Rescue Service through the budget process. The Bill requires the key strategic and planning documents as well as the annual report and accounts for each service to be laid before the Scottish Parliament. The Bill also requires the Police Investigations and Review Commissioner, HMICS and the Inspectors of SFRS (which replaces CIFRA as described below) to publish their reports and to lay them before the Scottish Parliament.”\textsuperscript{74}

119. The Committee believes that the requirements to lay the fire and police annual reports and strategic plans before the Scottish Parliament, will provide an opportunity to establish a degree of democratic accountability for the services, and to provide parliamentary scrutiny of their progress.

RESOURCES AND STAFFING

Funding and resourcing arrangements

120. In evidence to the Committee, the Scottish Government’s bill team commented on the funding arrangements for the new police and fire services—

“At present, about two thirds of police funding is provided by the Scottish Government and the other third is provided by the 32 local authorities so, in effect, the funding is assembled from 33 places. The proposal is that all the funding for the police will come directly from the Scottish Government. In fire and rescue, most of the funding comes through councils and joint boards from the local government settlement, although there is some national funding for national assets and so on. Again, we propose that all the funding for the Scottish fire and rescue service will come from the Scottish Government”.\textsuperscript{75}

\textsuperscript{74} Policy Memorandum.
121. In response to questions regarding the role of local authorities in funding joint police and fire boards, and whether a situation had ever arisen where a local authority had refused to provide funding, Mr Smith responded—

“I have never heard of a local authority refusing to pay the requisition, although negotiations can take place about the amount of the requisition. The Scottish Government used to provide 51 per cent of the police grant and require local authorities to provide the other 49 per cent. An interesting fact is that, since we discontinued that requirement several years ago, police funding has still been more or less split 51:49. It is difficult for a single local authority that is part of a joint board to take an independent decision about police funding, so the local authorities have by and large followed the previous pattern and have met the requisition”.

122. Various witnesses expressed concern about how resources would be allocated under the Bill proposals. ACPOS argued that “local policing resource needs to reflect variance in our communities across the country” and warned against “resources being dragged in to the busier urban areas at the expense of localised need or lack of regard for geography or spread of population, or other variables”.

123. The Scottish Fire Conveners Forum noted that the budget would be held centrally and allocated on the basis of priorities within the national strategic plan. However, in its written evidence to the Committee it states—

“The reality of being able to shape priorities locally and engage more effectively with the service at local authority level is obviously influenced by the extent to which budget decisions are driven nationally or locally...It is not clear what recourse the local authority has should that allocation not be considered sufficient for its needs or indeed does not match the priorities for the area as determined through the single outcome agreement or the local service plan which must be approved by the local authority.”

124. Responding to questions on these views, and whether further clarity was required on issues surrounding local resourcing, Councillor Bob Band of the Scottish Fire Conveners forum stated—

“That is essential. We need more clarity on what the level of delegation of budgetary control will be. I keep harking back to other committees that I deal with. In education, for example, we have the devolved school management budget...We require more clarity on the budgetary situation—and on the plan.”

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77 ACPOS submission.
78 Scottish Fire Conveners Forum submission.
125. SOLACE argued that local government should have some control of funding to ensure that councils had real influence over matters of local concern. In its written evidence to the Committee, it said—

“At the very least there must be full transparency of the allocation of resources to localities and the ability to scrutinise, question and challenge resource allocation and use.”

126. In oral evidence, Bob Jack of SOLACE argued that responsibility for resources, or having some influence over how resources are allocated to localities, was “at the heart” of accountability and responsibility, asking how people could be accountable “without having responsibility for resources”. He continued—

“….there is no reason why a system cannot be designed to give a locality some influence over and some responsibility for resource allocation, as well as the ability to hold people to account. That model is different from what is set out in principle in the bill. It would still involve a single national force, but it would be governed and organised differently.”

127. Responding to questions on the issue of local resourcing, and the ability of local authorities to ‘buy-in’ additional services from the police, or fire and rescue services, Councillor Barbara Grant of COSLA stated—

“Local authorities already put in money for additional services, such as campus cops. We do not know what will spring up, but there is a level of business that must be undertaken, which I presume has to be agreed locally. We would hope that the funding would be available, but we have no guarantees of that.”

128. During discussion of the issue of local authority funding for police and fire services, and whether the changes to the funding model for the services being introduced under the Bill really constituted a major shift in policy on funding, Bob Jack of SOLACE confirmed that, currently, should a local authority decide not to pay funds to a police or fire service, the joint police or fire board in question, can requisition funding from councils, who have no statutory rights to prevent such funds being requisitioned.

129. UNISON Scotland outlined concerns that local authorities might face additional budgetary pressures as a result of the Bill proposals - for example, in paying for the scrutiny of complaints, training for members, or even the administration of local police, and believed that “this should come from the

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80 SOLACE submission.
Scottish Police Authority resources rather than from local authorities’ own funding streams.”

130. Some concerns were expressed about resources being moved from local authorities to the new national authorities. COSLA and the Scottish Police Authorities Conveners Forum raised issues in relation to the resources available to local authorities, to be able to provide sufficient independent research information, administrative or training support, or operational advice, to support whatever accountability structures councils might wish to put in place. This, it was believed, was especially pertinent in the light of the proposed transfer of current local authority resources to the SPA and SFRS Board to support their functions.

Conclusion

131. As the majority of local government funding for these services currently originates from central government by way of support grants and other means, it appears to the Committee that the move to services funded wholly by the Scottish Government (with the approval by the Scottish Parliament) may represent little real change to the present funding system.

132. The Committee also notes that no local authority has sought to withhold funding from a joint police or fire board.

133. It is clear from the volume of evidence received from key stakeholders, with regard to funding issues, that this is a matter on which further clarity from the Scottish Government would be welcomed.

134. In particular, the Committee notes the views expressed by some witnesses regarding concerns over the resources available to local authorities to support their engagement role in the new policing and fire service structures. Further clarity from the Scottish Government on how these structures will be resourced would be welcome.

Staff transfer

135. The Bill provides for the staff of joint police and fire boards to be transferred to the SPA, or the SFRS Board, along with staff currently employed by individual local authorities on police and fire functions. The Policy Memorandum stated that the “Scottish Government’s policy is that staff transferring within the public sector should do so as far as possible without any detriment to the individual in accordance with the Cabinet Office’s Statement of Practice on Staff Transfers in the Public Sector.” The Policy Memorandum further states that the Bill sets out arrangements for the transfer of police officers, fire-fighters and all other staff in post on the day the services are established to the new services, retaining their

84 UNISON Scotland submission.
86 The Committee agreed paragraph 130 by division: ANNEXE B Record of Divisions Taken in Private.
87 Margaret Mitchell dissented.
88 The Committee agreed paragraph 131 by division: ANNEXE B Record of Divisions Taken in Private.
terms and conditions on that date. Joint board staff will transfer under the provisions of the Bill while other staff will transfer by transfer schemes.89

136. The Scottish Police Authority Conveners Forum explained that the SPA would determine whether or not a police employee was to be a member of staff under the control and direction of the Chief Constable, or under the control and direction of the Authority, but that “at this time there is no information available as to when such decisions may be taken”.90

137. UNISON Scotland called for “greater clarification on which staff are transferred in areas where the delivery of services are provided by local authorities”, and whether staff, once transferred, “would be subject to the Scottish Government guidance on non-compulsory redundancies”.91

138. Transfers, it was argued, could have an impact on current staff in shared services, such as camera safety partnerships. The Scottish Police Authority Conveners Forum argued that there might be a “risk of losing expertise and specialist knowledge should staff be transferred to the new Authority requiring replacement at further additional cost”.92

139. The Scottish Community Safety Network also voiced concerns that “the position of specialist officers such as school liaison officers and neighbourhood officers remains unclear”.93

140. One of the issues raised during oral evidence taking was the experience from the amalgamation process that took place during the establishment of the Scottish Police Services Authority and the impact on staff morale in that case.

141. Gillian Campbell of the Scottish Police Services Authority referred to the experience of this amalgamation process in her oral evidence to the Committee—

“From an employment law perspective, a number of things need to be taken into consideration in the context of contract harmonisation. On its formation, the SPSA had its own set of terms and conditions and policies, and eight other sets came in. It took four years for the position to be resolved so that we had a harmonised set of terms and conditions. The scale of work and the amount of negotiation and consultation that is involved should not be underestimated. I hope that we have learned a number of lessons that can be taken forward in the new police authority, so that we can expedite the process, but employment legislation must be taken into consideration in relation to the timing and delivery of changes.”94

142. Responding to these comments, George McLrvine of UNISON Scotland stated that the amalgamation process that led to the establishment of the SPSA

89 Policy Memorandum.
90 Scottish Police Authority Conveners Forum submission.
91 UNISON Scotland submission.
92 Scottish Police Authority Conveners Forum submission.
93 Scottish Community Safety Network submission.
was not as fraught with difficulty as anecdotal evidence might initially suggest. Commenting of the evidence of the SPSA, he stated—

“That is not my recollection; it happened much more quickly than that. At the inception of the SPSA, the employer and the trade unions came together admirably on harmonisation of terms and conditions of employment. If we do the same again, I do not think that there will be a problem and it will not take four years. There is a lack of clarity and detail on where we are with the reform group. I cannot comment at this juncture on where we are on harmonisation, but I hope that we will be able to give an update on it soon.”

Conclusion

143. The Committee considers that issues relating to staff transfer and morale will be vital to the early success of the new services. The Committee therefore calls on the Scottish Government to take such measures as are necessary, including working with staff and their representatives, in order to minimise any negative impact on staff morale.

144. The Committee considers that uniformed and civilian staff would welcome further clarity from the Scottish Government on these matters before the planned transfer of staff to the new services in April 2013.

The benefits of the best value regime

145. Reference to best value reports from Audit Scotland and HM Inspector of Constabulary Scotland on the efficiency and effectiveness of the current joint boards were referred to in several contexts during the Committee’s evidence taking.

146. Responding to questions on best value reports on joint police boards, the Scottish Police Complaints Commissioner, Professor John McNeill, stated that he was “convinced that a national [police] authority can improve performance”. Professor McNeill qualified this remark by pointing out that performance of joint police boards was not uniform across Scotland, emphasising the importance of the police boards being resourced adequately. He continued—

“That means not just having an executive director or the finance, but having information and time made available, along with training in the discharge of their role. One of the primary functions of a Scottish police authority should be to confirm public confidence in policing by underlining the need to learn from complaints and, in my judgment, it would be able to do that more effectively than would a variety of boards across Scotland. Although the bill places very clear responsibilities on the Scottish police authority, it places an equally clear responsibility on the local commander to provide information to local areas. I hope that the combination of the police authority, the local

authority and the police investigations and review commissioner will drive up standards of governance and accountability.\(^{97}\)

147. HM Inspector of Constabulary Scotland, Andrew Laing, made it clear that elected members of joint police boards, who perform the function of bringing chief constables to account locally, “by and large do a good job”, and that this was borne out by best-value reviews. He said, however, that policing was now “a hugely complex, highly demanding and an expensive asset” to monitor and oversee. Questions raised in recent “best value 2” reviews, centred “more on boards’ capacity to bring chief constables to account and the individual capability and competence of members vis-à-vis their professional knowledge, their business knowledge and their knowledge of organisational structures”.\(^{98}\)

148. Mr Laing also drew the Committee’s attention to the issue of the support which needed to be provided to police board members, stating—

“The vast majority of board members are part-time and have limited time to commit to police committees and, similarly, the support provided across Scotland often comes from constituent local authorities on a part-time basis. All of that leads me to believe that there is room for significant improvement, partly by selecting individuals on the basis of competence and partly by taking into account the fact that the individuals who make up the board must have not only those professional qualities but the ability to exercise the democratic will and provide a democratic voice.”\(^{99}\)

149. Mr Laing pointed to the benefits of the best value regime continuing to apply to the newly established police force, although it would no longer be part of the local government structure. In evidence he stated—

“To give some confidence … I say that the best-value characteristics for police authorities and forces take into account local relationships. For the inspectorate or Audit Scotland as we move to the future, those relationships will form part of an inspection and audit or scrutiny regime that reports back into the system. I have no great concern that the existing arrangements will be deviated from. The local or additional scrutiny arrangements will provide confidence that such arrangements are happening.”\(^{100}\)

**Conclusion**

150. The Committee believes that the application of a duty of best value across the new police and fire and rescue services would improve and strengthen the efficiency and effectiveness of governance. The Committee notes the comment from Prof. John McNeill that the bill places very clear responsibility on the local commander to provide information to local areas.

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In addition to this, the Committee believes local authorities have a duty not only to receive information from the local commanders but to hold them to account.

IMPLEMENTATION AND OTHER ISSUES

151. The following issues were raised with the Committee by witnesses in relation to the Bill. While these are issues primarily for the consideration of the Justice Committee, as the lead committee, the Committee draws them to the attention of the lead committee, for information.

Timescale for the establishment of the PSS and SFRS

152. Various witnesses highlighted potential confusion and difficulties in the preparation for the commencement of the new police and fire services, owing to the proposed timescale for their establishment. The Government proposes the Police Service of Scotland, and the Scottish Police Authority will be established on 1 April 2013.

153. The Scottish Fire and Rescue Service, and the SFRS Board, have, as yet, no identified commencement date. The Chief Fire Officers Association Scotland explained that the absence of a definite commencement date for the new service meant “that many transfer issues cannot be planned definitively prior to vesting date and must therefore be for the new service to resolve.” The association also stated that “the lack of proper shadow arrangements will undoubtedly have an effect on employee morale and hampers the ability of current employers to provide meaningful information to staff on their future.”

154. Alex Clark, of the Chief Fire Officers Association, argued in oral evidence that the timescales laid down for establishing the new fire and rescue service were challenging. Referring to the Association’s written evidence, he stated—

“….we make the case for earlier appointment of the chief fire officer so that a shadow management arrangement can be established much earlier and we can move towards the new service far more quickly. At present, we are taking a collegiate approach. The services are involved in trying to develop the shape of the new service, but that is being done with no clear leadership and direction in decision making. Currently, we are eight individual fire and rescue authorities that service the needs of our fire boards. That is a difficult place to be. The early appointment of the chief fire officer and, subsequently, the management team will provide authoritative direction setting to allow us to move forward on some of the innovative ideas that are arising about what the new service can deliver. Until such time as we have that person in place, it will be difficult to make progress. The longer it takes to put that person in place, the more the timescales for implementation will be compromised.”

101 Chief Fire Officers Association Scotland submission.
102 Chief Fire Officers Association Scotland submission.
Conclusion

155. The Committee notes witnesses’ views that the timescale for establishing the Police Service of Scotland by 1 April 2013 may be challenging. The Committee also notes the concern of fire service witnesses over the lack of clarity regarding a definite commencement date for the Scottish Fire and Rescue Service.

156. The Committee further notes the suggestion to appoint transitional board members, on an interim basis, to progress the work towards the establishment of the services and invites the lead Committee to consider this proposition further.

Ministerial direction and clarity of operational independence

157. A number of witnesses stressed the importance of political neutrality and operational independence for the police. Responses from ACPOS, the Scottish Police Federation, the Association of Scottish Police Superintendents, the Scottish Community Safety Network and the Scottish Police Authority Conveners Forum indicated that stakeholders have concerns that the proposed ministerial powers of direction may allow Ministers to have inappropriate influence over the Chief Constable or the SPA.104

158. The Scottish Police Authority Conveners Forum argued that “the proposed lack of treasury function, ability to carry-forward reserve funding, constraints on borrowing capabilities, potential inability to recover VAT and being subject to general or specific Ministerial direction clearly do not achieve the essential separation from Scottish Ministers and the Authority will therefore remain too closely linked to government.”105

159. On the other hand, Professor Nicholas Fyfe, Director of the Scottish Institute for Policing Research at the University of Dundee, explained that he believed that the proposals did safeguard neutrality and operational independence, stating—

“There is, for example, a requirement on local police commanders to work with local authorities to produce local policing plans and there is clarity around the fact that Scottish Ministers may not give any direction in respect of specific operations carried out by the Police Service.”106

160. The concept of operational independence was discussed by several witnesses. HM Inspector of Constabulary in Scotland, Andrew Laing, commented on the difficulty of maintaining operational independence in terms of the relationship between elected politicians, an appointed SPA and the duties of the Chief Constable, and sworn police officers, in discharging their police duties. Referring to the current relationship between Chief Constables and the elected membership of joint police boards, Mr Laing commented—

“As I have said before, policing is to a great extent self-regulated. Very often, chief constables determine what will be presented to the board and when it

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104 Written submissions.
105 ACPOS submission.
106 Professor Nicholas Fyfe submission.
will be presented and then ask elected members to call them to account on it. Much of that is secreted in the concept of operational independence. There is no clear definition of the term; we certainly need a clearer definition but, in my view, the bill does not go far enough in trying to set that out. The questions that need to be asked include what a chief constable should be operationally independent from, why they should be operationally independent and where the boundaries lie. I do not think that we will get a definitive answer to that but, at the moment, the gulf is so wide as to leave chief constables in a reasonable position to use operational independence as a defence mechanism when called to account.”

161. Commenting on the potential definition of ‘operational independence’ in terms of the powers of ministers to issue directions to the Scottish Police Authority, or the Chief Constable, the Police Complaints Commissioner for Scotland, Professor John McNeill, drew upon the work of the Patton Commission in Northern Ireland. He stated—

“I do not subscribe to the myth of operational independence. Patten put it much more appropriately in Northern Ireland when he talked about “operational primacy”. One of the tensions that any police authority at national—and I dare say local—level must confront is the idea of the independence of policing. Policing is about working with and in the community and being informed by the community, but consent to policing must be informed. The whole concept of operational independence flies in the face of that, so I prefer the concept of operational primacy, which is subject to being tested.”

Conclusion
162. The Committee notes the concerns expressed in evidence as regards “operational primacy” and suggests that the lead Committee may wish to explore this issue further.

Public complaints procedure
163. Another issue considered by the Committee in relation to the proposed new structures, and how they will differ from the current system of joint boards, was the handling of public complaints made against the police, and ensuring that the new single national police structure facilitates best practice in ensuring complaints are dealt with swiftly, and at the most local level possible. The Police Complaints Commissioner for Scotland, Professor John McNeill, pointed out that—

“A key element is how complaints that are essentially about local relationships are resolved at the local level. In the guidance that I set out last year, I expected them to be resolved as quickly as possible at the lowest possible grade in the police and clearly within the locality. I am delighted that ACPOS is currently taking forward training in dealing with complaints, and I

109 The Committee agreed paragraph 161 by division: ANNEXE B Record of Divisions Taken in Private.
see no reason why that training should not inform the approach of any future Scotland police service in dealing with complaints at the national and local levels.... In essence, complaints are about relationships. Most relationships will be at the local level, so it makes sense for them to be resolved quickly at the lowest rank possible."\(^{110}\)

164. Responding to Professor McNeill’s comments, Councillor Iain Whyte, of the Scottish Police Authorities Conveners Forum, spoke of the need to ensure that the developing culture of dealing with complaints was maintained within the new police structure—

“If the culture is that the local force commander reacts to complaints from the public, there is an oversight role locally, through police boards, to ensure that complaints are handled properly and issues highlighted. Members raise issues relating to their own areas, and I am sure that that will continue. Feedback is very important in local scrutiny.”\(^{111}\)

**Conclusion**

165. The Committee supports the view that local authorities should seek to use current good practice to resolve public complaints with local police commanders, or local fire officers, at the local level. Individual public complaints should not be allowed to escalate to a stage where they become a central consideration for the Scottish Police Authority, or Scottish Fire and Rescue Service Board, unless they involve very serious issues which may have national implications for the service in question.

**Clarity on the statutory duties of the fire service**

166. John Duffy of the FBU called for the Scottish Government to take the opportunity to set out in the Bill the principal duties expected of the Scottish Fire and Rescue Service, so that such duties can be strategically planned, developed and funded. In evidence to the Committee he stated—

“A generation ago, our activities in dealing with road traffic collisions and accidents were not a funded part of the service; they now are. However, none of the other things, such as water rescues and line rescues, is a funded part of the service. The Government must tell us what the basis is for its figure on the funding of the fire service and what the expectation is—what the Government wants us to do in exchange for the money.”\(^{112}\)

167. Alex Clark of the Chief Fire Officers Association echoed this view—

“An opportunity has perhaps been missed in the bill to recognise the broader role that the fire and rescue service plays in the prevention agenda and through our contribution to road safety work and water rescue activity. If the service is currently undertaking additional functions—in the absence of


anyone else doing those things—the bill presents an opportunity to make that work part of the role of the fire and rescue service and to bring clarity to its functions. That would allow us to develop into a service that will deliver the functions far more succinctly.”

Conclusion

168. The Committee notes the views expressed by the Fire Brigades Union and the Chief Fire Officers Association that the Scottish Government should consider taking the opportunity provided by the Bill to amend the Fire (Scotland) Act 2005 so as to ensure that those functions regularly carried out by fire and rescue services, such as water rescues and line rescues, are defined and funded as fire service responsibilities. The Committee suggests that the lead Committee might wish to explore this issue further.

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ANNEXE A: EXTRACTS FROM THE MINUTES OF THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

2nd Meeting 2012 (Session 4), Wednesday 25th January 2012

Police and Fire Reform (Scotland) Bill (in private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1. The Committee also agreed to hold a discussion, in private, at the end of each meeting at which oral evidence is taken; to delegate to the Convener the responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses, and to consider all draft reports on the Bill, in private, at future meetings.

4th Meeting, 2012 (Session 4), Wednesday 8th February 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Christie Smith, Head of Police and Fire Reform Division,
Liz Sadler, Head of Policy and Legislation Unit, Police and Fire Reform Division, Stephanie Virlogeux, Policy and Legislation Unit, Police and Fire Reform Division, Scottish Government

Police and Fire Reform (Scotland) Bill (in private): The Committee considered the evidence received

5th Meeting, 2012 (Session 4) Tuesday, 21st February 2012

Police and Fire Reform (Scotland) Bill: The Committee took evidence on the Bill at Stage 1 from—

Councillor Barbara Grant, Community Safety Spokesperson, COSLA
Bob Jack, Spokesperson on Community Safety, Justice, Police & Fire, Society of Local Authority Chief Executives
Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland
Councillor Iain Whyte, Chair, Scottish Police Authorities Conveners Forum
Andrew Laing, Her Majesty's Inspector of Constabulary for Scotland
Professor John McNeill, Police Complaints Commissioner for Scotland
Gillian Campbell, Director of Human Resources, Scottish Police Services Authority
Chief Superintendent David O'Connor, President, Association of Scottish Police Superintendents
Donald Urquhart, Chair, Scottish Community Safety Network
Calum Steele, General Secretary, Scottish Police Federation
George McIrvine, Vice-Chair, UNISON Scottish Police Committee
Alex Clark, Chair, Chief Fire Officers Association Scotland
John Duffy, Scottish Secretary, Fire Brigades Union
Professor Nicholas Fyfe, Director, Scottish Institute for Policing Research, University of Dundee
Councillor Bob Band, Scottish Fire Conveners Forum;
Alex Clark, Chair, Chief Fire Officers Association Scotland;
John Duffy, Scottish Secretary, Fire Brigades Union.

**Police and Fire Reform (Scotland) Bill (in private):** The Committee considered the evidence received.

**6th Meeting, 2012 (Session 4) Wednesday, 7th March 2012**

**Police and Fire Reform (Scotland) Bill (in private):** The Committee considered a draft report to the Justice Committee. Various changes were agreed to, and the Committee agreed to consider a revised draft at its next meeting.

**7th Meeting, 2012 (Session 4) Wednesday 14 March 2012**

**Police and Fire Reform (Scotland) Bill (in private):** The Committee considered a draft report to the Justice Committee. Various changes were proposed and decided upon (three by division), and the Committee agreed the draft report as amended.
ANNEXE B: RECORD OF DIVISIONS TAKEN IN PRIVATE BY THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

1. On Wednesday 14 March 2012, the Local Government and Regeneration Committee consider its draft report to the Justice Committee on the Police and Fire Reform (Scotland) Bill. This consideration took place in private session.

2. David Torrance submitted his apologies for this meeting. Jamie Hepburn (Committee Substitute), attending the meeting in his place.

3. James Dornan attended the meeting following his appointment as a member of the Committee by the Parliament on 7 March 2012.

4. During consideration of the draft report, Margaret Mitchell proposed that paragraph 130 be amended by deleting the paragraph and replaced it with the following text—

   The Committee notes that the majority of local government funding for these services currently originates from central government, by way of support grants and other means and further notes that this is the same arrangement proposed in the bill under the new system.

5. The proposal was disagreed to, by division: For 1 (Margaret Mitchell); Against 6 (James Dornan; Jamie Hepburn; Joe FitzPatrick; Anne McTaggart; John Pentland; Kevin Stewart); Abstentions 0.

6. During consideration of the draft report, John Pentland proposed that paragraph 131 be amended by adding the following text at the end—

   but recognises the loss of local accountability that may come from changes to funding arrangements.

7. The proposal was disagreed to, by division: For 3 (Anne McTaggart; Margaret Mitchell; John Pentland); Against 4 (James Dornan; Jamie Hepburn; Joe FitzPatrick; Kevin Stewart); Abstentions 0.

8. During consideration of the draft report, Margaret Mitchell proposed that paragraph 161 be amended by adding the following text at the end—

   The Committee also notes concerns about the new SPA’s lack of treasury function.

The proposal was disagreed to, by division: For 1 (Margaret Mitchell); Against 6 (James Dornan; Jamie Hepburn; Joe FitzPatrick; Anne McTaggart; John Pentland; Kevin Stewart); Abstentions 0.
ANNEXE C: ORAL EVIDENCE AND ASSOCIATED WRITTEN EVIDENCE OF THE LOCAL GOVERNMENT & REGENERATION COMMITTEE

4th Meeting, 2012 (Session 4), Wednesday 8th February 2012

ORAL EVIDENCE

Christie Smith, Head of Police and Fire Reform Division, Scottish Government
Liz Sadler, Head of Policy and Legislation Unit, Police and Fire Reform Division, Scottish Government
Stephanie Virlogeux, Policy and Legislation Unit, Police and Fire Reform Division, Scottish Government.

WRITTEN EVIDENCE

Scottish Government (149KB pdf)

5th Meeting, 2012 (Session 4), Tuesday 21st February 2012

ORAL EVIDENCE

Councillor Barbara Grant, Community Safety Spokesperson, COSLA
Bob Jack, Spokesperson on Community Safety, Justice, Police & Fire, Society of Local Authority Chief Executives
Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland
Councillor Iain Whyte, Chair, Scottish Police Authorities Conveners Forum
Andrew Laing, Her Majesty's Inspector of Constabulary for Scotland
Professor John McNeill, Police Complaints Commissioner for Scotland
Gillian Campbell, Director of Human Resources, Scottish Police Services Authority
Chief Superintendent David O'Connor, President, Association of Scottish Police Superintendents
Donald Urquhart, Chair, Scottish Community Safety Network
Calum Steele, General Secretary, Scottish Police Federation
George McIrvine, Vice-Chair, UNISON Scottish Police Committee
Alex Clark, Chair, Chief Fire Officers Association Scotland
John Duffy, Scottish Secretary, Fire Brigades Union
Professor Nicholas Fyfe, Director, Scottish Institute for Policing Research, University of Dundee

Councillor Bob Band, Scottish Fire Conveners Forum

Alex Clark, Chair, Chief Fire Officers Association Scotland

John Duffy, Scottish Secretary, Fire Brigades Union

WRITTEN EVIDENCE

Association of Chief Police Officers in Scotland (276KB pdf)
Association of Scottish Police Superintendents (237KB pdf)
Chief Fire Officers Association Scotland (274KB pdf)
COSLA (146KB pdf)
Fire Brigades Union (301KB pdf)
HM Inspectorate of Constabulary for Scotland (152KB pdf)
Police Complaints Commissioner for Scotland (200KB pdf)
Professor Nicholas Fyfe (263KB pdf)
Scottish Community Safety Network (79KB pdf)
Scottish Fire Conveners Forum (166KB pdf)
Scottish Police Authorities Conveners Forum (157KB pdf)
Scottish Police Federation (88KB pdf)
Scottish Police Services Authority (155KB pdf)
SOLACE (95KB pdf)
UNISON (131KB.pdf)

SUPPLEMENTARY WRITTEN EVIDENCE

Scottish Fire Conveners Forum (189KB pdf)
Scottish Police Authorities Conveners Forum (465KB pdf)
Police and Fire Reform (Scotland) Bill: Stage 1

The Convener: Our next item of business is an oral evidence session with members of the Scottish Government's bill team for the Police and Fire Reform (Scotland) Bill. The committee has been appointed as a secondary committee for consideration of the bill at stage 1. The focus of our consideration is to examine the policy aspects of the bill that are most relevant to our remit and to report on those issues to the Justice Committee, which is the lead committee for consideration of the bill.

I am pleased to have Christie Smith and the bill team with us. Christie is the head of the police and fire reform division at the Scottish Government. I invite him to introduce the other members of the team and make an opening statement.

Christie Smith (Scottish Government): Thank you very much, convener, for inviting us to the committee to give evidence on the bill. My responsibilities are for the overall reform of both the police and the fire and rescue services, including the proposals in the bill and those outwith it.

I have with me Liz Sadler, who is the head of the team that produced the bill, and Stephanie Virlogeux, who works with Liz on the bill. Liz will make some opening remarks to give an overview of what the bill does. We are then in your hands for questioning.

Liz Sadler (Scottish Government): I thought that it would be helpful to provide the committee with a brief overview of the bill and, specifically, the provisions in it that relate to local accountability and the wider links with local authorities. My comments supplement the submission that we provided the committee with last week.

The purpose of the bill is to create a single police service and a single fire and rescue service to meet the three aims of reform: to protect and improve local services despite financial cuts; to create more equal access to specialist support and national capacity; and to strengthen the connection between services and communities.

Police and fire reform is part of the Scottish Government's wider public service reform programme, which is focused on improving service outcomes for the people of Scotland. Building on the findings of the Christie commission, the programme will be built on the four pillars of prevention, greater integration of public services at a local level, greater investment in the people delivering the services and a focus on improving performance.

The provisions in the bill align well with those aims by providing a clear, modern purpose for policing focused on prevention and early intervention to improve outcomes—a new outcomes-focused purpose for the fire and rescue service will be set out in a new fire and rescue framework; clearer integration of services with community planning structures and local governance arrangements, to enable partnership at a local level; local governance arrangements that create stronger partnerships and links with front-line staff and clear arrangements for the transfer of staff to the new services; and a clear statutory framework for national governance, statutory planning and reporting requirements, and clear scrutiny arrangements.

The Scottish Government has consulted widely both on the principle of single services and on how those services will operate. That has been done through two formal consultations—the first was conducted from February to May last year and the second in September and October—and through detailed engagement with stakeholders and practitioners.

The bill is in three parts. Part 1 deals with the police, part 2 deals with the fire and rescue service and part 3 deals with general provisions.

The Police (Scotland) Act 1967 is more than 40 years old. We have therefore taken the opportunity in part 1 to repeal that legislation and put in place a new modernised framework for policing.

The regulatory framework for fire was updated in the Fire (Scotland) Act 2005. Part 2 therefore amends the 2005 act and transfers its firefighting, fire safety and other functions under the act from the current eight services to the Scottish fire and rescue service. For the most part, the bill puts in place consistent arrangements for both police and fire.

It is important to emphasise that the bill sets out the governance arrangements and framework for the new single services; the detailed managerial and operational delivery of those services will be for the services to decide, not for legislation.

The arrangements in the bill have a strong local focus. In particular, the bill provides new statutory principles for policing and placing communities at the heart of service provision; national governance structures to ensure an enhanced focus on the local delivery of policing and fire and rescue services; and a new role for local authorities at the national level, with ministers having a statutory duty to consult local authority representative bodies before they determine strategic police priorities. The Scottish police authority and the
Scottish fire and rescue service will have a statutory duty to consult all local authorities on their strategic plans, and there will be new, clear powers for local authorities in relation to the provision of policing and fire and rescue services in their area, including in relation to the establishment of local commanders and local senior officers. Those officers will be designated to contribute to community planning, which will provide for greater integration with the community planning process, and there will be clear arrangements for the transfer of staff and property.

The Scottish Government has established a project to support local authorities in trialling the new local arrangements ahead of their formal introduction. Twenty-five local authorities have already told us that they will participate in the pathfinder projects. That demonstrates a strong appetite among the local authorities to develop the new arrangements in partnership with the police and fire and rescue services. We look forward to gathering and sharing the learning and good practice that emerge.

To conclude, the bill will establish single services for Scotland to ensure that the police and fire and rescue services are in the best possible shape to meet the demands of the 21st century and the expectations of Scotland’s communities. Through reform, the Government is seeking to ensure that the services remain strongly rooted in and are responsive to those communities, and that resources are focused on supporting the front line.

We would be happy to answer any questions.

The Convener: Thank you very much.

You talked about integration with community planning and mentioned local commanders. How do you see that working in practice?

Liz Sadler: The bill provides for the local commander to be designated under the Local Government in Scotland Act 2003 to participate in community planning in the local authority area. The Scottish fire and rescue service will also have a duty to do that. The local senior officer will be the designated officer. The local commander and the local senior officer will therefore have a key role in agreeing a local plan with the local authority for the provision of their services. They will have a statutory duty to prepare a local plan in partnership with the local authority, which will have responsibilities for monitoring and advising on the local plan.

The Convener: Do we expect the local commanders to go to local authority meetings to answer councillors’ questions directly?

Liz Sadler: Absolutely. The bill leaves the arrangements for that open. Policing is different in different parts of Scotland, so we think that the mechanisms for how the relationship works should be left to local discretion, but we certainly envisage that the local senior officer and the local commander will appear before the local authority. The local authority could decide to use its current community planning arrangements or it could set up a police and fire committee. Indeed, it could have that as a committee of the full council. It is entirely up to the local authority how to work in partnership to establish what best meets local needs.

John Pentland: Would there be a local commander for each local authority?

Liz Sadler: The bill provides that the chief constable and the chief officer must designate a local commander and local senior officer for each local authority area in Scotland. If it were considered appropriate, a local commander could work with more than one local authority, but there must be a designated person for each local authority.

John Pentland: So as things stand, there could be 32 local commanders.

Liz Sadler: Yes.

Margaret Mitchell: Currently, the position of local commander is quite powerful. Would the local commanders as envisaged in the 32 local authorities have the same powers?

10:45

Christie Smith: They will have the same powers and responsibilities locally, but their position in the police or fire and rescue service might be different, depending on the extent of those powers, so we have not specified the rank or grading of those posts. There are already divisional commanders but they vary in their rank and grading. We would expect that to be worked out between the services and the councils.

Bill Walker: I will follow that up on a practical level. I am still a local councillor in Fife and we have a pretty good relationship with the police. For example, at ward level we work with constables and sergeants; at area committee level, we work with chief inspectors; and at Fife Council, we work with the chief constable of Fife. The relationship works pretty well within a matrix structure. There is also community engagement with community councils and other interested people, which works pretty well. I am satisfied with the reorganisation of the police into a national service, but I want to maintain those local links because that is the issue that people ask me about. They are all in favour of saving money and streamlining the service at the top level, but they are concerned about what happens at the lower levels.
I will follow up something that one of my colleagues said. I do not think that this is in the documentation that I have seen so far. As our local authorities vary hugely, I assume that the local commander for a very large local authority could be the equivalent of an assistant chief constable, whereas for a very small local authority a superintendent may be the appropriate level. Is that the idea? I am keen to maintain the links, but we have 32 local authorities and it could be quite tricky. I take it that the person who is designated as the local commander will be at an appropriate level to relate to the local issues.

Christie Smith: Yes. We think that the local links are pretty good in most places. Probably the thing that has been said most consistently to us when we have consulted on the proposals is that we should not break those links but try to make them stronger. In Fife and in Dumfries and Galloway, where there is already coterminosity between the council, the police and the fire and rescue service, those links work most like how we think they will work in the future. However, that is not generally the position in Scotland. In most of Scotland, the services are overseen by the joint boards of a number of councils. The effect of the proposals will be to take the joint board out of the equation and put the council in direct contact with the police and fire and rescue services.

You are right that there are places where a chief inspector is responsible for a council area. There is quite a range from Glasgow, which has two chief superintendents, to Clackmannanshire and from Edinburgh to Orkney. That is why we do not think that there is a one-size-fits-all solution. To a large extent, the services have already got the span and the burden of local responsibility about right. We hope that the services working with the councils, particularly over the next year in the pathfinder projects, will be able to sort that out to everyone’s satisfaction.

Kevin Stewart: Ms Sadler said that it will be up to each local authority to decide whether the commander and chief officer will report to the community planning partnership, to a committee of the council or even to the full council. If local authorities chose still to have joint arrangements, would that be possible under the legislation?

Liz Sadler: Yes, it would be possible for local authorities to come together and organise in that way. We would expect the local authorities, the police and the fire and rescue service to work in partnership to determine the best way of delivering that.

Christie Smith: Twenty-five local authorities want to participate in the pathfinder projects. Most of them want their own arrangements, but at least two neighbouring local authorities of a similar size want to try a combined arrangement. The three island authorities are also thinking about a combined arrangement. There is a diversity of ambition and we are quite happy to see how those different arrangements work out. The bottom line is that each council will be entitled to make its own arrangements if it wants to do that. It will be a matter of consensus and voluntary co-operation if councils decide to come together.

Kevin Stewart: So we will have complete and utter independence for councils—apart from Fife Council and Dumfries and Galloway Council—to decide on the matter, rather than the current arrangement whereby a small number of councillors go to a board.

Christie Smith: Yes.

The Convener: You mentioned some of the councils that are part of the pathfinder projects and said that different options were being considered. When will those options be made public, so that we can look at what councils are proposing?

Christie Smith: We have expressions of interest from those councils now and we are collating them. There may be one or two late expressions of interest, but we hope to get everyone up and running in April. There is no sensitivity or confidentiality about our information and we will be able to make it available pretty soon. In fact, if the committee wants more information about that before it makes its report to the Justice Committee, I am sure that we can arrange to provide it. We can write to you after the meeting, if that would be useful.

The Convener: That would be useful; the sooner, the better would be helpful for our inquiry.

Margaret Mitchell: Can I take you back to the consultation? There were 219 respondents, the vast majority of whom were not in favour of having a single police force. How many of those respondents were local authorities? How many local authorities were and how many were not in favour of having a single police force?

Christie Smith: I am not sure whether we have the analysis by local authority with us, but we can easily produce it. The majority of those in the February to May consultation who expressed an opinion about structure did not favour having a single police service. However, a good number of respondents did not express an opinion about structure, so it would not be true to say that a majority of respondents opposed having a single police service.

Margaret Mitchell: Perhaps you can give us an analysis later of the comments.

Local authorities will have the power to monitor and advise on local plans. How will that differ from
Margaret Mitchell: The proposal is that all the funding for the Scottish fire and rescue boards from the local government settlement, of the funding comes through councils and joint boards. From the Scottish Government, in fire and rescue, most of the funding for the police will come directly from the Scottish Government. In fire and rescue, most of the funding for the police will come from the Scottish Government. In fire and rescue, most of the funding for the police will come from the Scottish Government.

Margaret Mitchell: That is helpful, but perhaps I can phrase my question in another way. The councils will have the power to monitor and advise on local plans. How does that differ from the overall powers that local authorities have just now over the direction of the police or over decision making within the police and fire and rescue services?

Christie Smith: Other than in Fife, and Dumfries and Galloway, which we keep coming back to, local authorities can exercise that power only through the joint board. Twelve local authorities come together to agree Strathclyde’s plan, and five councils come together to agree the Lothian and Borders plan. However, that will be done through the joint board and not through the council as such; it will be done through the council’s representatives on the joint board.

Margaret Mitchell: Do funding decisions not rest in part just now with local authorities? It is my understanding that, under the bill, the Scottish Government will solely be responsible for the funding of the services. Is that the case?

Christie Smith: At present, about two thirds of police funding is provided by the Scottish Government and the other third is provided by the 32 local authorities so, in effect, the funding is assembled from 33 places. The proposal is that all the funding for the police will come directly from the Scottish Government. In fire and rescue, most of the funding comes through councils and joint boards from the local government settlement, although there is some national funding for national assets and so on. Again, we propose that all the funding for the Scottish fire and rescue service will come from the Scottish Government.

Margaret Mitchell: So the decision-making power to which I referred is not in the bill and will be taken away from local authorities. That raises a concern—although it is not for the bill team, as you only advise on the bill—because with funding come power and influence.

Will appointments to the new Scottish police authority be entirely under the Government’s remit?

Christie Smith: The bill proposes that the Scottish ministers will make the appointments. They will be regulated by the Commissioner for Public Appointments in Scotland, so they will be public appointments in that sense.

Margaret Mitchell: Under the bill, the Government will fund both services and will appoint the new Scottish police authority’s chair and all its members. Is that the case?

Christie Smith: That is correct.

Kevin Stewart: At the moment, local authority funding involves a requisition by police and fire boards in all areas other than Fife, and Dumfries and Galloway. Has a local authority ever refused to pay the requisition?

Christie Smith: I have never heard of a local authority refusing to pay the requisition, although negotiations can take place about the amount of the requisition.

The Scottish Government used to provide 51 per cent of the police grant and require local authorities to provide the other 49 per cent. An interesting fact is that, since we discontinued that requirement several years ago, police funding has still been more or less split 51:49. It is difficult for a single local authority that is part of a joint board to take an independent decision about police funding, so the local authorities have by and large followed the previous pattern and have met the requisition.

Kevin Stewart: No local authority in the country has used its power through resources to try to stop the requisitioned amount being given to a police or fire and rescue board.

Christie Smith: I am not privy to discussions about requisitions, but I have not heard of a local authority that has refused to meet the requisition.

Kevin Stewart: I return to the democracy aspect. Small numbers of members of each local authority serve on boards, other than in Fife and in Dumfries and Galloway. In making their submissions, were councils aware of the proposal to democratise the police service further to local authority level, or was that not originally proposed?

Christie Smith: The consultation that was mentioned, to which councils responded, was not explicit about that issue—it made a general case for reform in principle and talked about the direction of reform. The more detailed proposals were set out in the second consultation document. Individual councils have reacted pretty positively to the idea that they will have more access to police

Kevin Stewart: How many local authorities are there in Scotland?

Christie Smith: There are 32. Six are unitary and the other 26 are in joint boards.

Kevin Stewart: Are police and fire boards required to have joint boards?

Christie Smith: No. If there is a single service, the boards can be single.

Kevin Stewart: What are the terms of reference for joint boards?

Christie Smith: They are set out in the bill.
and fire services and that more members will be involved in oversight of police and fire services.

I think that about an eighth of councillors scrutinise police and fire and rescue services. If councils had their own committees for those services, analogous to council committees such as education or social work committees, we would expect about half of councillors to have direct contact with the police and fire and rescue services. That would involve about four times as many councillors as are involved now. Such an arrangement would probably be particularly beneficial for small councils, which might typically send two members to quite a large joint board. We think that the proposals will create quite an increase in engagement between councils and the services.

Kevin Stewart: So it is fair to say that, since the proposals were announced, councils have become much more positive about the nationwide services.

Has there been a level of positivity in the applications for pathfinders?

11:00

Christie Smith: So far, 25 of the 32 councils have expressed an interest, with maybe more to come. Many seem to be enthusiastic about this; in fact, some have started this work before the pathfinders have even begun.

John Pentland: The proposed changes will have implications; indeed, in response to Margaret Mitchell, you outlined the financial implications. However, I want to ask about staffing. After the single police force and single fire board are created, there will still be local variations in employment agreements. If liabilities arise from this move, who will pick up the cost—the local authorities, the Scottish Government or the fire and police boards?

Liz Sadler: On the day the new services are established, all employed staff and officers will be entitled to transfer on their terms and conditions of service. In the run-up to reform, the existing police and fire services will still have to live within their resources and, after reform, there is likely to be some rationalisation of staffing. The Government expects that to be achieved through voluntary redundancies, the cost of which will be borne by the current joint boards in advance of reform and by the new services after reform. The financial memorandum and the outline business case for the reform programme take account of the cost of such redundancies.

John Pentland: Do those costs include any potential equal pay claims on transfer of employment?

Liz Sadler: Once the staff have transferred to the new services, it will be up to those services to look at people's terms and conditions and the extent to which they need to harmonise any differences. Again, the outline business case sets out some estimated costs—I think that the figure is £2.9 million—to allow the police to bring terms and conditions of service into line.

The Convener: Can you confirm that the Scottish Government's no compulsory redundancy policy will apply to the people who are shifted into the new service?

Liz Sadler: The business case has been prepared on the basis that there will be no need for compulsory redundancies.

John Pentland: I have two other questions. First, when you were asked earlier whether each of the 32 authorities would have a local commander, you said yes. Will the pathfinder projects involving two or three local authorities working together have a single commander?

Secondly, will accountability come back to the local level?

Christie Smith: On the question about the pathfinders, we have said that every council can have its own local commander if it wants. Indeed, from the expressions of interest that we have received about the pathfinders, it seems that that is what most councils want. However, a couple want to try to share a local commander and, in one case, three want to share. That approach will be trialled and, if that is the way they want to go, they can go that way. However, if at the trial's conclusion they decide that they want their own local commander, they will be entitled to take that route. In fact, the bill makes that clear.

Although as part of the single national service, the commanders will be ultimately accountable to the chief constable or the chief officer of the fire and rescue service, they will have specific duties to account locally for local performance, to take account of local priorities, to report to the council, to participate in community planning and all the rest of it. That approach is intended as a counterbalance to keep local services rooted locally and to ensure that the creation of a single service does not result in overcentralisation or an overpreoccupation with national priorities.

John Pentland: What about local accountability?

Christie Smith: I am sorry—I thought that I had answered that. I am happy to elaborate, but I do not quite understand the question.

John Pentland: Will there be local accountability for the business of the local commander or the police or fire board?
Christie Smith: The bill sets out the duties of the local commander and local senior officer, which include reporting to the council, agreeing a plan with the council, participating in community planning and a range of other such duties. That is how the services will account locally.

Anne McTaggart: What are the estimated savings? Has that figure been put together yet?

Christie Smith: Yes—it has been put together over a period of several years, actually. As the financial memorandum sets out, we estimate that, when the reform programme is complete, we will save £101 million a year in cash from policing and £25 million a year in cash from fire and rescue. It is a five-year programme, so the figure will build up over time. The crucial step in enabling the change is to create the single structures.

Anne McTaggart: Have the set-up costs, such as the costs of rebranding and rebadging, been taken into account in those figures?

Christie Smith: Those figures are the annual recurring net savings after costs, or once the reform is complete. There will be one-off costs in the creation of the new structures in the next couple of years. Those have been accounted for and provision was made for them in the spending review that has just been carried out.

Margaret Mitchell: Is it the case that somebody who is currently a community police officer could in theory apply for and become a local commander?

Christie Smith: If he or she is qualified and has the right rank for the position, I am sure that that is the case.

Margaret Mitchell: Is there a stipulation on what rank someone must be to apply for the position?

Christie Smith: We have not stipulated a rank for that. We expect the services to sort that out with the councils. Whatever the rank is, the officers who are eligible to apply for the position will be able to do so. However, that is a matter for the police and fire and rescue services to sort out.

Margaret Mitchell: So there is no stipulation in the bill about what rank people must be to apply to be a local commander.

Kevin Stewart: Convener, I think that we are going up the wrong path, because the appointment of local commanders, whatever rank is involved—from inspector up to chief superintendent—will be an operational matter for the chief constable, as is the case under the current set-up. We are getting into realms that the bill does not touch on, because operational matters will still lie entirely within the remit of the chief constable. I think that that is correct, but perhaps Mr Smith can confirm it.

Christie Smith: That is correct. As we discussed, there is potential variability in the responsibilities of local commanders, depending on the area that is involved. That is why we have not attempted to specify a rank in the bill. We expect the services to work that out with the councils.

Margaret Mitchell: That answers that question, but will you elaborate on the positions of assistant and deputy chief constables? How do they fit in and what role is envisaged for them?

Liz Sadler: The bill provides that the Scottish police authority must appoint a chief constable and one or more deputy chief constables and one or more assistant chief constables. The appointment of the chief constable is subject to ministerial agreement. The appointment of deputies and assistants will be a matter for the board to decide, in consultation with the chief constable. The composition and roles of the senior command team will be a matter for the chief constable to work out in association with the Scottish police authority. What the deputies and assistants do will depend on the way in which the service decides to organise that team. Ministers do not want to specify their exact roles in legislation.

Margaret Mitchell: Is there any provision in the bill for resolution in the event of a conflict between national and local priorities?

Christie Smith: We do not expect conflict between national and local priorities, but the bill sets out ways of resolving that in the planning requirements at the various tiers. For example, Scottish ministers can set strategic priorities for policing or fire and rescue services, but they must consult local authorities before doing so. The Scottish police authority and the Scottish fire and rescue service must prepare strategic plans for policing and fire and rescue, and they must consult local authorities before doing so. Those bodies will have explicit duties to maintain and improve local policing and local fire and rescue. The local plans that are prepared in each locality need to be consistent with and take account of the strategic plans and so on. Finally, the local commanders and local senior officers will both be part of a national structure, but they will also be accountable for performance locally and will provide a mechanism for resolving any issues of priority.

Margaret Mitchell: There have been some concerns about the business cases. Some people have said that they are subjective and partial. Has any attempt been made to have an independent review of the findings, or were the findings merely put straight into the policy memorandum?
Christie Smith: Both outline business cases were based on work that was carried out by the services themselves. In policing, particularly, it was a police-led team that came up with the various proposals for a structure. We shared drafts of the OBCs in the early summer of last year and then published final versions in September. We think that we fairly appraised the different options that were before ministers at the time, the three structural options being a single service, a regional structure and the status quo with increased collaboration. There is no doubt that the OBCs reflect ministers’ judgment that the structures most likely to achieve the aims of reform are single services. Ministers have been clear in defending that decision, not only through the OBCs, but through the bill and by other means. Ultimately, it was for the Government to decide on which structure to bring before Parliament in a bill, and that is the view that the Government took.

Margaret Mitchell: So, to answer the question, the findings were put straight into the policy memorandum.

Christie Smith: The policy memorandum describes what is in the bill. The outline business cases set out the financial analysis and other kinds of analysis that supported the reform process. The material from the outline business cases did not find its way into the policy memorandum. The bill was drafted to create a single service, which was the conclusion that came out of the outline business cases.

Margaret Mitchell: Did the conclusions go straight into the financial memorandum, then?

Christie Smith: I am sorry if I misunderstood your question. Yes, much of the material in the financial memorandum is based on the analysis in the two outline business cases.

Kevin Stewart: Going back to the issue of priorities and the resolution of conflict between local and national priorities, am I right in saying that there is no remedy for such conflict under the current set-up? A regional priority in Grampian might not be a local priority in, say, Aberdeen. Am I right in saying that, at the moment, there is nothing to deal with that?

Christie Smith: At the moment, there is nothing to deal with conflicts involving national and local priorities. You are right to say that we have a mechanism that could generate regional priorities. However, in discussion with councils and others in the run-up to the bill, we could not find good examples of regional priorities—Strathclyde priorities, Lothian and Borders priorities or Grampian priorities—although we found plenty of examples of local priorities. We know that there are certain national priorities, whether those are big national issues such as counterterrorism or things that are nationally important because they are local priorities everywhere. That is why the bill provides for the expression of national and local priorities, and we think that it provides mechanisms for getting those in the same place so that they are not dealt with separately.

Kevin Stewart: So, in the bill there are mechanisms to deal with local priorities, whereas those mechanisms did not exist previously.

Christie Smith: Exactly.

John Pentland: I have a question for Ms Sadler. If the joint boards leave any usable reserves, will they come to local authorities or will they be distributed to the new police and fire authorities?

Liz Sadler: As national bodies, the Scottish police authority and the Scottish fire and rescue service will not be able to utilise reserves. Officials are currently working with the Convention of Scottish Local Authorities on how best to utilise the existing resources or how to distribute them fairly.

Margaret Mitchell: If a local authority decided that it had a particular priority that it wanted to see in the local plan and it wanted to contribute funds towards addressing that priority, could it do so?

Christie Smith: Yes, it could. Councils do that now. Some councils pay for additional police officers or other local initiatives, and they will certainly be able to do that after the changes are made.

The Convener: There are no further questions. I thank Christie Smith and his team for their evidence. We will take oral evidence on the bill from key stakeholders on the afternoon of Tuesday 21 February, and we look forward to hearing more about the bill then. Thank you for your evidence today.
Police and Fire Reform (Scotland) Bill: Stage 1

14:01

The Convener: [Under agenda item 3, four panels of witnesses will give oral evidence on the Police and Fire Reform (Scotland) Bill. As the witnesses will be aware, our scrutiny is focused on how the bill will affect local government. As the lead committee, the Justice Committee will consider the wider issues of how the new police and fire service will operate. I therefore ask committee members and witnesses to restrict comments and questions as much as possible to areas within this committee's remit.]

I welcome the first panel: Councillor Barbara Grant, community safety spokesperson for the Convention of Scottish Local Authorities; and Bob Jack, spokesperson on community safety, justice, police and fire with the Society of Local Authority Chief Executives and Senior Managers.

I will kick off questions by asking the panel members for their views on the proposed national boards, particularly on whether they are content with the proposed appointment procedure and think that the boards' size and make-up are correct, or whether they have suggestions for improvement.

Councillor Barbara Grant (Convention of Scottish Local Authorities): Thank you for inviting us along today.

I think that we made it plain in our submission that we do not believe that the proposal for a national board with seven to 11 members, with possibly three or four of them elected members, is appropriate for something this large. We have suggested that a national board should have at least 15 members, with a majority of elected members. I truly do not see how the business can be conducted with anything less. All you would need is to have two people off with flu and someone else on holiday and you would be stuck. I do not see how you could have several sub-committees, which I believe you would have to have. Having so few elected members does not seem to us the correct way forward either. COSLA has always had the view that police and fire are part of local government business, and we would like that to continue. If the whole project had been set up as a shared service affair, we would not have had such a difficulty.

The Convener: Your suggestion is for 15 members with eight local authority representatives. How might those eight be selected?

Councillor Grant: I believe that the submission says that we would look to COSLA to put forward names of elected members. That would give a broader spread across the country, as it were. The elected people on such boards represent the board, not their own authority. By the same token, they are at least cognisant of what goes on in the world beyond their own little patch, which makes quite a difference.

Bob Jack (Society of Local Authority Chief Executives and Senior Managers): The Society of Local Authority Chief Executives and Senior Managers sets out its position on this matter in paragraphs 4 and 5 of its submission to the consultation, which we have resubmitted for the committee's interest. Like COSLA, we question whether the non-departmental public body route is the correct approach and, in our submission, we suggest that a truly national and local partnership be created. Councillor Grant mentioned a shared service, and we think that it should be shared between the national and local levels. As our submission explains a lot of the rationale behind that suggestion, I will not waste the committee's time going back into it. I simply flag up the point that the particular route set out in part 1 of schedule 1, where the body's status is described, brings with it a whole lot of other consequences.

Some very practical concerns for local government centre on the relationship between the national and local levels—I am happy to expand on that in further questioning—while other concerns are about what happens when you set up this kind of body. I am sad to say that in recent years we have had experience of setting up such a body in the policing field and having to deal with employment, VAT and other issues, which I appreciate might be for another committee to address.

Our view is that this route is not the only one to go down in establishing adequate governance for a national police force. It takes out of local government something that has been there for centuries and moves it entirely into the realm of a quango. There is a different approach, of which, as we highlight in our submission, the Metropolitan Police Authority of London is an example.

Kevin Stewart: On the point about policing having been a local government matter for quite some time, I have to wonder whether it can be said that since reorganisation in 1995 policing has been truly part of the local government family. As Councillor Grant rightly pointed out, folks who are appointed to boards do not represent their local authorities. Moreover, if we take Fife and Dumfries and Galloway out of the equation, the only power that local authorities have with regard to police boards relates to finance and my understanding is
that no local authority has ever refused to pay the requisition. Will the witnesses comment on that?

**Councillor Grant:** That is perfectly true. As someone who sits on the Strathclyde joint police board, I am not aware that the precept has ever been refused. Of course, where people do not adhere to the precept, the board has the ability to requisition money from the local authority, but I am not aware of that ever happening.

Under the new proposals, there will be no finance from local authorities; all of it will come directly from the top. As a result, local authorities will not be able to suggest anything in their meetings with the local commander. It is all very well saying that they must have an agreement but, if the instructions from on high do not fit into that, what do the local commanders respond to? Do they respond to the local authority agreement or the edict from on high? You cannot have two masters in this business, and I am a wee bit worried about that.

**Kevin Stewart:** At the moment, apart from Fife Council and Dumfries and Galloway Council, no individual local authority has any real say anyway. Do you agree that the link between local authorities and policing was broken with reorganisation in 1995-96?

**Councillor Grant:** A local authority always has the authority to go directly to the chief constable or any of his subordinates and say what they want or what they feel. Local authorities have never been barred from doing that. As a member of a local authority, I can lift the phone and speak to Steve House at any time—I do not have to be a member of the police board. A local member can phone up and speak to anybody in the police at any time to make their presence felt, make their views known and have discussions. There has never been any problem that I am aware of.

**Kevin Stewart:** And that will not change—elected members will still be able to approach local commanders.

**Councillor Grant:** Well, we do not know that. The difficulty is that there is a big hole at the moment and we have not been able to get a handle on that.

**David Torrance:** My questions are about community planning and engagement, which is probably the issue that I have been asked about most by members of the public. What are the bill’s implications for community policing and fire and rescue services and the community planning partnerships? To what extent do the proposals threaten continued community engagement? How will local police and fire commanders engage meaningfully with the public under the new structure?

**Councillor Grant:** You are asking questions to which we do not yet have answers, as we do not have the detail to be able to respond positively. Community planning is a big focus for local authorities and we are concerned that the outcome from the community planning partners should be a positive one—that is what we want to focus on. Of course, community planning partners are not just the police and fire services; health and all sorts of other areas are involved, and it has all got to knit together. That is one of the strong things that we want to major on and, hopefully, expand and make better.

**The Convener:** How could that be improved with a single police force?

**Councillor Grant:** We are led to believe that there will be a commander at a local level, but we do not know whether that commander will be for one authority or several authorities. An agreement will, supposedly, be reached between the local commander and whatever authority, but, if they do not agree on anything, is there a way to have an adjudication on that? We do not know as yet. We want to ensure that the local commander is on side with what the local authorities want to do and the outcomes that they are looking for.

**Bob Jack:** That is an important question that needs to be teased out. We raise some concerns about it in the SOLACE written submission. There is a danger that the somewhat simplistic division of national and local policing obscures the issue. Local policing is not the same as community planning in the locality as it operates at the moment. In the two unitary authority areas—Fife and Dumfries and Galloway—and the smaller of the other police areas, engagement with community planning takes place at a much more senior level within the force. Notwithstanding how the organisational structure of the new force develops, the idea that the local area commander will be the be-all and end-all of the police’s engagement with community planning is fraught with risk and danger, as we try to highlight in our submission.

We suggest that, as well as the local area commander, there will have to be some engagement between local government and the strategic senior command of the police force; otherwise, for important issues that are currently handled in most of the country, perhaps excepting Strathclyde, at chief officer level, where are we to find the point of connect? For example, in my area, we had a critical child protection inspection—which is a topical issue—in Stirling, in June 2010, and the follow-up inspection in 2011 highlighted the importance of the leadership of the chief officers of the local authority, the health board and the police force in addressing some of the issues of concern and the improvement...
actions. Is that as likely to happen at local area commander level, with someone who is a mere inspector or chief inspector? That is the challenge and we need to tease that out.

SOLACE is not saying that the issue is by any means a show-stopper, but it cannot be addressed simply by saying that we have national policing in one place and local policing in another and everything will be fine. Community planning cuts across those two levels and we need to find a way to knit them together, which is why we suggested that the authority might have a better chance of achieving that if it were created as a genuine national-local partnership from top to bottom.

14:15

Bill Walker: Good afternoon. I want to follow that up at a local level. In Fife, we have a pretty good relationship between Fife Council and the police, especially at local level. We have wards, area committees and so on, and as a councillor I regularly meet constables, sergeants, inspectors and chief inspectors. It works well, especially with the community engagement model that we now use successfully.

There are eight existing police boards and 32 local authorities, and I am concerned about how the local commander idea will work. I am content with the current work at local level and hope that it will continue. My concern is that in large local authorities such as Glasgow, Edinburgh and Fife, which is the third largest, the local commander will be a pretty senior person in the national force—I do not know what their rank will be, but it will probably be something like assistant chief constable—while in a small authority it might be chief inspector. I am trying to visualise how these local commanders will get on together if they have a round-table conference. A whole range of ranks will get together and I wonder what the power relationships will be like and about people’s ability to relate to local government. How will it work in practice?

Councillor Grant: One of the difficulties is that there is a huge gap in the information about how such aspects of the bill will work. From what we have seen of it, it is not at all helpful on how we will engage. We are okay with what will happen at the very lowest level and, perhaps, with the person at the very top, but we do not have enough information about that huge gap in the middle. Unfortunately, what we have is all far too sketchy to be able to give you a definitive answer, which is what I would like to do. We are not in a position to do so at the moment, because we do not have enough information about how it will all knit together.

The Convener: Is COSLA in discussions with the Scottish Government about some of that detail? Is there any on-going dialogue?

Councillor Grant: We have been in discussion with the Scottish Government for a considerable period, but I cannot say that it has taken on board much of what has been said. It sent out two consultation documents last year and there was quite a good response. Neither of those consultations showed that people were in favour of a single force, but that is what we have and what we have to deal with. I hope that we will be able to do as best we can and that we get the outcomes that we all want, but unfortunately we do not have enough information at the moment to be able to say anything definitively.

Bill Walker: As I have said, in Fife we have a pretty good relationship with all ranks in the matrix structure, from that of chief constable downwards, and I am sure that the same is true in Dumfries and Galloway. A look at those relationships might be worth while.

I should say also that I am pleased to welcome to Fife the interim headquarters of the new police service in Tulliallan. I am in favour of a national police service. I think that it will be good to have one, but it must extend upwards; we do not want a top-down approach. We should develop the community relationships that we have in wards and areas and build up to the top rather than go from the top down. Do you agree?

Councillor Grant: Absolutely—I am all in favour of starting at the bottom and working our way up—but the business of how we get from the ground floor to the top is the bit that we need filled in. I am sure that others who are working on the subject will come forward with that information ere long, because there is a tight timescale to work to.

Bob Jack: The question of how to knit together the national and local bits, particularly in relation to community planning, is at the heart of this. Section 47 of the bill vests the duty to participate in community planning in the local area commander—full stop. From our point of view, the whole force structure needs to have a duty to participate—it cannot just be left at the local area commander level, because some community planning issues are handled above that level, as I said. That issue will need to be looked at as the bill proceeds. The whole authority, or at least the chief constable and the service, must have a duty to participate, whatever is said about the local area commander.

Anne McTaggart: Will local authorities have sufficient influence over local policing and local fire and rescue plans, including budget setting and resource allocation?
Councillor Grant: We will have no influence at all over budget setting—moneys will be handed down, as it were. Once a chief constable and his subordinates are in place, it will be up to them to decide how much money goes where. I hope that, when the money is devolved, it will fit in with whatever the agreed plan is, but we have no way of knowing that at this point. If the budget does not fit with the money, I am not sure where we will go.

I am sorry—what was the rest of your question?
Anne McTaggart: You have answered my question—thank you.

Bob Jack: We touch on the issue in our submission. At the heart of it are accountability and responsibility and how people can be accountable without having responsibility for resources or some influence over how resources are allocated to localities. Those are real questions that people have not begun to get their heads round. I noticed in The Herald last week some debate about decisions of the existing fire board on fire stations in the Highlands and Islands, which were taken with a view to reorganisation. As such issues come to the fore, local influence over the allocation of resources will come into sharp focus.

Our submission says that there is no reason why a system cannot be designed to give a locality some influence over and some responsibility for resource allocation, as well as the ability to hold people to account. That model is different from what is set out in principle in the bill. It would still involve a single national force, but it would be governed and organised differently.

The Convener: When we heard from the bill team a couple of weeks ago, it suggested that a local authority could decide to buy in additional services. Would that allow for some responsibility for resources? For example, an authority could say that it wants additional police officers in an area. The national service would pay for the majority of the core policing, but local authorities would still have the opportunity to make additional resources available.

Councillor Grant: Local authorities already put in money for additional services, such as campus cops. We do not know what will spring up, but there is a level of business that must be undertaken, which I presume has to be agreed locally. We would hope that the funding would be available, but we have no guarantees of that. The Cabinet Secretary for Justice says that the level of policing will remain the same—17,234 police officers—but that includes those doing all the extra things that are being done. Between 600 and 800 polis are already embarked on extra things, which come out of that chunk of 17,234. If the funding is not there from councils because they are a bit strapped, that amount of policing will not be there.

Kevin Stewart: I will play devil's advocate a bit here. Councillor Grant, you point out that some local authorities choose to pay for additional policing. However, no local authority really has a say in budget allocation at the moment—you have already given evidence in that regard. The budget is set at the national level and the board sets the level that has to come from the local authorities. You have already said that no requisition has ever taken place because authorities just pay the money straight over. Do local authorities have a say in the budget allocation, apart from funding extra policing if they choose to do so?

Councillor Grant: The say is always there; it is just that local authorities have not chosen to use it. However, when it comes to the bit, it is up to each council to decide what to do.

Kevin Stewart: The say is not there because if a council decides not to pay, the board can requisition anyway. Councils have no budgetary rights at the moment.

Bob Jack: Mr Stewart is technically correct in that if the board gets to a budget decision, it levies a requisition, which local authorities are bound to pay. However, that is the legal situation, not the practical, political reality on the ground. Mr Stewart implied that boards are somehow not part of local government, but they are. They are constituted under the Local Government etc (Scotland) Act 1994 and are entirely composed of appointees of the constituent authorities. They are part of local government, although it is correct that they are separate from the constituent councils.

Boards do not determine their budgets in a vacuum. There is a discussion in the locality about the overall funding available to local government, the police grant and the 49 per cent that comes through local government. The board does not go off into a corner and then face the constituent authorities with a requisition without any prior discussion. There is quite a deal of collaboration among the constituent authorities, the board and the police or fire service before a board would ever get to the point of setting a budget with a legally binding requisition.

Margaret Mitchell (Central Scotland) (Con): A number of the consultation responses referred to the tripartite structure, which is approved of as having a good balance between the national and the local, and political interference. From what you have said today and from your submissions, it appears that there is a real concern that without proper detail about the allocation of resources at local level, the local committees will be nothing more than a talking shop or an extension of a non-departmental public body. Would you prefer the
current arrangement of the police grant to remain to give those local committees real teeth in financial decision making?

**Councillor Grant:** The tripartite arrangement has worked extremely well. It is a bit like a three-legged stool—if you take a nip out of one leg, it all goes a bit to pot. It is hard to see how the new arrangement will work as well. We cannot go back to what we have had—that is just a no-no. We will have to go forward and make the new arrangement work well. We have got to be there, up front, ensuring that what we get in place works well.

I keep repeating that there are too many things that we do not know about for us to be able to get a handle on the proposals. The proposition is that the Cabinet Secretary for Justice will deal with the national board and not with the chief constable. At the moment, the justice secretary can work with the chief constable, but it is proposed that the justice secretary will work only with the board. However, the statement that the Scottish police authority “must comply with any direction (general or specific) given by the Scottish Ministers”

seems to be the most undemocratic statement that I have ever seen, and I do not know that I would like to sign up to it. That is in the bill.

14:30

**Margaret Mitchell:** Is it your definite view that there should be specific and clear provision in the bill for funding at a local level?

**Councillor Grant:** If there was funding at local level, or an arrangement to provide such funding, it would make the whole business much more accountable locally, which is where we seem to be missing something.

**Bob Jack:** We said in our submission that we should look at how local government can continue to be a route for some of the funding for the new services. We have been concentrating on the police, but we must not forget that we are talking about fire and rescue services as well.

That is all of a piece with what I referred to earlier: as I understand the parliamentary process, stage 1 is about the principle of a bill. I suppose that the question is whether the direction of travel that is set out in the bill is the right direction in principle. We have asked whether there is another way forward that would view the new single services as a national-local partnership. That would say something about the kind of authority that would be created; about how a partnership between local and national Government could be created at national board level; and about how the funding could come partly from local and partly from national Government. That, to me, is a pretty fundamental issue of principle.

The Government has made clear in the bill and through two rounds of consultation what it wants to see. This is a parliamentary process. Stage 1 is about principles, so, quite apart from what the Government thinks, Parliament has to be satisfied with the principle. We are suggesting that there is another way of looking at the matter that would achieve the same end result—a national-local partnership around the two single national services.

**The Convener:** Are you suggesting that we should have a national police service and a national fire service, for which the 32 local authorities would have to come to an agreement on how much they should pay?

**Bob Jack:** As we say in our submission, creating such a system is not without complexity, but the detail could surely be worked through. Within these islands, we have models that involve just such a system—for example, there is a national-local partnership around the policing of the capital city of the United Kingdom. The answers are out there to be looked for, if we want to look for them.

That is the issue of principle: either we create the new body as part of Government and as a partnership between Government and local government, or we create it as an appointed quango, with all that flows from that. That is the proposition that is in the bill—it involves the creation of an appointed quango, which gives rise to a host of issues. Such an arrangement can be made to work. As the professional organisation for chief executives, it is not our job to comment on the policy. We are saying that we may have views about some of the issues that are of concern, but what the bill proposes can be made to work. We are certainly up for doing that and are determined to do our best in that regard, but at this stage, when the principle is being discussed, it is important to raise the concerns that we have raised and to make the suggestions that we have made.

**Kevin Stewart:** The funding issue is a bit of a red herring. It is national Government that decides what goes on in each force area, because it provides 51 per cent of the funding; the 49 per cent automatically comes from local authorities, without using requisition. Am I right in saying that for a number of years national Government has decided the resourcing in each force area?

**Bob Jack:** The 51 per cent police grant comes directly from the Scottish Government to each police board and the 49 per cent comes through the grant-aided expenditure distribution of revenue support grant to local authorities. As I explained,
the position is usually the result of consultation among the constituent authorities before the board sets its budget. You are quite right about the legal position: if the board sets its budget, the authorities must meet the requisition. One could observe that pretty well all local government’s money comes from the Scottish Government. That is the reality. The 49 per cent comes through the revenue support grant, which provides all bar 10 per cent of what local government spends.

**Kevin Stewart:** It is right that a lot of the money that goes to local government comes from central Government. In most areas local government can decide how it spends the money, particularly now that ring fencing has gone, but in relation to police funding, since the change in the system in 1996 it has always been the case that every local authority has paid the boards 49 per cent, to match the 51 per cent from central Government. Is it the reality that national Government currently sets the budget for police forces? Yes or no?

**Bob Jack:** The legal position is as you described it. If the board sets a budget and levies a requisition, the authorities must pay it. The situation has never arisen, I suggest because of the pre-budget-setting consultation that I described. If a particular police board and force decided to exempt itself from the whole drive on efficiency, for example, and was not prepared to cut into budgets, there would be a pretty serious issue. It would be pretty serious if a budget was set at a growth level and a requisition came down that the authorities would be legally obliged to pay, at a time when the authorities are having to meet substantial efficiency targets in their own budgets. The practical, political reality is that such matters are discussed and the point is never reached at which the legal requisition must be met in the face of opposition from the constituent authorities.

**Margaret Mitchell:** Would you welcome clarity on the funding that is available to local committees? Would you very much welcome direct funding to local committees, to give them the accountability that they need if they are to form a partnership between national and local policing and fire services?

**Bob Jack:** That is our position, as we said in our submission.

**Margaret Mitchell:** The submissions from both witnesses reflected concern about whether there will be independent information gathering that is separate from the information that is provided by policing and fire alone. Reference was made to the importance of local intelligence and the kind of information that currently comes to committees in relation to serious crime and so on. Will you talk a little more about that and allay our fears about the important role that local government plays in that regard?

**Councillor Grant:** Will you be a little more specific about what you mean?

**Margaret Mitchell:** COSLA said in paragraph 37 of its submission:

"COSLA are not clear where informed independent professional advice on policing and fire will come from to inform the local committees."

In paragraph 7 of its submission, SOLACE referred to

"the consequences of serious and organised crime at the national (or indeed international) level,"

and local intelligence about disruptive individuals, dysfunctional family units and so on, which comes in a wide variety of ways.

**Councillor Grant:** I am with you now.

So much of what goes on locally feeds into issues that go beyond the local level. A care worker who, while they are out and about, sees something that they think should not be happening can refer the issue to their local police constable, sergeant or whoever. There are all sorts of things going on locally that intermingle with one another. If something that is happening locally gets referred up, you do not know whether it concerns someone who is part of a terrorist organisation or is involved in serious crime, of which there is a lot going on.

A lot of things are in the mix, and we do not tend to separate them out, because everything is there to make the process work; people understand that they have to take cognisance of what is going on around them, and people who are working in the community—whether they are care workers, health workers or people who work in the fire service—keep in touch with one another. If they see something that does not appear to be the right way forward, they can soon get in touch with someone about it.

Serious and organised crime is a big issue. I do not know how much of that will be involved locally—

**The Convener:** I am slightly concerned that you are getting on to operational matters of policing, which is going beyond where we should be in terms of the committee’s remit.

**Margaret Mitchell:** Are you content that the provisions in the bill give you the mechanisms to provide that local intelligence?

**Councillor Grant:** I hope that they do.

**Margaret Mitchell:** But you are unsure. You would like that to be clarified.

**Councillor Grant:** There are many things that we do not have information about at the moment.

**Bob Jack:** I do not see any reasons why those mechanisms cannot continue under the new
structure. It is a matter of how things are organised and what the relationship is between local government and national Government. That is the point that we were making in the paragraph that you referred to, which has to be read in the context of paragraphs 6, 7 and 8. In essence, the point is that you cannot tease out which issues are local and which are national because the one type informs the other. The risk is that, if you get too fixed on the idea that the only business of local government in relation to the police is what is defined as local policing, you will miss that wider picture.

Margaret Mitchell: Is it your perception that there might be additional costs to local authorities as a result of the provisions in the bill?

Councillor Grant: If local authorities wanted to do something specific that was not part of their general agreement, that would represent an on-cost. We still have to—

Margaret Mitchell: I was thinking more specifically about some of the provisions around training or information sharing. Are there other costs that might be incurred as a result of the provisions in the bill?

Councillor Grant: We would ask whether setting up committees for police and fire services will represent another on-cost in relation to the current provisions around the way in which local authorities work with various committees. Will it cost a bit more to set up another bureaucracy around a police and fire committee? Obviously, training is always undertaken, but it might need to be more extensive as a result of the bill.

Margaret Mitchell: Does SOLACE have any concerns?

Bob Jack: I suppose that, in theory, having a local police committee and a local fire and rescue committee—or even a combined police, fire and rescue committee or a wider community safety or public protection committee—that serve the purpose that is set out in the bill represents an additional cost, as we do not have that at the moment. Personally, I do not think that that is a huge issue. We have committees for all sorts of things. We combine committees and disband committees and recreate committees. That issue is not as significant as some of the others that we have been discussing.

Margaret Mitchell: Do you have any comments on the provisions, or lack of provisions, about dispute resolution in the bill?

Councillor Grant: We do not know who will deal with any disputes. If a council goes forward with a plan and hopes that its local commander will be happy with that plan, because that is the outcome that the council wants, will someone sit in arbitration with regard to the way forward? The bill contains nothing about how that would work. Would both sides just bang their heads together in the hope that they will come up with a good answer?

14:45

Margaret Mitchell: More clarity on that would be welcome.

Councillor Grant: Yes—more clarity on much of the bill would be helpful.

Bob Jack: I wonder whether you really want to go down the route of including dispute resolution machinery in the bill. We raised a concern in our submission at the second stage of the consultation about whether the local authority would approve or simply be consulted on the local plan. That has been clarified in the bill: it is approval. What happens if the authority does not approve the plan?

You can go down one of two routes. You can put in place dispute resolution machinery and legislate for such a situation, or—as I explained to Kevin Stewart—you can do what happens in reality with the budgets, which is to leave the resolution of such situations to practical political good sense.

If an authority had serious issues with the proposed local plan—if there were things in the plan that the authority did not like, or if things were not in it that the authority wanted to see—that would soon escalate through the structure and there would be a resolution, whether the bill sets out the machinery or not. Some of these things are best left to good sense, if and when the—one would hope very unusual—circumstance arises.

John Pentland: You have both touched on the questions that I am about to ask with regard to relationships. Will those involve working together or not? Does SOLACE or COSLA have any concerns about variation between the areas and the seniority of local commanders and senior officers? Should there be a direct relationship between local authorities and the governing boards of police and fire services?

Councillor Grant: At present, the relationships between councils and police and fire and rescue services are excellent, and we certainly would not want to lose that. I am fairly hopeful that we will not, but everyone will be working through a new piece of ground.

If councils decide to set up police and fire committees, one presumes that the chief officers will have to come along and talk to those committees. One would hope that they would not just be sitting there and nodding like donkeys, and that there would be good interaction and a good
reason to have a committee, but we will see: time will tell.

Bob Jack: We raised that issue in our submission. The target operating model—as it was called—that underlay the business case mentioned a potential span of four ranks from which the area commander would be drawn. That may or may not—in fact, it will probably not—be the end result as the organisational design is progressed, but there will still be a disparity because the 32 councils, which must all have a local commander, must fit into whatever organisational structure the new force develops.

I would have thought that all 32 local area commanders could not by definition be of the same rank, because they will be looking after areas of considerable difference in size, geography and so on. There is an issue around how we deal with that. We certainly felt that a span of four ranks was unacceptable, because the smallest authority’s local area commander could be an inspector and the largest authority’s commander could be a chief superintendent, which is a huge difference in seniority and authority.

The system will work best if there is at local level someone of sufficient seniority and authority to build a relationship with the local authority and the local community. There is a question in that regard that must be resolved as the organisational structure is progressed.

In some respects, that is why we suggested that there should be a local government voice at the national board level. That would help with regard to Margaret Mitchell’s point about how disputes are resolved. If that perspective is there at the national level, as well as in each of the 32 localities, perhaps disputes will be less likely to arise or will be more easily resolved if they do.

That takes us back to the question of what we are creating through the bill. Is it a quango to run a single national force, be it fire or police, or is it more of a partnership between the two levels of governance in the country? Our strong view is that if we take the latter route, a lot of the concerns and issues will be more easily resolved than if we take the route that is currently proposed.

John Pentland: Councillor Grant, is it your view that each local authority should have a police and fire committee?

Councillor Grant: No. My view is that it should depend on how each council feels about the issue. Certainly, my council in East Renfrewshire is looking at the pathfinders business and thinking that it would not go down the route of having a separate police and fire committee, but would formalise what is being done informally at the moment and look at its cabinet reporting to the council on the business that it has done. East Renfrewshire Council is a small authority, but bigger authorities such as Glasgow City Council or Dundee City Council might want to have a police and fire committee. It will be up to each authority to decide the best way forward for it.

On the issue of a local commander for an area, at the moment one local commander covers the three Ayrshire authorities, for example. I do not see any reason why something like that would not be appropriate elsewhere. My authority is part of G division in Glasgow, which looks after Pollok, Govan and so on. The chief superintendent there looks after part of Glasgow and the whole of East Renfrewshire.

Obviously, there could be umpteen different permutations for having a local commander, but I would be surprised if, at the end of the day, we had 32 commanders. If there was only one commander for a big city, we would have to think through what we do for smaller areas. It is the business of the police to work that through. When a chief constable is involved and the whole business filters down, we might be in a better position to make judgments.

The Convener: There are no further questions, so I thank the witnesses for their evidence. You are welcome to stay for the rest of the meeting, if you wish.

14:52
Meeting suspended.

14:54
On resuming—

The Convener: The panel for our second oral evidence session is slightly bigger. If the witnesses feel that someone has covered an area to their satisfaction, it is not necessary for them to answer every question.

The panel consists of Chief Constable Kevin Smith, president of the Association of Chief Police Officers in Scotland; Councillor Iain Whyte, chair of the Scottish police authorities conveners forum; Andrew Laing, Her Majesty’s inspector of constabulary for Scotland; Professor John McNeill, Police Complaints Commissioner for Scotland; and Gillian Campbell, director of human resources at the Scottish Police Services Authority. You are all welcome.

I kick off by asking panel members for their views on the proposals for a national board. Do you think that the appointment process and the number of members and make-up of the board are appropriate? If not, do you have suggestions on ways to improve the proposals?
Chief Constable Kevin Smith (Association of Chief Police Officers in Scotland): There are a number of issues. The national board will be a very important part of the new structure. The one thing that has been missing from the discussion so far and is missing from the bill is the part that the citizen plays in it. There is no reference to the connectivity between the national authority and the citizen, nor is there any direct reflection in the bill of the relationship with the citizen and the local authority. To ensure that the process is democratic, there must be some form of compulsion on the police authority to have a consultation process with the citizen so that it is informed by what the people of Scotland think.

We have a number of other points. It came through in the previous evidence session that there must be a link between the local and the national. Not to have such a link would be to miss a trick. I spent some time in Northern Ireland looking at the governance set-up there. The one thing that became clear was the void between the district policing partnerships and the national policing board. In policing, there is no clear delineation between the local and the national; it is a continuum and a mosaic. Clarity between the two does not exist for us. We must ensure that the local informs the national and the national informs the local.

We are looking for a new era of governance in terms of the scrutiny and the calibre of people who will be required to hold a £1.4 billion budget and a very powerful individual to account, and the process must be informed by elected members of an equal calibre. We believe that there should be a number of elected members on the national authority. Just as people come to give their expertise in finance, risk management and corporate governance, so too must elected members come to ensure that the police authority is informed by the local element. They must be there on an equal footing with the other members and must also be appointed through the public appointment process.

Another provision on the national authority that we question is the power of ministerial direction. When we have asked the Government about the issue, we have been advised that policing is a national service and that the health service and other important public services survive with such an arrangement and that we are no different. However, we are absolutely different. We have very strong coercive powers and the chief constable is in a very powerful position.

We believe that there needs to be further clarity on and further articulation of what ministerial direction would look like in practice. The reference in the bill to a specific policing operation is a very narrow definition and we believe that the definition should be much broader. The ministerial direction is to the authority, not to the chief constable, but there is not much of a buffer in between. We believe that a fundamental part of the formation of the new authority must be some questioning and relaxation of the power of ministerial direction.

Those are my views on the role of the national authority.

Councillor Iain Whyte (Scottish Police Authorities Conveners Forum): I am happy to agree with most of what Kevin Smith said. I further emphasise the point that some others have made to the committee, which is that the number of board members seems insufficient to the conveners. I sit on a board of 18 for Lothian and Borders Police. Some of my colleagues sit on boards that are only slightly smaller and others sit on boards that are quite a bit larger to deal with the business of policing throughout the eight areas of Scotland. It is quite tough—there is quite a workload on some of the people who are more heavily involved. Without having a bigger board than is suggested in the bill, it will be very difficult to get through the business and bring the proper scrutiny that is required, especially when sub-committees have to be set up for certain issues.

15:00

I, too, have concerns about the local relationships. There is at least the potential for a force that is directed nationally through direction from ministers to the absolute governing body, the board, to concentrate on centralised national issues, some of which are quite high profile—quite sexy, shall we say?—to the detriment of local policing. That is certainly the way that resourcing could go. I fear that, without some control and monitoring of resourcing locally, there will be a problem. At the moment, that is what we have through the tripartite system. I listened to your earlier discussion about budgets. Budgets are set through dialogue with local authorities and it is not just about GAE. Every local authority in my area spends more than its GAE in topping up the police numbers. GAE alone does not set the budget, and it is all done through dialogue with council leaders. If there were a real problem—if there were differences of opinion with the board members who are members of those councils—there would be votes at police boards about how much to requisition from the constituent councils. We do not have those because we do it by agreement.

Andrew Laing (Her Majesty’s Inspector of Constabulary for Scotland): Good afternoon. Thank you for the opportunity to speak today. The question that you pose about the board is a long-asked question that stems back to the 1962 Royal Commission on the Police, which tried to strike a balance between democracy and accountability at
both local and national levels. We do not seem to have found an answer to that yet, although what is proposed takes us some way forward.

Around a year ago, HMI provided the committee with a paper on governance and accountability in policing in Scotland, which drew on evidence from best-value reviews, the independent review of policing and other papers. It identified a number of areas that required to be addressed to ensure good governance and accountability in policing. It recognised the need to strike a balance between democracy—the democratic will of the people on behalf of the citizen—and governance and accountability with the competence and capability to quiz intuitively and call policing to account, taking into account the fact that policing is a professional and specialised area. Much of what is seen at the moment at board level is the superficial face of policing—the public-facing bit. What is often not seen is the bit behind the scenes—the intelligence and the information that is not widely or publicly available. The notions that are contained in the bill suggest to me that the future board, as proposed, could be a mix of democratically elected members and others with competences in the specialisms of policing, finance, resource management and corporate governance. That would be a positive benefit.

I will briefly touch on two other points, the first of which follows on from the earlier discussions regarding accountability. Within the notion of a single board, some effort must be put into defining what we mean by accountability. In purist terms, I suggest that accountability comes with consequence and that consequence within a linear structure—within a chief constable’s responsibility for day-to-day management—must go down through the organisation. If we get to a position where there are two or more seats of accountability with consequence, we will be in a very difficult position. That has been drawn out, over recent years, in evidence from best-value reviews. The short answer to your question is that, in terms of structure and where accountability is placed, the proposals are positive but need to be taken into a context of local reporting and local answerability where the consequences are drawn back through the top.

Professor John McNeill (Police Complaints Commissioner for Scotland): Good afternoon. I am pretty sympathetic to what Andrew Laing has said. I have considerable experience of corporate governance, and my primary concern is whether any police authority is competent to hold the command team to account. I do not subscribe to the view that the current arrangements are uniformly robust, and I therefore welcome the proposal to establish a police authority whose members will be appointed on the basis of their competence. There is another issue here, which is that at least some of the members will need to be security cleared to a fairly high level if they are to hold the chief constable and his or her team to account. I am fond of saying that there is a world of difference between hearing an account and holding to account, and for me the primary role of any police authority and the acid test of its performance will be whether it actively and successfully holds the command team to account.

The Convener: Do you think that the current system holds the command team to account?

Professor McNeill: Others are better placed to comment on the current system, but my experience, albeit fairly limited and focused on complaints handling, is that there is considerable room for improvement. I published two reports last year, one of which was intended to assist police authorities and boards with holding the command teams to account, particularly with regard to complaints handling. It is a checklist that is adjustable for both national and local contexts.

The second report was statutory guidance. It is imperative that the Scottish police authority takes seriously its statutory responsibility under section 61 of the bill, putting in place effective mechanisms for dealing with complaints and, importantly, consulting others about how that is done, including, I hope, the police investigations and review commissioner.

Gillian Campbell (Scottish Police Services Authority): By and large, the SPSA is comfortable with the proposed numbers. Over the past four to five years, it has usually operated with a board of eight members—currently seven—and with the sub-committees there has been consistent delivery of output and governance at a strategic level. We do not have the same policing organisation that sits underneath the SPSA, nor do we have the interface at a local level, but I am conscious that many multinational and highly complex organisations run with a board of between seven and 11 people.

Kevin Stewart: I have a question for Professor McNeill and Mr Laing. The joint best-value reports by Audit Scotland and Her Majesty’s inspectorate of constabulary have shown failings in a number of areas. Can you comment on some of those failings? Could the situation be improved with a new national authority?

Professor McNeill: I am convinced that a national authority can improve performance. I qualify that by saying that performance is not uniform across Scotland. Some time ago, I held a seminar in Dundee for representatives from police boards at which I emphasised the importance of the boards being resourced adequately. That means not just having an executive director or the finance, but having information and time made
available, along with training in the discharge of their role. One of the primary functions of a Scottish police authority should be to confirm public confidence in policing by underlining the need to learn from complaints and, in my judgment, it would be able to do that more effectively than would a variety of boards across Scotland.

Although the bill places very clear responsibilities on the Scottish police authority, it places an equally clear responsibility on the local commander to provide information to local areas. I hope that the combination of the police authority, the local authority and the police investigations and review commissioner will drive up standards of governance and accountability.

Kevin Stewart: Mr Laing, will you comment on the best-value audits that you carried out with Audit Scotland?

Andrew Laing: Certainly. First, though, I just want to support Professor McNeill’s comments.

I make it absolutely clear that elected members who perform the function of bringing chief constables to account locally by and large do a good job. Indeed, the best-value reviews provide evidence to support that. However, the fact is that policing is hugely complex, highly demanding and an expensive asset. The questions raised in the best-value 2 reviews centre more on boards’ capacity to bring chief constables to account and the individual capability and competence of members vis-à-vis their professional knowledge, their business knowledge and their knowledge of organisational structures.

A secondary issue is the support that is provided to board members. The vast majority of board members are part-time and have limited time to commit to police committees and, similarly, the support provided across Scotland often comes from constituent local authorities on a part-time basis. All of that leads me to believe that there is room for significant improvement, partly by selecting individuals on the basis of competence and partly by taking into account the fact that the individuals who make up the board must have not only those professional qualities but the ability to exercise the democratic will and provide a democratic voice.

Finally, I want to highlight the notion of what is called operational independence, which creates a huge difficulty in governing policing. As I have said before, policing is to a great extent self-regulated. Very often, chief constables determine what will be presented to the board and when it will be presented and then ask elected members to call them to account on it. Much of that is secreted in the concept of operational independence. There is no clear definition of the term; we certainly need a clearer definition but, in my view, the bill does not go far enough in trying to set that out. The questions that need to be asked include what a chief constable should be operationally independent from, why they should be operationally independent and where the boundaries lie. I do not think that we will get a definitive answer to that but, at the moment, the gulf is so wide as to leave chief constables in a reasonable position to use operational independence as a defence mechanism when called to account.

David Torrance: I want to go back to my initial question. How will the bill affect community engagement and community planning partnerships? Will it restrict such engagement? How are we going to engage with the public who, after all, will be the first to complain to us? They are certainly the most concerned about the issue.

Councillor Whyte: This is a very difficult area and the bill does not give us much of a clue about how any of the local arrangements will be taken forward and—critically—gives us no clue about how the Scottish police authority will deal with the public. There has to be a direct relationship in that respect, and others might want to amplify that comment.

As for local arrangements, there are differences in how well police boards up and down Scotland engage. Some are better than others. Indeed, community planning works in different ways in different local authority areas. My biggest concern about community planning is that, even when it is working well, it is not open to very much democratic scrutiny, and there could certainly be improvements in that area.

At least once a year, the chief constable of Lothian and Borders Police and I visit local community planning partnerships throughout the police area to listen to their policing issues and, when I do so, I speak mostly to council officers or partner body officers. Very few elected members are present and there is very little interaction with the public on these matters. In a sense, therefore, the introduction of a local public committee will help. However, that will not necessarily get us anywhere in dealing with the deficiencies that we have heard about in current police board arrangements, for example in maintaining direct contact with the public—perhaps the boards leave that to the force, because it has the resources to do it—and in holding the force to account, although you may have been drawn a jaundiced picture about that. On the whole, boards do a good job. It is difficult to come up with reasons why they are doing a bad job when most of our police forces are performing very well. The test of such things is when things go wrong. When things
although I doubt that it will. I think that this will be include as many as 32 local commanders, authorities, so the new set-up could, in theory, straightforward, but Scotland has 32 local police and the council. That is fairly because we have the same area for both the commander. Perhaps we are spoiled in Fife, force, but I am concerned about the idea of a local and chief inspectors. I believe in a national police and involves constables, sergeants, inspectors communities and the police. That works very well wards, area committees and so on—between communities and the police. That works very well and involves constables, sergeants, inspectors and chief inspectors. I believe in a national police force, but I am concerned about the idea of a local commander. Perhaps we are spoiled in Fife, because we have the same area for both the police and the council. That is fairly straightforward, but Scotland has 32 local authorities, so the new set-up could, in theory, include as many as 32 local commanders, although I doubt that it will. I think that this will be key. As he knows all the police areas in Scotland, I ask Mr Laing how this can be resolved. Do you envisage a police commander taking on four local areas and having helpers? How will it work? I would hate to lose our relationships on the ground; I assume that they will continue and, I hope, improve. How do you envisage the idea of a local commander working while keeping other linkages right at the appropriate levels?

Andrew Laing: If I can return to the previous question, you may then wish to turn to Mr Smith, who is in the process of thinking through the detailed arrangements. Part of the issue about community planning partnerships and the relationship between local commanders and local bodies centres on governance and accountability. Community planning partnerships work reasonably well, but each of the constituent organisations, such as police and social work, housing and other local authority agencies, is functional in its make-up. In the context of what the bill describes, those partners will need and require to continue to participate—there is no lack of clarity about that. I think that the community planning arrangements that are in place will be perpetuated under a local commander.

To give some confidence about that, I say that the best-value characteristics for police authorities and forces take into account local relationships. For the inspectorate or Audit Scotland as we move to the future, those relationships will form part of an inspection and audit or scrutiny regime that reports back into the system. I have no great concern that the existing arrangements will be deviated from. The local or additional scrutiny arrangements will provide confidence that such arrangements are happening.

Will there be 32 local commanders? I think that there will be 32 areas in which a local commander has a presence; Mr Smith might be able to answer the question whether local commanders will have single commands or a variety of commands. Will they all be at the same rank? I suspect not, but they will have a similar function and responsibility. I am convinced that the chief constable will hold them to account in much the same way, irrespective of rank.

As we move forward, HMI will have to think about how it performs its function. At the moment, we look at eight forces and the Scottish Police Services Authority’s constituent parts. In the future, my intention is to develop an inspection and audit regime jointly with other agencies, such as Audit Scotland, to look at performance in the broadest terms, which would include relationships across the 32 local authority areas.

Chief Constable Smith: It is not unreasonable to be concerned that the advent of the new force could mean that all the good local policing will stop
all of a sudden and somehow go to another place, but local community policing is in our DNA—it is absolutely part of how we are brought up as police officers and it reaches up to chief officers. No matter whether someone is a chief in a large urban area or a small rural force, local community policing will remain integral to what we do.

It is right that what that will mean to the local elected member has been discussed, but I will concentrate on the relationship between local people and the local police, which should not change. We do not envisage that, from day one, all the good work that is in place the length and breadth of Scotland will change. We can talk about frameworks, governance, processes and the bill, but the critical part is relationships locally between the community cop—or, at the level above, the local community inspector—and the people with whom he or she engages. As important as the relationship between the local authority and the police is, community planning brings a much broader, deeper and richer relationship, because it is informed by a much broader base of people.

Two things are certain: there will be 32 local things and there will be one national service. The issue is the bit in the middle. Whether there will be 32 local area commanders has been discussed. I suppose that, as the committee is scrutinising the bill, it probably will not see the output of the pathfinders that are on the go, as that will be available much later in the year. I think that the pathfinders will inform a lot of practice in the local relationship. What will come from that is a willingness among local authorities to come together and share resources. A commander might be clearly for one area, but he or she might have more than one area.

The issue of rank is a red herring. I was a divisional commander in the east end of Glasgow when I served in Strathclyde. As a chief superintendent then, I had more people than I had as the chief constable of Central Scotland Police. When I went to Central Scotland, a chief inspector was in charge of Clackmannanshire, which is the smallest mainland local authority area. I can guarantee that that individual was much closer to the local authority than I had been. Rank is not the issue; what matters is the relationship, how close the parties are and how well they develop that.

There is also concern that people at a lower level cannot draw down resources. We have a fairly sophisticated tasking and co-ordinating process, which means that, if the smallest is having the biggest problems, we, as the biggest gang in Scotland, will go and help and ensure that the resource gets drawn down to assist. Serious and organised crime and counterterrorism happen in places such as Clackmannanshire and the Highlands and Islands, and the beauty of the new service is to do with retaining what is best about the current service and developing the capacity and capability that we want for the more specialist services across Scotland. Within that, the chief constable still has to deliver local policing and will still be held to account by the police authority for the delivery of local policing. Therefore, I do not think that there is the wide gap that some might see.

Professor McNeill: I agree with Kevin Smith on the importance and reality of relationships at the local level. A key element is how complaints that are essentially about local relationships are resolved at the local level. In the guidance that I set out last year, I expected them to be resolved as quickly as possible at the lowest possible grade in the police and clearly within the locality. I am delighted that ACPOS is currently taking forward training in dealing with complaints, and I see no reason why that training should not inform the approach of any future Scotland police service in dealing with complaints at the national and local levels.

Anne McTaggart: I am not sure who I will aim my question at, but I am sure that someone will jump up and down—although most of the witnesses will simply look at their feet. Should the bill prescribe the structure and operation of local authority police and fire committees? I ask Mr Laing to answer that question, as he is looking at his feet.

Andrew Laing: I was actually writing down what I was going to say. [Laughter.]

Anne McTaggart: That is what I thought.

Andrew Laing: A great deal of care has to be taken in forming the legislation, and a primary principle should be put in place. The question is whom we want to manage the service. I return to the comments about operational independence and the ability to execute and exercise the law. If we want the chief constable to manage the service, we must be careful not to build legislation that constrains that too much or, by default, tries to govern how the service is managed. That is probably a clumsy way of saying that the process is so new that it will have to be given the flexibility to evolve. From HMI’s perspective, an important part of that is scrutiny and auditing to ensure that what is intended actually starts to happen. If it does not, recommendations should be made to allow things to flex a little bit and become better. If the legislation is too tight and definitive, the scope to do that will be very much restricted.

Professor McNeill: I agree. A key element will be not only how responsive the local bodies are to stress testing the local policing plans, but how active they are in informing the content of the policing plans.
Councillor Whyte: There must be a fair degree of flexibility, and the pathfinders are intended to look at that. However, there are some areas that I do not want to get lost between the national and the local. For instance, at the moment police boards have responsibility for custody visiting schemes, but there is nothing to tell us what will happen to them, although we will require to have them. We need to meet our international commitments on the right of people in custody to have a custody visiting scheme, but where will such schemes be placed? Even if they are the responsibility of the new authority, will it want to sub-contract the running of them locally to the local authorities? It might well do, because they currently recruit people and have the local knowledge about where people go in the custody process. There is a whole host of issues around that.

15:30

Similarly, on complaints, Professor McNeill’s written evidence is clear about the safeguards that must be built in, but he does not mention the work that is currently done by police board complaints sub-committees, which dip sample and look at complaints in detail and then ask questions of the police complaints and standards people about the implications for the general running of the force and about how they ensure that the public get a good response to complaints.

I see nowhere where such work can happen, as things stand. We must not forget about that; provision must be made. If the intention is that the new authority members will do that work, I suggest that their scope for scrutinising complaints in that way will be limited, because there will not be many of them and they will have to cover the whole of Scotland. The work might need to be devolved to the local level, so that we ensure that councillors on local committees look at cases that have gone wrong, as well as having the general view from the divisional commander about how things have gone in the area.

Chief Constable Smith: I want to draw out some of the detail that I think would benefit the bill, some of which I have touched on. I suppose that it is a question of having one’s cake and eating it; there is a need for flexibility, but key areas must be clear.

There absolutely must be a link between the local and the national; the bill is currently silent on that and must clearly define the link. It must also set out the requirement for consultation with citizens, to ensure that citizens’ voices are heard. There must be a role for elected members, who must be on an equal footing with independent members on the national authority. We need further clarity and greater comfort about what ministerial direction should and should not involve.

An area that has not been highlighted brings us back to operational independence. The bill states that it will be for the authority to develop the strategic plan for policing. There is a role for the authority and for ministers in determining strategic priorities, but it is for the chief constable to develop and deliver the plan, subject to approval. A key part of operational independence is that the plan should be the chief constable’s plan. ACPOS thinks that the bill would benefit from fine tuning in those areas.

Professor McNeill: I make two general comments. First, it is crucial that whoever is a member of the police authority recognises the corporate nature of the work. There are dangers, which are very evident in the experience of a number of oversight bodies. When representative members are put in, quite often their default position is to represent their base, consciously or unconsciously, and the whole principle of fiduciary responsibility goes out of the window. It is of paramount importance that whoever is appointed signs up to working for the police authority in a corporate way.

My second point relates not to my role as Police Complaints Commissioner but to my wider interests. I do not subscribe to the myth of operational independence. Patten put it much more appropriately in Northern Ireland when he talked about “operational primacy”. One of the tensions that any police authority at national—and I dare say local—level must confront is the idea of the independence of policing. Policing is about working with and in the community and being informed by the community, but consent to policing must be informed. The whole concept of operational independence flies in the face of that, so I prefer the concept of operational primacy, which is subject to being tested.

John Pentland: I was going to ask questions about relationships and ministerial direction, but both issues have been well covered.

Mr Laing talked about the chief constable having autonomy over their remit, and Professor McNeill talked about operational independence. On this side of the table, we would perhaps say “operational separation”.

That leads on to what Councillor Iain Whyte talked about. If the board was autonomous and centrally funded, perhaps it would do the sexy things rather than other things. Are we saying that there should be no political intervention in, or influence over, how the board runs its business?

Chief Constable Smith: Mr Laing should answer that first.
Andrew Laing: Thanks, Mr Smith.

Chief Constable Smith: I heard your name being mentioned.

Andrew Laing: Perhaps I used loose language in my previous comments about operational independence. To be clear, I was throwing out the challenge that we need a better definition of it. We are in danger of having a heated agreement. [Laughter.] We need something—it might be called operational primacy—and we need a bill that spells it out.

Earlier, I asked, “What are the police operationally independent of?” It is probably unwise of me to answer that question myself, but, for me, they are not operationally independent of the citizen or the governance body; rather, they are operationally independent to exercise and execute the law. Nobody can tell the chief constable that he must enforce a certain law in a certain way at a certain time.

There are dangers that, as has been mentioned, the powers in the bill would allow ministers to tell the authority how they wanted a particular policy to be implemented and the authority could then tell the chief constable. That would get us into some dangerous operational areas.

I will use an example to exaggerate the point. If the ministerial direction was to police or not police an industrial dispute and the police followed that direction without taking cognisance of the law, we would start to get into some dangerous territory. The stated case law talks about issues with the police having been directed to police or not police certain activities, which were mostly industrial or political.

We need a clear statement in the bill, so that the governing body and the chief constable understand what operational independence is. I am not overly concerned about whether it is described as independence, primacy or something else.

Does that answer most parts of the question?

John Pentland: Yes.

Margaret Mitchell: Section 5 gives ministers the authority to give general or specific directions. I suppose that the key to maintaining independence will be ensuring that, as ACPOS said, the resourcing of the local committees reflects the variations between communities throughout the country. We must also ensure that resources are not transferred to an urban area at the expense of a rural area.

Will the witnesses comment on the apparent lack of clarity on the resourcing and financing of the local committees?

Chief Constable Smith: I drew earlier from my experience in another place. There is a concern that resources will be moved from rural to urban areas—more specifically, to the central belt. I have worked in the central belt, and the concern there is that the resources will be spread even more thinly to the more rural areas. Whether in Glasgow or somewhere much further north, police share the concern that they will lose resources. Our responsibility in developing the new service is to come up with a scientifically based resource allocation model.

There is no such thing as a perfect resource allocation model. Resource allocation models only cause fights between senior officers about who wins and who loses. However, we need a model that is based not only on the incidence, threat and risk of crime—all the aspects of demand—but on need. That is, it should take account of matters such as domestic violence and public protection. We need a sophisticated model that goes some way towards assuring the people of Scotland—locally and nationally—that we have a sound method by which we allocate resources.

However, it is not as simple as deciding what is local, as earlier witnesses said—the local community cop, local patrol vehicle drivers and local investigations. Specialist experience of public protection, sex offender management, counterterrorism and so on is being brought in at the local level. There is the notion that if you protect the local, it will take care of itself, but that is not the case. My hope is that those who think that they might lose resources will start to see evidence of the wider effort of the Scottish police service being brought to bear.

Much of what we will have to deliver through the bill has rightly been thrust on to our shoulders, and we are absolutely committed to delivering it. The notion of maintaining and enhancing the jewel in the crown—local community policing—will stay for ever. However, we need to take that a step further and ensure that the specialist support—the more sophisticated types of policing—is available when and where required. Fortunately, most parts of Scotland do not need that support most of the time.

Councillor Whyte: This is a difficult area to get into. I will comment on some of the questions that COSLA and SOLACE were asked about the resourcing of local committees and how they look at these things. For instance, the current resource model is not implemented properly. The grant-aided expenditure allocation formula has not been updated since 2004, so my policing area is underfunded because there has been population growth and change. Such things will have to be looked at again by the new chief constable and the
force. There must be fairness and proper scrutiny—scrutiny is the big issue.

Police boards’ resource in the form of research, back-up capability and training for members is currently underfunded, which probably represents a risk. That was highlighted in Andrew Laing’s best-value audits. In Lothian and Borders we have spent more in that area, but we were still asked about it at the end of what was a fairly good best-value report. If all the resource flows to the new Scottish police authority—we do not know whether it will—how will committees hold a local commander to account, compare their area with other parts of Scotland and review whether they should take up a resource, crime rate or solvency rate issue? We need some back-up for that, as it will probably be a big issue for local authorities.

Margaret Mitchell: So, the authority must be accountable and transparent, and resources must be allocated, with details of how that happens. Are there any other comments on that specific point?

Professor McNeill: I endorse what Councillor Whyte has said. For me, one of the key tests for the Scottish police authority will be how it monitors and responds to the feedback that is provided to the local commander by the local authority. The bill provides for the local authority to monitor and give feedback to the local commander on reviews and on any policing matter, and, importantly, to recommend improvements. I am keen to see a duty imposed on the Scottish police authority to justify its response to the improvements that have been recommended to it by local authorities.

Chief Constable Smith: It is critical that we resource locally, and that we maintain that. However, what we are doing here is setting the context for significant savings. If the chief constable has no flexibility to move resources and rationalise them across Scotland, we will not make the significant savings that are needed. I caution that this is all being seen as local, but although local is a big and very important bit, the chief constable and his or her command team must have flexibility, and if he or she is too constrained by 32 demanding bits of governance there will be no capacity to move and rationalise resources, and make the required savings.

Margaret Mitchell: In your submission, you talk about financial arrangements, the inability to hold reserves and a spend-it-or-lose-it mindset, which does not seem a sensible way to proceed.

15:45

Chief Constable Smith: We have talked about some aspects of the way in which the new authority will be set up, ministerial direction and so on. As things stand, we will have a significant VAT liability, although Government is working hard to resolve that. Furthermore, we have been working hard since 2007 to resolve the SPSA issue. Other issues that arise are limited borrowing powers and the inability to carry forward reserves. National bodies are used to working within that type of framework; we are not. Good strategic management and good risk management in an emergency organisation require a capacity to carry reserves forward, in order to deal with the unforeseen and with contingencies. We have not been party to the considerations up to now, but we feel that, without that capacity, we will be drawn back to the Government too regularly. Being able to carry forward reserves will be a key component of the patchwork of things that will allow us to maintain our operations. I was about to say “maintain operational independence from Government” there, but I mean everything to do with our operations. We should not be regarded as just another national body or just another Government body. Policing should not be part of a Government body.

Margaret Mitchell: We take that key point from your evidence today—that the police are a special case, distinct from health boards or other national bodies.

There has been a lack of detail in regard to dispute resolution. Are you concerned about that—whether it relates to resourcing, information, allocation, or whatever?

Chief Constable Smith: Do we want a complex system of dispute resolution? I think that we want dispute prevention. We suggest that a formal relationship between the local and the national will be key; the local must inform the national, and vice versa. We want dispute prevention, rather than a complicated process of dispute resolution.

If a process of dispute resolution exits, my concern is that it will be used. My mantra is, “For the vast majority of policing, you will see no difference.” Things will happen the way they happen just now—through effective relationships and through being able to speak to the next person up the chain. That person will still exist, although in most cases, they will not be a chief constable. Many things will be resolved in the way that they are today—through effective dialogue and good relationships.

Margaret Mitchell: Do you regard the local level as key in the resolution of complaints within the service?

Professor McNeill: Yes. In essence, complaints are about relationships. Most relationships will be at the local level, so it makes sense for them to be resolved quickly at the lowest rank possible. The police have worked closely with me and my staff to make that possible.
Councillor Whyte: If the culture is that the local force commander reacts to complaints from the public, there is an oversight role locally, through police boards, to ensure that complaints are handled properly and issues highlighted. Members raise issues relating to their own areas, and I am sure that that will continue. Feedback is very important in local scrutiny.

Kevin Stewart: Given what Councillor Whyte said, I will say that I come from an area in which the police board has always been underfunded and has only recently made some headway. However, I do not want to be too parochial.

I want to ask about resource allocation, and Chief Constable Smith has talked about the amount of time that has to be spent on what is a somewhat sophisticated system. Would it not be better to import best practice from across the country, before you fiddle too much with resources?

Chief Constable Smith: If anything in my evidence made you suspect that we were going to fiddle with things from day one, let me reassure you. Day one of the new service will be about low risk and soft landings. If a person needs the police, I hope that they will not notice any difference. The badge, the logo on the car and the introduction on the telephone will be different, but, by and large, I hope that there will be no difference. On the new chief constable, the new era and the development of the new resource allocation model for the future, the resources in your or any other area will largely be the same as they are at present.

Kevin Stewart: I am glad to hear that. Personally, I am not that bothered about badge changes. I am sure that they will be followed through.

My second question is for Councillor Whyte. How many council leaders or senior councillors currently sit on police boards?

Councillor Whyte: I am unaware of the numbers throughout Scotland. I can speak only for my own police board. Its members are not all council leaders, but we have dialogue with other council leaders. In Edinburgh, both the council leader and the deputy council leader are members of the police board.

Kevin Stewart: I will turn to Mr Laing. Certain best-value reports state that there are not enough senior folk on a number of police boards throughout the country. Am I right in saying that those areas for which the best-value reports were not so good had no senior councillors on their boards?

Andrew Laing: Yes. The picture is mixed across Scotland. Councillor Whyte has rightly identified the position in Lothian and Borders. There are areas in which council leaders and deputy leaders are not on the police boards. The selection process is a matter for the constituent local authorities. The notion that there may be a hierarchy in relation to how councillors are appointed has been mooted in the past. An important issue for the future, particularly as we approach local government elections and a transitional period, is the challenge of who will fill the posts in the interim period. We need to pay close attention to that over the next few months.

Chief Constable Smith: Just for clarification, the leader of Stirling Council sits as a vice-convener on the central Scotland joint police board.

Professor McNeill: I will go back to the issue of police boards and the continuous improvement of complaints handling. I have been heartened by the willingness of the conveners forum and police board members to work closely with my office over the past year or two. That has been particularly apparent in the dip sampling to which Councillor Whyte referred, which identified a number of concerns. A crucial element has been the willingness of a number of boards—one in particular—to stretch the current legislation to resolve an issue that their dip sampling had identified. I am confident that, if we are clever about this, we can get an axis between the police authority, local authorities, the police investigations and review commissioner, and the command team—the police in general—that will drive up the standards of complaints handling and confirm confidence in policing throughout Scotland.

Bill Walker: This might be the final question. I was heartened to hear Kevin Smith mention earlier that an inspector or chief inspector would be the local commander to look after Clackmannanshire. I live near there, and that is good.

The position of local commander will be at the heart of the system and will be very important. I would like to ask Gillian Campbell about that—it is about time that she was asked a question, because she has not been asked many at all. This is a completely unscientific finding, but I have met many officers and have found that, although those above the rank of chief inspector—such as superintendents—are all wonderful people, they do management and planning jobs that are a bit remote from community work. I hope that a lot of chief inspectors and superintendents will be involved at local commander level. Will there be a need for human resources training to ensure that superintendents, who have a high-powered job, are more community oriented in the local commander structure?
Gillian Campbell: My role is in the SPSA, which has no police officers. In effect, we provide a range of services on a national basis—forensics, information and communications technology and training—to the police forces. We look at training for all the ranks, and just now we are looking at what will be needed for change management to help to skill and prepare officers of all ranks for the significant change that they will need to deal with. It is well understood that there will need to be a real focus on the training agenda and what needs to be delivered, which continues to evolve, as we understand how the picture is evolving. Significant work and thought has already gone into what the training requirements will be for skilling and ensuring that we have the right structure.

Andrew Laing: Perhaps I can introduce a cautionary note. The local commander will have a vital, pivotal role in policing partnerships, communities and building the relationships that have been talked about all afternoon. However, as an inspector of constabulary I am slightly concerned that if we see the development of community planning partnerships and another body at local level—a police committee—to hold the local commander to account, most of the time will be spent in servicing those bodies. There is a vital job to be done at the back of that and real care must be taken not to build in a level of bureaucracy that inhibits that job.

To put that into context, we have talked a lot about accountability, but it is only one part of the system of governance that will emerge. There is direct accountability at Scottish police authority level, but there are also levels of external and internal scrutiny and levels of inspection and audit jointly with inspection and audit agencies. There will undoubtedly also be a raft of internal and external performance measures. That ambit of measures should provide a good system of governance overall without the need to burden local commanders by having them answer for every detail.

A significant amount of effort and industry rightly goes in from both sides to servicing eight police authorities at the moment. I am concerned about the bureaucracy that might be invoked by projecting that into 32, plus one national body.

The Convener: Are there any thoughts on those points?

Councillor Whyte: I hope that this committee will note the concerns about the potential costs of the proposals. Margaret Mitchell asked about the resourcing of local scrutiny, which is a real concern. Local authorities will have to be left with some resource once transfer takes place to allow them to undertake scrutiny. To properly run a committee a clerking system is needed as well as research and policy support. Within councils, there must be responsibility allowances for a convener and vice-convener. All such aspects involve a limited use of resources, but they must be thought about, quantified and put forward. I am not sure that there is anything about those in the financial memorandum at present. The committee’s assistance to local authorities on that issue would be helpful.

I did not get a chance earlier to say anything when somebody asked about dispute resolution. Like others, I am not sure that we need a formal system, but there probably needs to be a way of bringing in some outside advice and help for such situations. At the moment, it is partly the job of Mr Laing, who is sitting on my right, to provide independent, professional policing advice to the Government and police boards. I think that that would be an appropriate place to start in considering whether a policing plan is appropriate on a professional basis.

Anne McTaggart: It is not like me to try to defend the police, but anyway. There was reference earlier to terms and conditions and people being moved around. Perhaps I have not listened properly, but I have not heard anyone mention terms and conditions or contracts. Are the unions involved?

16:00

Chief Constable Smith: You are asking about what will be the most important area of work, because we have eight police forces, the SPSA and the Scottish Crime and Drug Enforcement Agency. I am sure that Gillian Campbell can speak much more knowledgeably about the issue than I can. There is huge variety out there, and a major part of the reform programme will be about the harmonisation of terms and conditions. That will be a significant piece of work.

It is not just about day one. The work will run for some time thereafter and has been budgeted for in the business case—it will come with a cost. The responsibility for the transfer of staff rests with the Scottish Government, but significant effort will be needed from the service—the forces and the SPSA—to ensure that things happen for day one. A complex piece of work must and will be done.

Gillian Campbell: From an employment law perspective, a number of things need to be taken into consideration in the context of contract harmonisation. On its formation, the SPSA had its own set of terms and conditions and policies, and eight other sets came in. It took four years for the position to be resolved so that we had a harmonised set of terms and conditions.

The scale of work and the amount of negotiation and consultation that is involved should not be underestimated. I hope that we have learned a
number of lessons that can be taken forward in the new police authority, so that we can expedite the process, but employment legislation must be taken into consideration in relation to the timing and delivery of changes.

**Margaret Mitchell:** A big reason for the proposal to move to a single police force is that savings will be made. To what extent will the bill place additional costs on local authorities? Councillor Whyte touched on costs of administration in relation to contracts, and the submission from the Scottish police authorities conveners forum mentioned costs. Concern has been expressed about resources being moved from local level to the new national authority. Specialist knowledge and expertise might have to be replaced at local authority level, for example in relation to camera safety partnerships. Will the witnesses elaborate on that?

**Councillor Whyte:** I mentioned the cost of running local scrutiny committees. Under the new arrangements, in Lothian and Borders we would have five committees instead of a single police board, which would create an additional cost to be spread between the local authorities. The authorities currently pool their resource; it goes into the police board budget and is top sliced, and we then buy back the resource that we need—mostly from City of Edinburgh Council, although it could be from any of the constituent authorities—based on time. The new arrangements will multiply all that by five. Of course, resource also has to go to the centre, to run the police authority and the force headquarters.

There will be savings on the policing side. My view is that some of those are heavily constrained by the requirement to keep to policing numbers, which includes numbers that local authorities and others are paying for, and by the Government's policy of no compulsory redundancies. So far, police authorities have made savings through voluntary redundancies, but I wonder when we will reach the limits of that approach and it will be no longer feasible.

**Margaret Mitchell:** Do other witnesses want to comment on the potential for additional costs at local level?

**Chief Constable Smith:** I can give a specific example. The business case looked at savings of £2.5 million per annum for the police through the transfer of the function of traffic wardens to local authorities. I cannot see how that is a saving; if we transfer the function I imagine that local authorities will look for the salaries. Even if there is a saving for the police there will be a cost to another part of the public purse. There are other functions in that regard—I cannot remember the detail.

We need to ensure that a measure that is counted as a saving for the police does not simply place additional pressure on the local authority. Traffic wardens are a specific example—if all the organisations are put together I think that we are talking about £10 million, £20 million or £30 million, which is a fairly significant sum.

**Andrew Laing:** I reiterate what I said about the dangers of the bureaucracy that 32 local committees will create. The pathfinders projects that are established will try to develop some of the detail around the issue. It might be inevitable that we end up with 32 local committees and that the financial cost of running them and the cost in terms of demands on local commanders' time will be significant.

**The Convener:** If there are no further questions, I thank the witnesses.

16:05

Meeting suspended.

16:15

On resuming—

**The Convener:** I welcome our third panel of witnesses. It is another large panel so, if the witnesses indicate to me when they want to speak, I will try to ensure that everybody gets the opportunity to feed into the discussion when appropriate.

The witnesses are: Chief Superintendent David O’Connor, president of the Association of Scottish Police Superintendents; Donald Urquhart, chair of the Scottish community safety network; Calum Steele, general secretary of the Scottish Police Federation; George McIrvine, vice-chair of Unison’s Scottish police committee; and Professor Nicholas Fyfe, director of the Scottish institute for policing research at the University of Dundee. You are all extremely welcome.

I will kick off with the same question that I asked the previous two panels of witnesses. What are your thoughts about the make-up and size of, the appointments process for, or any other aspect of the proposed national boards? How might the proposals be improved?

**Chief Superintendent David O’Connor (Association of Scottish Police Superintendents):** There is a clear view among our members that some form of democratic accountability needs to be built into the new Scottish police authority board. Indeed, there must be a link from the national authority back into the local policing areas.

A board membership of between seven and 11 is proposed in the bill. Would that be sufficient to
handle the business that the authority will undertake? Given the task that must be undertaken, particularly in the early years of reform, should those posts be full time? Police reform is not only about 1 April next year; it will probably go on for a number of years thereafter.

**Donald Urquhart (Scottish Community Safety Network):** Some of the previous witnesses covered some of the issues about which the Scottish community safety network is concerned. However, community safety partnerships are concerned about the separation between ministers, the board and operational delivery.

The proposed size of the police authority board will not enable appropriate representation that reflects all 32 local authorities or local community safety partnerships. Although we would not expect one board member per partnership, a larger board might better reflect the variation across Scotland and enable that to be reflected more accurately in some of the board’s decisions.

**Calum Steele (Scottish Police Federation):** The SPF’s views largely mirror those of Kevin Smith presented, with a heavy leaning towards John McNeill’s comments—we do not consider the two points of view to be in any way contradictory.

We consider a board of seven to 11 members to be far too small. Policing, probably like nothing else in the world, holds a fascination for the general public that is almost difficult to comprehend—I suspect that it even goes beyond the current vilification of bankers. There are three areas on which everybody in the street has an opinion: policing, football and the family. Given the interest in the police service and the expectations that are placed on it, a board that could be as small as seven members—or even a board of 11—would not have the resilience to deliver all that will be expected of it.

**George McIrvine (Unison):** Unison echoes what the federation and many others have said. The numbers proposed—seven to 11 members—are not enough to cover a national board; we should be thinking about 15 plus.

One of the key principles of the Christie commission on the reform of public services is that a service is built around the people and the community in which they reside. Public reassurance could be affected if the board is seen to be small and not reflective of the community, and that may have a negative effect on democracy and the democratic process. That is Unison’s view.

**Professor Nicholas Fyfe (University of Dundee):** I echo and endorse a lot of what has been said this afternoon, but I want to add something that we set out in our written evidence. We could assess the board’s role and effectiveness against a set of democratic criteria. I particularly highlight the distribution of power in the board and the balance between the national and the local.

Various people have highlighted the issue of access to information. Will the board be wholly reliant on information that is provided by the police service, or will it have an independent capacity to gather information about citizens’ views on policing and police effectiveness? It is crucial that the board is resourced in a way that allows it to engage in a deep and rich dialogue with the police about the delivery of policing.

My final point is about participation. How will the board encourage wider community and citizen participation in debates about policing locally and nationally? Dialogue and drawing a wider constituency of people into the discussion about what makes good policing in Scotland is definitely a good thing.

**The Convener:** I return to David O’Connor and the idea of the board perhaps being full time. Should the whole board or only some of its members be full time?

**Chief Superintendent O’Connor:** In the early days, given the significance of the new police authority’s task and the scope of its work, there will have to be a clear focus on getting Scotland’s new police service up and running in order to do the job justice. I am not sure what other commitments the potential appointees would have. The point was made that the work will probably take a couple of years.

**The Convener:** That is interesting. Obviously, it would be difficult for local councillors to have that work as a full-time commitment.

**David Torrance:** I return to my original question on community planning and engagement. How does the bill affect that? Will it restrict or enhance it?

**Chief Superintendent O’Connor:** We clearly have a real focus on community safety but, as a result of the local commander’s role in community planning—many of our members will probably be designated as local commanders—there will be the potential to improve local community planning and engagement. I agree, however, with previous comments that have been made about the need for links into local community and strategic planning. There has been a great deal of focus on and discussion about local commanders—potentially 32 of them—being involved in community planning, but we must consider that some problems will transcend boundaries and consequently we may need to consider community planning arrangements across a number of local authority areas. I sense that some of our discussions will need to go in that direction.
Calum Steele: I will pick up on Kevin Smith’s earlier comments about local community policing being in our DNA. We do not need legislation to tell the police service how to engage in community planning; we would do that regardless, even in the absence of legislation. David O’Connor’s point about going beyond the local authority element is important. Again, I suspect that, almost without the requirement for legislation, circumstances will evolve to enable that to happen.

Donald Urquhart: I am conscious of what Andrew Laing said about the danger of the local commander being so closely involved with the local bureaucracy that he or she ceases to be able to undertake an effective operational role. There are a number of established local partnerships, such as child protection committees, alcohol and drug partnerships, community planning partnerships and community safety partnerships. Their make-up and effectiveness vary significantly. We would like a means of engagement that is effective and improving, so that services such as community safety are delivered much more effectively locally. However, as a retired police officer, I say that it is important to ensure that that does not impact negatively on operational delivery. Appropriate strategic involvement locally is key.

Bill Walker: I hope that David O’Connor will remember that I said to the previous panel that superintendents are all very nice people.

I am very much in favour of the whole thing, but its success on the ground will revolve around the local commander. In Fife, we have good relationships through our structure of ward and area committees. I meet a lot of people up to the chief inspector level; I made some comment, which I hope was not disparaging, about superintendents getting a little bit airy-fairy.

Superintendents and chief inspectors will play a large part in the local commander function. Will you reassure us that that is the right way to go? I am sure that it is. Do you agree that it would be good to look at how the arrangements operate in west Fife—you are welcome to come to Fife any time—and particularly at the community engagement model, which is good? We do not want to lose that but, as I said to the first panel, I hope that we can improve things upwards, rather than downwards.

Chief Superintendent O’Connor: Contrary to what Councillor Grant said, superintendents supported the establishment of a single service during the consultation exercise.

On your point, part of the consultation exercise was that we need to focus on building the new service from the community up, with local commanders who lead local policing teams from local police stations that provide visible and accessible response policing that is subject to local accountability and governance. It is right that there is much discussion about the top-down approach to the strategic framework, the new Scottish police authority and the chief constable’s role and responsibilities, but we must have a balance. To maintain service delivery, we must build the new service from the bottom up.

You are right—a number of our member superintendents and chief superintendents and some of our Scottish Police Federation colleagues are already local commanders and provide such a service across Scotland. There are many examples of good partnership working. Police performance has never been better and we need to draw on all the positive experience of local partnership working and local policing. As I have said before, policing in Scotland is not broken, so let us not try to fix it too much.

Donald Urquhart: One key challenge for community safety partnerships at present is dealing with the speed and frequency of changeovers of individuals in local policing arrangements. We see an opportunity to address continuity of membership on some of the key partnerships that we have spoken about, such as community safety partnerships and child protection committees. People in such partnerships can begin to develop an effective working relationship with their local police contacts, but when those people are—for understandable policing reasons—moved on, the partnerships have to spend considerable time on building up new relationships. That can have a significant negative effect on a partnership’s effectiveness. We can never expect guarantees, but we look for reassurance that continuity will be maintained as much as it can be, to ensure that partnerships are as effective as they can be.

16:30

Calum Steele: If any partnership or relationship is built on the rank of the officer, it is built on the wrong thing. Relationships and partnerships surely work most effectively because of the personalities of the individuals involved. I have not yet found a situation where the rank of one person makes them any more informed or better placed to take their place in a partnership than any other individual.

In a past life I served in remote and single-officer stations. I am pretty sure—I would certainly like to think that it was the case—that the community in those areas felt that they got a particularly good service because there was a police officer there and did not think that the service was in any way diminished because the officer happened to be a constable.
By the same token, many local authorities are served by chief inspectors and many island areas are served by constables in their own right. I am sure that the individuals in those areas very much consider themselves as the chief constable of Barra or the chief constable of Comhairle nan Eilean Siar, Orkney or Shetland and that there is no diminution in the service or the relationship as a consequence of the arrangement.

Professor Fyfe: A footnote to that response is that we have just carried out a piece of research evaluating the Fife community engagement model. The model is well received by the community across Fife and one reason that it works so effectively is that it encourages a problem-solving approach to be taken locally, because it deals with issues that local people bring to the meetings. Such issues are often not to do with crime but with disorder, antisocial behaviour, youths hanging around and so on.

The model creates a very intense form of local accountability. The officers have to keep going back to the meetings every two months and members of the community ask what actions have been taken. Although we are talking about much bigger structures of accountability, it is important not to lose sight of the local infrastructural accountability that operates through such meetings.

George Mclrvine: Another issue with regard to community planning is funded posts. A lot of posts are currently funded, be it part time or 100 per cent, by local authorities. The posts and services include mobile closed-circuit television, community intelligence analysts, researchers, safety camera partnerships and the like. That also needs to be looked at. What happens when we move to one national board? Where will the money come from? Will we retain those services?

John Pentland: My question follows that response. Gillian Campbell, who was a witness on the previous panel, answered Anne McTaggart’s question about the transfer of employees, which was more related to the police. Are there existing local variations or employment agreements that should be taken into account in transferring local authority staff—which I think you touched on—to new services? What needs to be considered in transferring local authority staff to the new services? I was a wee bit surprised when Gillian Campbell said that it took four years for that to be dealt with when the SPSA was set up.

George Mclrvine: That is not my recollection; it happened much more quickly than that. At the inception of the SPSA, the employer and the trade unions came together admirably on harmonisation of terms and conditions of employment. If we do the same again, I do not think that there will be a problem and it will not take four years.

There is a lack of clarity and detail on where we are with the reform group. I cannot comment at this juncture on where we are on harmonisation, but I hope that we will be able to give an update on it soon.

John Pentland: Does anyone else have a comment on the transfer of local authority staff?

Donald Urquhart: I am not sure that my comment is necessarily about the transfer of local authority staff, but one issue is funding for additional officers in specific roles—Barbara Grant mentioned campus cops, for example—and additional neighbourhood policing, which is funded either by community safety partnerships or by local authorities. There is a lack of clarity about how such funding will be carried forward through the transitional period. I recognise that budgets and responsibility for finance will be shifting. It will be interesting to see whether local authorities will still be in a position to fund additional services, should they feel that there is a need for them because of local circumstances. A bit of additional detail on that might be helpful.

Chief Superintendent O’Connor: I will make a point about police officers. There will certainly be areas of the bill that we will scrutinise in terms of the impact of the changes on officers’ terms and conditions. We have heard that officers will transfer into the new service with their current terms and conditions, and we will carefully consider that over the weeks and months ahead. One thing that the bill proposes is the dissolution of the Police Advisory Board for Scotland, and we will seek clarification about what will replace it.

Anne McTaggart: I will ask a different question this time. Is that okay? [Laughter.]

You have all been here for most of the afternoon and we have spoken about the impact on communities, but I want to ask you about something that has been mentioned in the press and in documents that we have read: the projected loss of 2,000 police staff posts over the next three years. Do you see that having an effect on the police service of Scotland and, if so, of what kind? What impact could it have on local authorities and communities?

Chief Superintendent O’Connor: I will start—again.

Anne McTaggart: I was hoping that you would.

Chief Superintendent O’Connor: The reform process has been built on making efficiency savings, and such savings normally lead to financial savings, which ultimately lead to cuts in people’s jobs—in this case because 84 to 86 per cent of police funding is spent on staff. The Association of Scottish Police Superintendents believes that the new model must be predicated...
on a balanced workforce, which means a balance between police officers and police staff, with the right people with the right skills doing the right jobs at the right time. We have a lot of highly experienced, competent and skilled police staff and we need to maximise opportunities to retain those skills.

Anne Mctaggart: Would it be wrong of me to talk about the 2,000 posts that I have read about, but which you have not mentioned?

Chief Superintendent O’Connor: The figure has been mentioned in the context of the reform programme. I sense that we need to take this one step at a time. It will be key that we maintain service delivery during the reform programme and, critically for us, that we maintain staff confidence and morale. I am sure that George McIrvine can respond better about the fears among police staff.

We believe that as we build a new model for Scotland we must have that balance, with highly skilled, experienced and trained police officers out in communities exercising their core functions and police staff providing the other valuable services that are needed to deliver the complete new model.

The Convener: We are moving into an area that is probably for the Justice Committee, but it is only fair to let George McIrvine in on this point.

George McIrvine: We are hearing about being truthful and transparent, so I will give a simple answer: there most certainly is an impact. You cannot get rid of 1,000 posts through early retirement, voluntary redundancy and the non-filling of posts without there being an impact on services. I will just give a wee example. You are talking about 1,000 times 36 hours a week, and that is a lot of policing hours. We talk about the 17,234 police officers but not about the 5,000-plus police staff, near enough one in three of the police family are staff but we never speak about them. There is a wide range of specialised and administrative support posts, including forensic scientists, scene-of-crime officers, intelligence analysts, control-room dispatchers and custody staff.

The conundrum is that police reform requires that efficiency savings be made within the constraint of maintaining 17,234 police officers and having no compulsory redundancies. My and Unison’s view is that something has to go. We are effectively decivilianising Scottish policing as we know it, which is unfair. Davie O’Connor touched on the reason why we brought civilisation in, which was to bring the right people with the right skills to the right jobs, but we are not doing that and we are going to lose it.

Following the Winsor review in England and Wales, we hear about the balanced workforce and we see cuts in the numbers of police officers and police staff. What we are seeing in Scotland is the Winsor review being adopted, but only for police staff. It might not affect terms and conditions, but it has an effect in terms of job losses.

Professor Fyfe: I will make a brief point on that. A group of police staff with whom we work closely consists of crime analysts, performance analysts and intelligence analysts. They play a crucial role in the provision of effective intelligence-led policing and we have built up a lot of expertise over the past few years by using such analysts. It seems to me to be a backward step to start not to use such people, who can help to deploy resources effectively and build an evidence base for policing practice and so on.

Calum Steele: I understand the sensitivities in the debate. The requirement to save money is evident across all areas of public life and, indeed, all areas over which the Government reaches. I understand the focus on the 17,234 police officers but, as is always the case, it depends on what the starting point is. In the 10 years before the pledge on 1,000 extra police officers—between 1997 and 2007—police officer numbers in Scotland increased by only 8 per cent, while support staff numbers increased by 71 per cent. That was undoubtedly in large part a consequence of how the police service has evolved.

I have always said—our written submission makes this clear—that we should not look at what the job is or who does it, but at why the job is done in the first place. I suppose that in many ways that links neatly back to the various discussions that have taken place about the information that is to be supplied locally at the local authority centre through the police boards, and about where expectations are to be laid. We could find ourselves in a situation in which every local authority and the proposed Scottish police authority want to hold the service to account, so it is spending so much time being accountable that it is not delivering the service.

Donald Urquhart: I have to be very careful about what I say, because I am married to a member of the police support staff.

I was at the Scottish community safety convention this morning, at which the Minister for Community Safety and Legal Affairs and Colin Mair from the Improvement Service talked about changing the way in which we look at community safety in general. There is no doubt that communities would be concerned if they were to see a significant reduction in the numbers of police staff, which includes police officers and support staff, who fulfil an important function.

One of the issues that we will have to come to terms with, against the backdrop of significant
financial reductions, is how we will engage with communities so that they police themselves more effectively with the support of the proposed new police authority and a number of local partnerships that are in existence already.

As Barbara Grant said, we are where we are, but we undoubtedly need more detail. We need to start thinking about how we can put what is proposed into effect in the most beneficial way for communities. We need to reassure people that although there may be reductions in police staff, there are better and more effective ways of delivering safer communities for Scotland. That would be one of the things that partnerships would seek to achieve.

**Margaret Mitchell:** A number of the submissions from the panellists, including those of the Scottish Police Federation, the Association of Scottish Police Superintendents and the Scottish community safety network, stress the importance of retaining political neutrality and operational independence for the police. The SPF goes a little bit further, and states:

“We are concerned that the Bill proposes changes to accountability and governance which could affect operational independence and amount to inappropriate political direction.”

The key issue seems to be resourcing of the proposed new Scottish police authority and local police committees. Can you comment further on that?

**Calum Steele:** I think that points about the SPA have been largely covered by Kevin Smith, including points on the ability of a committee with between seven and 11 members to discharge all its functions—which tied in nicely with Barbara Grant’s comments about incapacity.

As we intend to say to the Justice Committee, if we have to suspend a member from the SPA, the authority’s relationship with the chief constable will have to be clear. To expand on that, it can be argued that, by default of a ministerial direction to the board, the board itself would give a downward direction to the chief constable, which has the potential to cause significant difficulty.

16:45

I think that many of those who have attended this meeting would agree about operational independence; I am mindful of Andrew Laing’s comments on that. The key element for us is that we would hate to see anything that would result in a diminution of the chief constable’s operational independence. That relates to the master-servant relationship between the local commander and the chief constable or, indeed, the local authority.

**Chief Superintendent O’Connor:** Building on that, Mr Smith talked about seeking clarification on ministerial direction. We have heard about operational independence, operational responsibility and operational primacy, as well as about accountability. I sense from the bill that we need to clarify what all those things mean to the men and women who actually go out and provide the service. The one thing that has been missing in the debate so far is recognition of the fact that we are held accountable for our actions by the courts—that is what people need to remember. When the men and women who go out and deliver the Scottish police service day in, day out decide to do something, the first thing in their minds is that they will be held to account for their actions by the Scottish courts. That is true of the constable, the commanders and, ultimately, the chief constable. The operational independence and operational neutrality that police officers need in order to apply the law—Mr Laing also mentioned this—are a fundamental part of case law that has been handed down from generation to generation. We need to seek clarity about what all this means. The local commanders among my members will certainly seek clarity.

**Margaret Mitchell:** Will you underline the special case, in policing terms, for a national police force, as opposed to the case for other national bodies?

**Chief Superintendent O’Connor:** As agents of the Crown and as officers of the law, we have a duty to enforce the law. In that respect, we are different from other parts of the public sector.

**Donald Urquhart:** One of the difficulties in working with a number of partners in communities is their lack of understanding of what the law actually means and how it can and cannot be applied. Andrew Laing’s comments were helpful in terms of understanding what operational independence actually means, and greater clarification of that would be helpful. Sometimes, there is a fundamental misunderstanding of what the police can and cannot do, and that can get in the way of effective partnership working. That being made clearer might contribute to far more effective partnership working at local level.

**Margaret Mitchell:** On the resources issue, it is fundamental that you have the resources to do what you want to do. The Scottish police authorities conveners forum mentioned that it would not be able to keep reserves from year to year in order to use funds in the way that it wanted; other financial restrictions have also been noted. Moreover, Unison wrote:

“More detail is required on the issue of local budgets and whether or not there should be some funding specifically set aside for this.”
Perhaps those issues need to be teased out a bit. Resourcing and funding are key to accountability and transparency, keeping the local links that we want, and achieving a good partnership between national and local forces.

Donald Urquhart: The resourcing of the police service is not just about financial resources; it is about people resources, too. Kevin Smith talked this afternoon about the fact that the police are the biggest gang in town, and we must get across to local communities the need to be able to mobilise that gang and shift them to where the need is greatest. We would like the service to be responsive to local needs and to see additional resources brought in, where necessary, to supplement what is available immediately locally. If the service is responsive in that way, that will reassure people much more effectively.

As for the financial issue about reserves, I do not think that the community safety network would feel well placed to comment on that at this time.

Margaret Mitchell: Would anyone else like to comment?

Calum Steele: There is a logic to saying that the inability to carry reserves will result in what we used to see in local government for a long time before councils had that ability—come the middle of February onwards, everything started to smell of paint. That might be fine from an estates maintenance point of view, but we all know that it is not the best use of resources.

Some areas of the bill will confer on the national police authority the ability to form businesses, and there is a question in my mind whether such a business could borrow money in its own right. That could provide some capacity at a national level for the service to think creatively in ways that the legislation had not intended. I appreciate that that does not help the local situation, but it seems that the removal of some of the burden from local police boards and authorities, where they exist, to the more strategic elements of the new authority should free up the 32 authorities to direct some of their time and resources towards the issue.

It is odd, however, that local authorities say that things must come with additional responsibility money when, within the police service, we just get on and do things regardless of what we get paid. I would like the police service to get that additional responsibility money, as I suspect that I would be quite well paid on the back of it.

Chief Superintendent O'Connor: As commanders, many of us have grown up not only making operational decisions about local service delivery and achieving policing priorities, but making the financial decisions as well. When carrying out policing in any area, we must have a clear focus on service delivery and what we are seeking to achieve; however, in those parts of the country where there has been devolved management and devolved budgets, we have also had to make the financial decisions locally. We will want to know how those devolved budgets will operate in the future, because I sense that the financial decisions will have to be made right up there alongside the policing decisions.

Margaret Mitchell: Would Unison like to comment, given that you have specifically mentioned local budgets?

George McIrvine: As we state in our written submission, we require more detail on that. My comments follow on from what Davie O'Connor just said about the policing budget having to balance with the financial budget. I have spent 25-plus years in Tayside Police and have worked under different divisional commanders and heads of department who have spent their budgets differently. As Calum Steele said, sometimes you can smell the paint in February and March. There needs to be a balanced and consistent approach across the new force so that the budgets are spent properly.

Margaret Mitchell: So, there is a scrutiny angle, too.

George McIrvine: Yes. Absolutely.

Kevin Stewart: Let us return to the question of accountability. Mr O'Connor said that the police feel accountable to the courts. Do your members feel accountable to the existing boards, or are they far away from them?

Chief Superintendent O'Connor: Just now, a number of our members participate in the presentations of the police boards and police authorities across Scotland. A significant number of our members also have greater engagement with local community representatives and local councillors at divisional and sub-divisional level. Indeed, a lot of the issues, the police priorities and the matters that need to be resolved are dealt with through the arrangements that are in place before they come to police boards and police authorities. There is an opportunity to look at good practice in the work that is going on and build that into the new service.

Kevin Stewart: So you are more accountable to communities than you are to police boards. I am sure that that would continue, no matter what.

Chief Superintendent O'Connor: Absolutely. The new committees, however they look—it depends on what the pathfinders come up with—will certainly have more engagement with local authorities. There will be more democratic accountability and more reporting. There is a lot of good practice out there already. I have been a divisional commander in two divisions, and that
work has been going on in the service for some time.

**Calum Steele:** To a large extent, I echo what David O’Connor says. There is a subtle but distinct difference between accountability and governance. Beyond the fact that police officers are accountable to the courts, they are unique in that they are accountable for every single action and inaction. That applies from the moment that they are sworn in until the moment that they retire—it is not as simple as being from when they turn up at their shift. If a member of the public phones, it is expected that an officer or officers will be able to give information back to that member of the public.

My observation on the operation of police boards is that it is more in keeping with the comments of Professor McNeill: they tend to receive an account more than hold to an account. The most effective members on police boards and authorities are those who undertake the very relationships that David O’Connor mentioned; often, they seek out the views of the elected representatives of the Scottish Police Federation or indeed the local commanders before they attend. As I said, such things do not have to be legislated for—they either exist through personalities and relationships or they do not.

**Kevin Stewart:** Gumption.

On resourcing, there has been talk of things changing, but the reality is that they will probably change very little. As far as I am concerned, national Government already sets police budgets. We have discussed the ability to hold reserves and so on.

My question is directed mainly at David O’Connor. If local police commanders were given their own devolved budgets, would a bit more gumption come into play, with joined-up thinking with local authorities and other bodies to stretch out the budget that bit further?

**Chief Superintendent O’Connor:** Yes. As divisional commander, I operated under a devolved management system in which the budget, by and large, was decentralised and went out to the local commanders to provide a policing service in their communities. The local commanders were held to account for the way in which the finances were spent, but they were also held to account for performance. As I said earlier, we cannot and should not separate our operational decisions from our financial decisions, because everything comes at a cost.

**Margaret Mitchell:** The Scottish Police Federation believes that

*unless some definition is created the local authority role in policing could be subject to thirty two different interpretations and potentially place an undue burden on local commanders.*

It goes on to say that that could lead to “enormous bureaucracy” and that

“there is no mechanism for resolving disputes.”

It is not clear where the primacy would lie in a non-approval situation. Will you say a bit more about that?

**Calum Steele:** I am absolutely clear that the primacy in policing decisions rests with the local commander or, in the event of a dispute, with the chief constable. That is the nature of policing. It always has been and always should be.

The issue of the 32 local bureaucracies was rather succinctly covered by Kevin Smith and Andrew Laing when they referred to the fact that we cannot legislate for the mechanisms that are to be put in place to such an extent that they hamstring the organisation from delivering the service.

We may be very good at producing glossy books and brochures to satisfy local authorities, but we tend to miss the point somewhat because, ultimately, what matters is the service that is delivered to the public. If the local commanders are going to spend their time going in and out of their local council headquarters nigh on daily, they will not be in a position to ensure that policing is delivered as effectively as it should be.

17:00

**Margaret Mitchell:** So the definition in section 46 should be clarified or made more specific.

**Calum Steele:** Section 46—I am working from memory, which is dangerous to do—

**Margaret Mitchell:** It is the definition of the local authority’s role.

**Calum Steele:** Yes, it would be useful for that to be clarified.

**Chief Superintendent O’Connor:** We must remember that the police service is a disciplined service. We operate in an environment of command and control. Ultimately, commanders will be responsible to the chief constable for that discipline and for the command and control.

We need to be clear about how the local policing arrangements that are set out in sections 46 to 48 will work. I have no doubt that the officers who go out and provide that service in local communities know that they will be accountable to their sergeants, inspectors and local commanders, who, ultimately, will still be accountable to the chief constable.

**John Pentland:** Do you have any concerns about the variation between areas in the seniority
of local commanders and senior officers? Should there be a direct relationship between local authorities and the governing boards of the police and fire services?

Calum Steele: I answered that question earlier. The answer is no, we do not have such an arrangement just now, but I am pretty sure that Comhairle nan Eilean Siar, Orkney Islands Council and Shetland Islands Council would not say that they suffered as a consequence. Relationships and the ability to function do not depend on the rank of the individual who happens to be in command of the area.

Chief Superintendent O'Connor: The important factors are the roles, responsibilities and spans of command within the local areas. It is clear that the 32 local authorities are of different size. Consequently, one size will not fit all in the new structure. Therefore, it would be wholly wrong to focus on the ranks of local commanders. We need to consider the span of command and control within the different local authority areas.

Donald Urquhart: For community safety partnerships, it is important that, whoever the local commander is and regardless of the rank that they hold, they have the delegated authority to make local decisions to satisfy the local plans as they meet local needs and requirements.

Effective partnership working is down to individuals understanding what partnership working is about. It is about using gumption—Kevin Stewart used that word—and being able to back that up with the authority to make decisions that can be implemented locally on behalf of the service, if the need arises.

Professor Fyfe: I will make a brief comment about rank, roles and responsibilities. Recently, we did a piece of work in Northern Constabulary on policing in remote rural environments. Officers of a relatively low rank there have to develop a striking range of skills because they work in isolated communities.

At an event that we ran, somebody asked the participants whom they would rather have working on their team: a sergeant who had worked their whole career in an urban environment or a sergeant who had worked their whole career in a rural environment. They all said that they would prefer the person who had spent their time in a rural environment because of the responsibilities that they would have had to handle. That is interesting.

The Convener: There are no further questions, so I thank the witnesses.
The Convener: Do you have thoughts about the balance of councillors and other individuals in the board’s make-up?

Alex Clark: I have no particular thoughts. Local authorities must have a good representation, to bring localism to the board’s make-up, but I have no particular percentage in mind.

John Duffy (Fire Brigades Union): The key priority is the scrutiny by and democratic accountability of the new board. The current arrangements lack oversight above the local fire board level. In my time in the Fire Brigades Union, I have been involved in preparing submissions and briefing notes for a number of parliamentary debates on the fire service. It is clear that the Parliament has an interest in the fire service operating and functioning properly. A key point that we look for is that the new board should be answerable to the Parliament, which is the right place for ultimate public scrutiny of the fire service.

The current set-up of six joint boards and two unitary authorities has been regularly criticised by Audit Scotland for board and authority members’ lack of understanding of the service and their overreliance on chief fire officers. We can relate to that, but that is not a criticism of the individuals who are involved, because the system was flawed almost from its inception. The chief officer is the board’s adviser but is also given the task of developing and implementing policy and reporting on how well the service has done. The new service and the new board should avoid that dangerous closed loop.

To open up the closed loop, the board must have some way of getting external expert—for want of a better word—advice and other opinion. Perhaps that is where the link into local government is significant, because there must be a way to undertake what was earlier called dispute resolution. There must be a place to voice any difficulties between local government and the national board and to bring in an external view. As the representatives of the uniformed staff in the service, we will look for an opportunity to voice our members’ concerns directly to the board, too.

Councillor Band: When I talked to the Minister for Community Safety and Legal Affairs some time ago, I made the point that I work on a number of committees and boards that include bodies like the FBU. In education, teachers have seats on the board; in housing and health, residents have seats on the board. I see no reason why the fire and rescue service board should not have a representative of the uniformed staff. I know that not all members of the Chief Fire Officers Association Scotland share that view, but I hold it, have expressed it at the conveners forum and have had support for it.

David Torrance: Will the bill restrict or enhance community planning partnerships and engagement? We in Fife have a tremendous record of community engagement in the fire service—it is second to none and is very impressive. How will the bill enhance that?

Councillor Band: It is good that Fife has something going for it as far as the service is concerned. In Perth and Kinross, we have the support of Tayside Fire and Rescue service, its convener, its chief officer and his depute and assistant. I cannot see the bill making any difference to our community engagement, because we are heavily engaged already. Our mantra is “prevention, prevention, prevention”, starting with teaching youngsters to drive responsibly and going right through to fitting smoke alarms.

17:15

Alex Clark: I firmly believe that the bill brings opportunities to enhance community planning. Let us not forget that we are not starting from the beginning; we are already well embedded in community planning partnerships. The fire service is an exemplar of good community engagement and integration, and of trying to make a visible difference in people’s lives. That is already happening across the country. Contrary to what some people might think, I believe that with the local senior officer arrangement the bill brings an opportunity for us to allocate more resource to local authority areas and to improve our contributions at the local level. Key to success, though, will be how we manage the expectations of local authorities and other partners within the community planning environment. There might be a belief, for example, that the 32 local authorities will get their own fire brigade, and that would be a big expectation to manage. As we engage more in the community planning partnerships and start to make a difference, we have to be careful to manage local authorities’ expectations sympathetically and with our eyes open.

John Duffy: We see absolutely nothing in the bill that would restrict, prevent or damage the work that is being done in community planning partnerships. I agree with Alex Clark that a great deal of work is going on around Scotland with the fire service’s involvement in the partnerships, and that can only be enhanced.

One of Alex Clark’s colleagues has said that at least one of the organisations involved in a community planning partnership will know the name of the next fire death victim. It is about how we draw that information out and how the service taps into and best uses the knowledge that the housing department, the police and social services have.
I suggest that a key point is how we drive down the level at which community planning partnerships work, so that fire stations and their crews are much more involved with other agencies at their level, because that is where the snippets of information can be gathered and utilised. During the bill process we will be looking for as much as possible of the responsibility within the service to be devolved to local stations and local areas, so that they can best use the knowledge that is gained from being within structures such as community planning partnerships.

Anne McTaggart: I think that the witnesses have partly answered one of my questions. Will the local authorities have sufficient influence over local fire and rescue plans, including budget setting and resource allocation?

Councillor Band: The obvious issue there, which has often been mentioned, is that the plan has to be agreed. What will happen when it is not agreed? How do we have an influence at that point?

Alex Clark: The ambition is for local authorities to be fully involved in developing the local plan, because there must be that engagement early on if the fire and rescue service is to respond to local needs. Without that, the situation will become one of the fire and rescue service saying that it knows best and telling local authorities how to deliver the local plan to meet local needs, without there having been a dialogue to determine what those needs are.

Local authorities will be involved in developing the local plan, which, I understand, will be aligned with the national strategic plan, and we will then try to deliver the local plan and make significant differences in an area. I understand that the finances and budgets will be set at the top and devolved into the local authority areas, so, to reflect on what Councillor Band said, that would itself bring tension. If the money does not follow local priorities and is not enough to deliver against those priorities, tensions might arise. Many people have mentioned that already.

There must be some clarity around the mechanism for achieving a resolution of such a dispute. If local needs cannot be met because of a lack of provision, how do we square that off? We need clarity in the bill on how to resolve such situations.

John Duffy: Notwithstanding the arrangements in the joint boards, our concerns about finance, particularly in relation to the two unitary authorities, have been highlighted. I am going to pick on Fife in particular—I mean no disrespect to our colleagues from there. In general, the question relating to the funding arrangements for the fire service in Fife is how much of a cut in the budget will be made, but that is the wrong way round. We should look at what we are trying to achieve in the service and then try to make arrangements to fund that.

When we talk about consistency across Scotland, we know that there are differences in the make-up of communities across the country and in the risks, but the key is having a consistent methodology. The service should measure the risks and needs and then there should be resourcing, as opposed to trying to accommodate the particular influence of any councillor, a strong council or whatever.

I noted from the evidence from the police that one of the significant differences between us is that the fire service currently has no ability to top up—councils have no opportunity to add additional resources. In considering that alongside our view on having a consistent methodology, we would say that, if a council wanted to add additional resources, we would still be adamant that those resources should be sent to cover the greatest risk. They should not necessarily stay with the council that is prepared to dig deepest into its pocket.

Kevin Stewart: On consistency, have local authorities across the country been best served by the current fire boards, particularly when fire boards have bought equipment that cannot be used in other areas? Will the uniformity of a single fire service resolve some of those difficulties?

John Duffy: We hope so, as fire boards buy equipment that they cannot use even in their own authority areas. I do not want to sound too scathing, but things really cannot be much worse in some areas. One service in Scotland, which is being resourced from outside, is at the point of near meltdown. We must therefore be able to take down the borders—the lines on the map—if we are fully to support and resource areas in which there is the most risk and need.

The Convener: Councillor Band probably has a slightly different take on that matter.

Councillor Band: I hope that, when John Duffy spoke about taking down borders, he meant boundaries and was not referring to Lothian and Borders.

My only experience is with Tayside Fire and Rescue service. We designed our own combined aerial rescue pump. I think that John Duffy recognises that it works perfectly well in our area and that we have a good arrangement for crewing, but I know that other areas have vehicles that they cannot use, which are passed on to other services to use in a different way. That is ridiculous.

I agree that the single service will standardise some of the equipment, although, as far as I am
aware, ours is standardised with that of our neighbours. Indeed, on Friday, we had a major, 10-pump issue and were able to source a high-volume pump to take water from the local river. That pump happened to be out on an exercise and it took half an hour to load it and bring it up to us, but that is a different issue.

Alex Clark: The answer to the question is that having a single service will absolutely resolve some of those difficulties. When the eight services become one, the efficiency that will come from more effective procurement will deliver benefits to the service.

That work is already under way through reform planning. A number of teams are looking at what the future arrangements will look like and are starting to build up knowledge of the current asset mix across Scotland. Work is being done on an asset replacement strategy that will harmonise things and enable us to move towards a single procurement route so that we can realise the efficiencies that have been alluded to.

Margaret Mitchell: I want to go back to the issue of local connectivity with the national board, which is summed up well in paragraphs 5 and 6 of the Scottish fire conveners forum’s submission. It says:

“The reality of being able to shape priorities locally and engage more effectively with the service at local authority level is obviously influenced by the extent to which budget decisions are driven nationally or locally ... It is not clear what level of delegated budgetary control is envisaged and whether delegated responsibility will be provided to the local senior officer for the management of a local budget.”

For the record, will you confirm that more clarity on that aspect of the bill is essential?

Councillor Band: That is essential. We need more clarity on what the level of delegation of budgetary control will be. I keep harking back to other committees that I deal with. In education, for example, we have the devolved school management budget.

In previous discussions, I have brought up the issue of what level the budget is devolved to. Is it devolved to local authority level? Is it devolved to area—[Interruption.] My apologies. My phone is switched off, but sometimes it does these things. [Interruption.] It is particularly persistent—it will not go off if it is doing something.

Margaret Mitchell: Perhaps you could get someone to take it outside for you.

Councillor Band: That should be it now. I am sorry about that.

We require more clarity on the budgetary situation—and on the plan.

Alex Clark: From an operational command perspective and from a local commander or local senior officer perspective, there has to be clarity on the devolution of financial control. If we are truly to make a difference at local level, the local commander or local senior officer must have the flexibility to deploy resources and to contribute to the community planning agenda.

Earlier, one of my colleagues mentioned that it is necessary to have the ability to commit resources in order to make a difference. Without that devolved responsibility, we will not achieve anything and the single service will not achieve what it is intended to achieve.

John Duffy: I reiterate my colleagues’ comments; indeed, I would go one step further and say that, as yet, we do not have any clarity on the national budget. Previously, the fire and rescue service was funded against national response standards. Once the service had put in place the resources that it required to meet those standards, it was inspected by Her Majesty’s chief inspector of fire services for Scotland and the funding was, in effect, signed off at that level.

Since the introduction of the Fire (Scotland) Act 2005, that has continued to be the basis for the funding, with ad hoc increases. We are now at the point at which those increases have stopped and the budget is shrinking, but we do not know what the national budget is based on. That raises the issue that someone needs to tell the fire service what they want us to do. Do they want us just to meet the three statutory obligations that we have, or do they want us to have a wider role? I suggest that there is a public expectation that the fire and rescue service has a much wider role than it had previously. A generation ago, our activities in dealing with road traffic collisions and accidents were not a funded part of the service; they now are.

However, none of the other things, such as water rescues and line rescues, is a funded part of the service. The Government must tell us what the basis is for its figure on the funding of the fire service and what the expectation is—that the Government wants us to do in exchange for the money.

17:30

Alex Clark: I will echo some of John Duffy’s points. An opportunity has perhaps been missed in the bill to recognise the broader role that the fire and rescue service plays in the prevention agenda and through our contribution to road safety work and water rescue activity. If the service is currently undertaking additional functions—in the absence of anyone else doing those things—the bill presents an opportunity to make that work part of the role of the fire and rescue service and to bring clarity to its functions. That would allow us to
develop into a service that will deliver the functions far more succinctly.

Margaret Mitchell: I have two final questions. First, will you comment on the lack of a dispute resolution provision? Secondly, one aspect that we did not touch on with the police witnesses—although we should have—was the timescale for implementing the bill and establishing the national police force and the Scottish fire and rescue service. To clarify, I am not asking you to tell me what the timescale is; I just want you to say whether you have any concerns about it.

Alex Clark: I mentioned that we need provision for how to handle disputes between the national and local agendas. I understand from previous evidence that there might be a belief or perception that such disputes will not arise frequently. I have a different view. In the early stages of the new service, disputes might well arise fairly frequently because of the issue of how we balance the expectations of local authorities and those of the national direction and strategic plan. The lack of a mechanism for that will undoubtedly make the job of local commanders and local senior officers particularly challenging. They will be trying to serve two masters, but who will they actually report to?

The timescales for establishing the new service are challenging. In our written submission, we make the case for earlier appointment of the chief fire officer so that a shadow management arrangement can be established much earlier and we can move towards the new service far more quickly. At present, we are taking a collegiate approach. The services are involved in trying to develop the shape of the new service, but that is being done with no clear leadership and direction in decision making. Currently, we are eight individual fire and rescue authorities that service the needs of our fire boards. That is a difficult place to be.

The early appointment of the chief fire officer and, subsequently, the management team will provide authoritative direction setting to allow us to move forward on some of the innovative ideas that are arising about what the new service can deliver. Until such time as we have that person in place, it will be difficult to make progress. The longer it takes to put that person in place, the more the timescales for implementation will be compromised.

Margaret Mitchell: That is helpful.

John Duffy: If a disputes procedure is put in place between authorities and the service, it will be used. Trust me—I am a trade union official.

Margaret Mitchell: I believe you.

John Duffy: It would be better to try to avoid that, but that requires a method by which the local authorities have direct access to the board.

The timescale is challenging. However, I suggest that the fire service has never stopped changing and evolving and that the bill is just another part of the process. We are focusing on the fact that at some point next year a snapshot will be taken, at which point the service must look and feel a bit like a single service. If we continue to take the collaborative approach that we are currently taking, I do not doubt that we will be most of the way there. The work will certainly not be finished and there will be much to do, but I am sure that it will be possible for us to meet the timescales that ministers and the Government have set and to produce something that looks and feels like a single service.

Councillor Band: I think that on the due date we will be on the cusp of getting down to the finer detail. As far as the dispute scenario is concerned, if we put it in the small print, no one will know that it is there.

Bill Walker: I will ask a question that is similar to the one that I put to the police. I am pleased to say that in Fife, or certainly in west Fife, which is my part of the world, there is a pretty good relationship between the fire and rescue service and the communities, although in recent years the relationship was placed under a bit of stress when the fire station was moved from the west to the south of Dunfermline. I am told that the move worked out well and that response times are just as good if not better—I am subject to correction on that.

Am I correct in thinking that you will face the same issues as the police will face in relation to the appointment of local senior officers who will have a relationship with local authorities? Local authorities are of different sizes. Perhaps more junior people will be appointed to deal with some authorities, or perhaps a more senior person will have to look after several local authorities? Mr Clark might be best placed to respond.

Alex Clark: I agree with what some of your previous witnesses said. The rank of the local senior officer is not particularly important. However, from the fire and rescue service point of view, there is an additional complexity, in that the service has put in place role maps, which align a person’s responsibilities and activities with a pay grade, for example.

We can test engagement at local authority level. A number of people in the fire and rescue service community have signed up to be pathfinders and establish the local senior officer arrangement across a range of roles, from group commander up to principal officer level, depending on the size
of the local authority. The pathfinders are pilots and we will learn lessons about how to pitch engagement at the right level from the pilots’ successes and failures.

It is worth mentioning an issue that has not emerged in the discussion. The model for the new fire and rescue service is completely different from the current one in the number of people who will occupy senior roles. We currently have eight chief fire officers; in future we will have one. The opportunities for talented people to rise to the top of the organisation will become significantly limited. The people who in the current system would become chief officers are in future likely to find themselves filling the role of local senior officers, because the opportunity to progress to chief officer level will be limited, by virtue of there being only one chief officer.

Therefore—to answer your question—in future it will be the talented people in the organisation who perform the role of local senior officer. I am not too hung up on what is the appropriate rank for the person who is accountable to the local authority; it is about a person having the skill set that enables them to build the relationship and contribute effectively to the outcomes that they are expected to achieve through local engagement.

John Duffy: Many senior officers are FBU members and they are feeding back to us that they think that there are opportunities. Some of the services are already trying to organise themselves in a coterminous way with wards and the like. They see it as a huge opportunity to develop ideas from local circumstances and we are keen to explore with the service how that can be speeded up. The more experiments and trials there are of different ways in which to approach the problems, the more opportunities we have to find successful methods of working. We believe that there are opportunities to devolve down to the local level some of the service’s responsibilities and actions. I reiterate that the local senior officer is not the be-all and end-all; what is crucial is their ability to devolve down even further to station managers and station crews, because the crews are the point of contact with communities.

Councillor Band: Undoubtedly, it is the crews, who turn up for the gala days and suchlike, who have contact with members of the public. I agree with John Duffy that we are looking for responsibility to go down to ward level and to the local fire station and to local people. I think that we can bring the community together on that.

John Pentland: With any reform or review, there is a tendency to look at the financial resource that is required to deliver the service or look at what efficiencies can be made. However, the other very important element is the human resource, which I think the panel has touched on. Are there any particular areas of concern that require both immediate, short-term solutions and, ultimately, long-term solutions? Should there be a direct relationship between local authorities and the governing boards of police and fire services?

John Duffy: On short-term solutions, there are clearly a number of areas of uncertainty and where there is uncertainty there is generally apprehension. Our approach is to work closely with our management colleagues in the service. Over the past few weeks, we have done a number of joint training courses with them to try to make the process easier. One of the things that we need to do is to separate the idea of the post from the person. I know that there has been some discussion about the Transfer of Undertakings (Protection of Employment) Regulations with regard to terms and conditions, but that deals with the transfer and does not take account of the restructure, which will reduce the number of posts.

The issue is how our organisation and the service deal with the people who find that when the music stops there is no chair. As a trade union, our number 1 priority is the people, but we will look to build relationships with senior management colleagues in the service. One of our problems is that there will not be a new employer until 1 April but a lot of the work that needs to be done now involves negotiation. We are all in untried territory here, but the commitment that we have seen in the early months is encouraging. If we can sit down and talk about the issues, we can find a way to deal with the process.

I reiterate that the priority for us is the people rather than the posts. As has been said, we all appreciate that there will be fewer posts at chief officer and senior levels; the issue is how we deal with the people.

Alex Clark: I echo John Duffy’s point about the union and the management in the service working closely together to try to resolve some of the issues that arise as we assess how to take things forward. That work has proved to be productive.

On the question about the human resource side of things, our concern is how, in order to deliver the financial efficiencies—which have to be linked to the service that we provide—we deal with the financial implications of a business case that indicates that significant savings will be made by reducing the head count predicated on a retirement profile for the workforce when there is no requirement to retire. The numbers are aligned to the retirement profile of a firefighter who serves for 30 years and then retires, but that firefighter does not have to retire at that point, and many do not. Our concern is that it is anticipated that an efficiency can be gained through natural turnover of staff with no compulsory redundancies but, come the day, all those people may still be sitting
in their seats, and we will have a financial envelope to satisfy while still paying their salaries. How do we do that without there being an impact on service delivery? Delivering within our cost envelope will be a challenge. Do we take action at the early stages to identify the people who will be affected in order to best manage that from now on? We need that direction to take those steps earlier, in order to ease the burden that will inevitably come.

17:45

**Councillor Band:** As has been said many times, on 1 April we will see no difference on the streets. Perhaps Aberdeen will have red fire engines instead of white ones, but that will be the only difference that we will see.

If we are going to make these savings, we must consider what the expected savings from back-office staff will be. Only 12 per cent of the total establishment are back-office staff, so the required savings cannot all come from there. As John Duffy and Alex Clark said, something must be done now to slim down the workforce on a voluntary basis before we get too far along. Half of the 12 per cent who are back-office staff earn less than £15,000 a year, so there is not a huge saving to be made by dispensing with them. It is assumed that amalgamating the eight different services will cut out duplication, but there is not a huge saving to be made in that regard. We must make savings if we are going to make the expenditure on front-line services, but that is the difficulty that we face.

**Kevin Stewart:** I will ask one final question, in fairness, because I asked Councillor Whyte to answer the same question from a police perspective. I know that Councillor Band is a late substitute and I do not want to put him on the spot, but I will ask the question anyway.

Do you know how many leaders of councils or very senior councillors currently sit on fire boards?

**Councillor Band:** I do not know about other fire boards. None of the three authorities on my own fire board is represented by senior councillors such as a leader or deputy leader.

**Alex Clark:** The leader of the City of Edinburgh Council and the leader of West Lothian Council are both members of the Lothian and Borders fire board.

**The Convener:** It looks as if John Duffy has no idea; he is shaking his head.

There are no further questions for the panel. Thank you very much—you had a long wait. We now move into private session.
1. Introduction

1.1 We believe that we are reforming police from a position of strength, with record levels of performance\(^1\), and our aspiration is that reform presents an opportunity to continue to develop and enhance policing across Scotland. In doing so, we recognise the challenges and anxieties that such a significant process of change presents, which we discuss in this paper. We feel this is best tackled by open and honest articulation of the issues to ensure any problems are recognised and mitigated now. Close scrutiny of the proposed arrangements in that open and transparent manner will be key to ensuring the governance arrangements assist in the design and development of a new policing model that meets the needs of all communities across Scotland, the individual citizen, police service, and politicians.

1.2 It is the intention of the service that policing under the new single force structure will remain locally focussed with strong community relationships and partnerships with local authorities. As such, we firmly believe that reform will not fundamentally change the policing that the vast majority of the public see day-to-day, but it will change how the service is organised.

1.3 Despite the record levels of police performance under the existing arrangements, the recent debate on reform has raised a question mark over the quality of that local scrutiny from various quarters. Likewise, it is recognised that national governance arrangements are ad hoc and in need of modernisation.

1.4 We recognise that appropriate governance and accountability is a fundamental aspect of policing reform. In terms of formal structure, police accountability in Scotland is currently based on a constitutional settlement known as the tripartite structure. This tripartite structure was established to try and resolve historical tensions between national and local influences, and clarify the relative powers of local authorities, national government and chief constables in framing and implementation of policing policy, all whilst recognising that police officers are responsible to the law and that operational policing decisions must therefore be insulated from political interference.

1.5 The proposals will redefine the current tri-partite arrangements and our goal is that this should not undermine the importance and quality of local policing nor threaten the operational independence of policing by introducing an unwelcome imbalance through greater national control of the service. Governance and accountability play a crucial role in ensuring that our policing is ‘by consent’, and any change to these arrangements need to be critically examined.

\(^1\) ACPOS Annual Performance Report 2010/11: The Scottish Police Performance Framework
Changes to local governance and accountability are unavoidable, particularly in view of the creation of the Scottish Police Authority (SPA) and the dissolution of the current Police Authorities and Joint Police Boards. The new arrangements proposed in the Bill, in our view, describe arrangements for the relationship and engagement that the police have with communities and their elected representatives rather than a clear role of governance that currently exists locally. This amounts to a momentous and historic change to the policing in Scotland, and has focussed the mind to define the new structure, and importantly, the "new relationship" between the police service and Local Authorities. While the Local Government and Regeneration Committee is principally interested in local arrangements, our professional view is that local and national arrangements need to be considered together.

2. Operational independence of the chief constable / police service

2.1 We believe that provisions within the Bill threaten the operational independence of the chief constable, and therefore policing.

2.2 A key component of the current arrangements is that the chief constables exercise their operational responsibilities free of undue political interference, while subject to appropriate accountability and scrutiny. We are keen to ensure that the Bill provides the necessary safeguards to satisfactorily address and eliminate the inherent concerns that a 'single' chief constable could be subject to political influence and pressure. These concerns are real. They were raised by respondents to the Scottish Government consultation process and indeed the Cabinet Secretary for Justice himself recognised these concerns during the reform debate.

2.3 Specifically, we would raise the following issues: -

1. Ministerial Direction

- Whilst the Bill sets out a separation between Scottish Ministers and the chief constable, the provisions provide that the SPA must comply with any 'direction' given by Scottish Ministers. There is a clear risk that for the Authority to meet such compliance, undue pressure and influence could be asserted on the chief constable, ultimately challenging the impartiality and independence of the role to meet a political demand.

- We have asked Scottish Government for practical examples and instances of ministerial direction of other national bodies, in an attempt to allay our concerns. It is our position that past experience of ministerial direction is not indicative of the new relationship with the future policing organisation, failing to take proper cognisance of the unique status of policing.

- Scottish Government’s position is that ministerial directions are used rarely and come as a consequence of the SPA being a national body and that policing can be no different from other Government departments.

- Our view is that policing is different. It has coercive powers and in a democratic society it not only must be separate from Government, it must
be seen to be separate. We believe that the power of ministerial direction of the SPA, if it is to remain, needs to be more fully articulated and described, and appropriate caveats placed thereon, to ensure that it cannot result in an unintended consequence of ministerial direction of the chief constable.

- Sections 5(2) refers to “(a) a specific operation being or to be carried out by the Police Service”, and “(b) the way in which the Police Service is carrying out (or is to carry out) a specific operation”. We believe that this is too narrow in its definition and should be broadened to “any operational matter being carried out by the Police Service”.

2. Power to call on Chief Constable to retire in the interests of efficiency and effectiveness

- While this has its origins in the 1967 Act, the Bill as presented removes any protection from an arbitrary use of this power. The context of the 1967 Act was a significantly greater number of chief constables. We are now moving into a new era of a single service and the arrangements for removal of the single chief constable need to reflect that. We believe that the bill should articulate a more detailed formal process; procedures to be followed, definition of efficiency or effectiveness, and appellate process. The new arrangements should maintain the general principle but there should be a much more robust and documented process to provide clarity for all and to protect the single chief constable from arbitrary use of the power.

3. Scottish Police Authority

We have concerns regarding the specific provisions set out in the Bill for the new SPA:

- The SPA will have a limited number of members. We believe that for the SPA to be effective, in terms of holding the chief constable to account and discharging its wider responsibilities will require not simply high calibre multi-skilled people but in a sufficiency of numbers. We do not believe that the proposal for 7-11 members will be sufficient for this purpose. We believe that 15 would be a more appropriate number to provide capacity and resilience. To effectively discharge its role, the SPA will require a range of sub groups and we are concerned that co-opted members bring another element of lack of accountability.

- The Bill places no responsibility on the SPA to engage formally with local authorities. There should be a formalised connection and relationship between both tiers to ensure ‘local’ influences ‘national’ and vice-versa.

- The SPA has unclear and limited accountability to the citizen due to the small number of members who are appointed, not elected, and there must be some form of compulsion on the SPA to engage with the local committees and consult directly with the citizen.
There should be a number of locally elected members on the SPA. They should not be in a majority and they should be appointed on the same terms as other members, through the public appointments process, for their personal skills and experience and not simply on the basis of being an elected member. Their contribution on ‘local’ issues will be as important to the SPA as the other corporate disciplines brought by independent members.

The financial arrangements of the new organisation, as a consequence of its national status, place significant restrictions on the chief constable. Hitherto able to develop financial reserves to assist in good financial and risk management, the new arrangements, and in particular the restrictions on holding reserves, will encourage a ‘spend it or lose’ mind-set. Moreover, we are concerned that where the chief constable requires additional resources, in the absence of being able to accrue reserves from allocated resources, (s)he will be required to approach Scottish Government (presumably through the SPA). This provides Scottish Government with unnecessary leverage on what may be an operational decision for the chief constable.

We question the proposals in the Bill, whereby the SPA is responsible for development of the strategic plan for the Police Service of Scotland. Whilst we recognise that the SPA will have its own organisational priorities within its own strategic plan we believe the strategic plan of the Police Service of Scotland (as distinct from the SPSA) should be the responsibility of the professional and independent chief constable but would be subject to approval from the SPA.

3. Local Planning and the role of the Local Authority

3.1 We recognise a need to strengthen the role of local authorities in the local planning arrangements to satisfy requirements around local accountability through the community partnership processes.

3.2 Chapter 7 of the Bill sets out the provisions for local policing arrangements, and is prescriptive in the alignment of local policing with the 32 Local Authorities and the requirement for the local police commander to involve the Local authority in the setting of priorities and objectives, and preparation of a local police plan.

3.3 There is, however, a lack of clarity on how local arrangements and formalised reporting mechanisms should link in with the statutory requirements of accountability and scrutiny under the new Scottish Police Authority. As articulated previously, there needs to be connectivity between ‘local’ and ‘national’. National plans must reflect the importance of local delivery. Equally, local plans need to ensure appropriate prioritisation of national objectives. However, there must be clarity of accountability in terms of these two constituent parts of the governance structure.

3.4 Without such clarity, the proposals as they stand risk placing the new service under obligation to serve two ‘masters’; one on a statutory footing with governance and fiscal responsibility but little local accountability, and the other
with influence in determining local policing plans and outcomes but no statutory authority or fiscal responsibility to support delivery.

3.5 In some respects, the planned pilots and pathfinder projects that will test the new arrangements are key to determining future policy and practice in local policing arrangements. Moreover, the police service has a well refined and mature methodology, through the Strategic Policing Assessment and the Tasking & Co-ordinating Process for developing policing plans and effecting delivery of them, balancing local and national and through our active participation in the pilots/pathfinders, we believe that we have a positive contribution to make.

3.6 We fully support the practical benefits of the proposed alignment of local policing with the 32 Local Authority areas. Indeed this largely reflects current arrangements throughout Scotland. The chief constable will have a duty to ensure adequate arrangements for local policing and the SPA will hold him/her to account for that but there can be no ambiguity about the role of the chief constable, who must remain responsible for local policing and to whom local commanders are accountable. The question is one of balance. Just as it would be inappropriate for an over emphasis on national policing, an inflexibility at the local level that fetters the chief constable from his/her wider responsibilities would be equally inappropriate.

3.7 ACPOS advocates current community planning arrangements as a key consideration in determining how policing can be delivered locally within partnership arrangements, through:

- Professionalising and realigning existing community planning partnerships to bring corporacy to the 32 local area structure in support of local policing
- Linking the local policing plans into the community planning process and SOA's through a local strategic assessment
- Consolidation and enhancement of partnership working to support the principles of policing

3.8 Linking policing plans into the community planning process, and feeding into SOAs, would provide a structure conducive to requirements of both local and national accountability, and a correlation between local and national priorities.

3.9 We recognise the significant contribution that has been made to local policing in recent years through the formalised community planning processes, partnership and collaborative working. Furthermore we acknowledge the progress made by the police service in Scotland though a clear focus and effort on community engagement, and improved accessibility and willingness to respond directly to local problems.

3.10 This effort has resulted in increased levels of trust, confidence and public satisfaction in policing, and the processes that support it, and this must be preserved under the new arrangements. A continuation and standardisation of these arrangements is key to the future success of local policing delivery within the new structure.
Local Police Plans and Priorities

3.11 The inclusion of all stakeholders is crucial to this process; delivery of the local police plan cannot be seen to be the sole preserve of a newly defined ‘police - Local Authority’ relationship.

3.12 We believe the terms of the localised delivery around this requirement must be reflective of the need for flexibility in its application, and integral to the wider local community planning processes. This approach will encourage the citizen and all key stakeholders to contribute meaningfully to local policing planning process. This is in accordance with a model that conforms to the policing principles and purpose of policing to improve the safety and well-being of communities.

3.13 The Bill is clear on the statutory responsibility on the local commander to prepare and submit a local police plan to the relevant local authority for approval. This places emphasis on the local commander to consult with and seek ratification from only one partner (the respective local authority) on local policing. We believe this should be modified to reflect wider local policing arrangements; it would be more accurate to ask the local commander, with community planning partners, to produce a local strategic assessment which will assist and inform the local police plan.

3.14 Ownership and responsibility for the local police plan remains with the police, and the plan is still prepared and subject to approval by the Local Authority, per the provisions of the Bill. However, the local strategic assessment upon which the plan is based, in broader terms, will be developed by the police through wider consultation with partners. This takes full cognisance of the importance of a partnership approach in the participation and responsiveness to the delivery of policing. Local policing, in particular, is not delivered in isolation and aspects of local policing will be delivered with and by local partners.

3.15 As a consequence of this approach the local strategic assessment highlights the priorities for local policing more broadly, and ensures delivery of these priorities - and therefore the local police plan, at least in part - is integral to community planning and the local SOA. This approach will contribute to the wider effort to focus on preventative effort through partnership working, where there is a need to link police reform to the work currently ongoing under the Scottish Government Review of Community Planning and Single Outcome Agreements.

3.16 There is almost a bit of the unknown here and how this will work in practice. All of these processes, and the detail around it – setting priorities, the approval of the plan, community planning partnership delivery - needs to be fully exposed and subjected to rigorous scrutiny and testing through the local Pathfinder pilots.

3.17 In addition to this, ACPOS is resolute in its assertion that local policing arrangements (governance and scrutiny) must take full cognisance of the wider statutory requirements and responsibilities on the chief constable around continuous improvement in the carrying out of police functions in terms of Best Value, and scrutiny through the Scottish Policing Performance Framework (SPPF) in terms of national performance and outcomes (and notwithstanding the important external inspection and scrutiny arrangements by HMICS).
4. **Implications for local resourcing of police services**

4.1 Work is currently underway as part of the mandated Police Reform programme to develop a blueprint for the new Police Service of Scotland. In full recognition of the importance of local policing, ACPOS have appointed a dedicated team to apply the appropriate focus and effort to this significant aspect of police reform. This work is further underpinned by effort from across a number of executive-led workstreams within the reform programme, with full cognisance of interdependencies.

4.2 Whilst a final resource allocation model has not yet been determined - and is subject to the outcomes of these wider processes of remodelling - ACPOS fully acknowledges the importance that the commitment of local policing resource does not suffer to the detriment of police reform. A number of objectives and determining factors, critical to the successful outcome of this remodelling process are being followed, and this is fundamental in preserving that balance of local resource within the context of the new single service.

4.3 However, within the revised resourcing framework there will be the inevitable movement and displacement of some officer numbers and police staff from existing resource allocation within the geography of the 8-force model, SCDEA and SPSA. This is a fundamental objective of the reform of the police service, and will eventually remove some duplication of support services, and create more equal access to specialist support and national capacity where and when they are needed. ACPOS does not anticipate this will have a detrimental effect on local policing; indeed the contrary position should apply in that communities will benefit from the availability of increased cadre of specialist resource when required.

4.4 Local policing resource needs to reflect variance in our communities across the country. We would caution against a potential risk of bias from outcomes being too narrow and focussed on, for instance, crime levels and solvency; outcomes must be reflective of the broader well-being of all our communities, and not a charter for something that would result in resources being dragged in to the busier urban areas at the expense of localised need or lack of regard for geography or spread of population, or other variables.

4.5 The 17,234 police officer numbers should ensure that we maintain correct levels of policing in local communities. Key to maintaining this is a reduction of costs in other areas, the risks to which are outlined in our paper to the Finance Committee.
5. Conclusion

5.1 The introduction of the Police and Fire Reform (Scotland) Bill undoubtedly signifies a momentous change to policing in Scotland.

5.2 We fully acknowledge that reform on the scale proposed inevitably brings considerable challenges and not least the practicalities and logistical considerations of combining 8 individual forces and two policing agencies into one single organisation.

5.3 Alongside these challenges, we welcome the unique opportunities this presents. ACPOS looks forward to actively engaging with communities, partners and stakeholders as we reshape and modernize policing into a service that is more efficient, effective and responsive to the needs of all citizens and communities in Scotland.

ACPOS
February 2012
1 Introduction

1.1 ASPS are the body that represents constables that hold the ranks of Superintendent and Chief Superintendent in Scotland.

1.2 We support the policy objectives described in the Policy Memorandum (PM). The change programme must be considered against a backdrop of current police performance which has provided the lowest recorded crime figures for thirty five years allied to improved detection rates which has led Scottish Government to describe policing in Scotland as “excellent”. It must also be considered in the context of wider public sector reform.

1.3 We recognise the reality of the challenging economic environment and that this is a key driver to reduce the cost of policing while improving outcomes for communities and the wider public sector reform agenda.

1.4 We believe policing in Scotland is excellent because of the professional, committed and motivated people who deliver this service in a fair and impartial manner with the consent of the public. Critical to delivering excellent policing has been the freedom from undue influence from any individual or organisation.

2 ASPS and Police Reform

2.1 ASPS have over many years consistently called for a single police service for Scotland. We welcome the introduction of the Bill and the opportunity it presents to make a step change improvement in the police service delivered in Scotland for our communities.

3 Areas for Clarification

3.1 We would welcome clarification over the following key points in terms of Local Government and Regeneration Committee area of interest.

Section 17 – Chief Constable’s responsibility for policing Scotland

3.2 There is no reference to linking Local Plans to Strategic Plans. This seems to distance the Chief Constable from local policing.

1 Policy Memorandum, paragraph 2, 56,
3.3 There is no reference to the Local Policing Plan – are Local Commanders accountable to the Chief Constable for delivery of the Local Policing Plan?

3.4 The Chief Constable’s role in the strategic police plan is to be “involved” (2, (c)). Currently Chief Constables may be regarded as “owning” the police plan and this has delivered an “excellent” service. What is the intention and improvement being sought by this change?

**Section 31 – Forensic Services**

3.5 Effective Forensic Services play a crucial role in policing. We would welcome clarity regarding the operational deployment, direction and control of Forensic Services. We understand the need for separation of the analysis and presentation of evidence from the investigation and evidence gathering aspect of Forensic Services. However for the efficient, effective and fair investigation of crime, police need to have control over when, where and what Forensic Services do at the scenes of crime and in some aspects of the subsequent examination of evidence.

**Section 21 – Direction and control of the Police Service**

3.6 There is potential for misunderstanding to arise with regard to who has primacy when considered with the role of the Local Authority and Local Policing Plans in Chapter 7, where local plans must be approved by the Local Authority. Operational Officers need to understand their chain of command and their accountability to the Chief Constable.

**Chapter 4 – Principles, Priorities, Objectives and Plans**

3.7 There is no reference to the connection to Local Plans. We would expect there to be a requirement for Strategic and Annual Plans etc. to be used to inform the content of Local Policing Plans.

**Section 46 – Local Policing**

3.8 The Chief Constable must ensure that there are “adequate arrangements” in place for the policing of each Local Authority Area. Some clarity would be welcome over what is meant by “adequate” and how any concerns raised locally on the interpretation of what is deemed adequate, are to be raised and resolved.

**Section 46 – Local authority role in policing**

3.9 This imposes a number of requirements on Local Commanders which appear to replicate to some degree the requirements that currently are a matter for Chief Constables to provide reports, information etc. to Police Boards. The requirement under (3) in particular appears to have extremely broad
parameters which Local Commanders may not have the capacity or capability to respond.

3.10 This infers considerable latitude for local authorities to place demands upon the local police commander which may adversely impact on their operational responsibilities or capacity to meet a variety of demands over which they have little control, in an environment where we can anticipate less police support staff.

3.11 The Bill specifies the Local Authority and clarity would be welcome as to what this means as it may be interpreted in a number of ways.

3.12 There are many areas where it may not be appropriate for police to report to the Local Authority on certain matters and limit the detail on what can be reported. The Bill does not specify any constraints or exemptions and we would welcome clarity in this regard.

3.13 The Policy Memorandum\(^2\) states the Bill does not set out how this relationship should operate locally. We would welcome clarification over how local governance, the relationship between police and Local Authority can efficiently and effectively be structured without increasing costs if it is left to 32 individual interpretations.

**Section 47 – Duty to participate in community planning**

3.14 The Local Government (Scotland) Act 2003, Section 15 and 16 places the emphasis on Local Authorities, Chief Constables etc. in relation to community planning. We note that this duty is specified at “local commander” in the Bill. As the Chief Constable can delegate\(^3\) any of his/her functions to any constable we would welcome clarification as to why it is necessary to specify the local commander.

3.15 We would also encourage consideration of a review of the Local Government (Scotland) Act 2003 with regard to whether there is advantage to specify the equivalents of “local commanders” in the organisations specified in Section 16 of that Act, to ensure equal treatment across public sector bodies.

3.16 We recognise financial pressures may well affect services that contribute to community safety and wellbeing. The police are already the service of “last resort”. We would not wish to see a significant increase in the duties falling to police through an over wide interpretation of community planning.

3.17 We do see increased opportunities to share resources through Community Planning Partnerships and would encourage exploring this. This could include adopting a common business model that enables resources to be prioritised on prevention and managing risk to individuals and communities. Improvements in effective sharing of information and intelligence coordinated

\(^2\) Policy Memorandum
\(^3\) Bill, Section 18, (1)
tasking and close joint working on agreed priorities to deliver improved outcomes are entirely possible.

Section 48 – Local police plans

3.18 This section provides that the local police commander “must” submit the local policing plan to the Local Authority for “approval”. We would welcome clarity over this point. In particular this infers that the Local Authority has a degree of direction and control over local policing which may create tension in relation to the direction and control in Section 21, by the Chief Constable.

3.19 We strongly believe in being responsive to local communities but at the same time we believe that the public interest is best served by having an impartial professional police service. It is also of critical importance for local commanders and all constables, to be clear to whom they are accountable and we believe this is to the Chief Constable. This does not mean that there should not be any local accountability but that the nature and extent of such local accountability should leave no room for misinterpretation.

3.20 Clarity would also be welcome over what is meant by “Local Authority”. Is the intention that this should be the Chief Executive, Elected Members, Council Officers or a combination of any of these or any other configuration? We do not believe that it is in the public interest or best use of public resources to allow 32 variations to be developed without a framework that must be given due regard.

3.21 We also believe that there must be a requirement to consider the elements of Chapter 4 in relation to local policing plans. There must be a clear link between the Chief Constable, local policing, strategic and local plans and clarity over what has priority should any aspect become subject of disagreement and how a resolution can be obtained.

3.22 When policing in Scotland is recognised as “excellent” we would not encourage wholesale change.

Schedule 1 – The Scottish Police Authority

3.23 We would welcome clarity over the status of the part or full time nature of the Board members as well as the qualifications of those members to lead and manage the circa £1.4 billion critical public service that they will be responsible for.

3.24 We would also welcome clarity over the scope for suspension of a Board Member should they become a suspect in a serious criminal investigation and clarity on the extent of vetting that Board Members will be subject to.

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4 Bill, Section 46, (3)
4 Impact

4.1 It is our contention that local policing works well and it is important that any changes do not negatively impact on service delivery. It is not practicable, desirable or affordable to replace the current police boards with 32 smaller versions and expect existing reporting and accountability arrangements to be replicated 32 times.

4.2 We are aware of the potential local impact on employment and the economy as a consequence of reform and support a balanced workforce. We would hope to see the principles of both Christie and McClelland reports prominent when considering reform.

4.3 We do however anticipate a reduction in police staff numbers, a leaner management structure with reduced non-operational capacity. We therefore would not encourage a local accountability and reporting model that places an increased burden on local commanders. There needs to be some parameters that limit any potential burden on local commanders to allow them to focus on service delivery.
5 Conclusion

5.1 It is ASPS view that the operational responsibility of constables and the local police commander to act in pursuance of Sections 19 (function and jurisdiction), 20 (general duties) and 32 (policing principles) of the Bill, in the context or local policing must be explicitly stated and understood. This is essential to avoid a situation where local policing might become inappropriately influenced by any individual, or organisation in relation to the impartial execution of the office of constable resulting in the erosion of public confidence in the impartiality of the police service as a consequence.

5.2 Finally, the overriding priorities for ASPS in terms of responding to the Draft Bill and supporting the establishment of the new Police Service of Scotland are:

- Maintaining service delivery and high performance
- Ensuring public confidence and reassurance
- Preserving Constabulary Independence
- Maintaining staff confidence and morale
- Developing effective and clearly understood local and national accountability and governance arrangements
- Developing the new service from community level with the focus upon local commanders and teams providing visible, accessible and response policing
- Ensuring the range of specialist services are available locally and nationally

David O’Connor
President
February 2012
CFOAS has agreed to focus its written evidence on the following areas:

- Composition and skills set of the Scottish Fire and Rescue Board
- Functions of the Scottish Fire and Rescue Service
- HMI – roles and accountabilities
- National and Local structures – roles and accountabilities
- Financial Assumptions
- Employment Issues

**Composition and skills set of the Scottish Fire and Rescue Service Board**

1. The Bill provides that members of the Board will be appointed by Ministers on the basis of relevant skills and expertise. The correct blend of skills and expertise is critical in establishing the organisation's strategic direction and empowering it to properly scrutinise risk and take decisions on resource allocation within tight budgetary constraints. The role of the Board is to ensure the effective delivery of Fire and Rescue Services across Scotland and the Policy Memorandum makes clear that such members are not attending meetings as representatives but to act in the best interests of the Service. CFOAS agrees with this assertion. The Existing Joint Board structure has met with some criticism in the past however, the very challenges that Joint Boards have had to deal with will continue in the context of a pan Scottish Board. As the Audit Scotland Review of the “Role of Boards” concluded – it is important that Boards demonstrate collective responsibility and ownership of decisions. “Collective responsibility is essential and will be increasingly tested as boards have to make challenging decisions about how best to implement Government priorities, how to reduce costs and what services need to change or stop being delivered”

2. The specific skills that members will need to bring include the ability to properly scrutinise Service performance, clearly ensure the management of risk within the Fire and Rescue service context, demonstrate sound financial management, lead the development of a national strategic plan for the service and hold the Chief Officer to account for its delivery. These skills can be found from across stakeholder interests including local government, business and commerce, education and research, fire and rescue sector.
Functions of the Scottish Fire and Rescue service

3. The functions of the Scottish Fire and Rescue service remain as set out in the Fire (Scotland) Act 2005. It is understood that additional functions e.g. CBRN response and response to serious flooding will be transferred by means of secondary legislation and a new Fire and Rescue Framework will place these statutory functions within the context of prevention, community engagement and partnership working. It is unfortunate that primacy has not been given to the prevention agenda and that the opportunity has not been taken in the context of the primary legislation to provide a meaningful context within the areas of protection and prevention for all Fire and Rescue activity. It has been acknowledged through Community Fire Safety work and research including the study examining fire deaths and injuries in Scotland “Scotland Together” that the only demonstrative way to drive down fire death and injury and to reduce demand on already heavily burdened public services is through the adoption of a holistic, structured and joined up approach with partner agencies to focus on prevention activity and target “at risk” groups. Expanding on this theme, the now well developed role of the service in the context of road safety with the service leading the way on a number of initiatives (particularly aimed at young drivers) across the Country is not reflected in the Bill. The opportunity to clarify the role of the service in co-ordinating water rescue activity across Scotland has also been missed.

4. CFOAS has also consistently raised a number of issues that affect the legality of our Services’ cross border operational activity in England. We have been advised that these matters would be clarified in the Bill, however, the opportunity to do so does not appear to have been taken.

HMI role and accountabilities

5. The Bill establishes the role of Chief Inspector and Inspectors of the Fire and Rescue service as non-Ministerial office holders within the Scottish Administration. The Inspectorate may independently initiate inquiries as well as inspect on direction by Scottish Ministers. This clearly presents a potential conflict of interest in relation to determining inspections that remain risk based, proportionate and complimentary. Primacy will clearly rest with a Ministerial request for any one off inspection that may not be seen in the context of broader audit and inspection criteria or indeed will pull resource away from planned work programmes. Depending on the direction given by Ministers, this could also potentially place undue political pressure on Inspectors in terms of timescale and conclusions.
National and local structures – roles and accountabilities

6. In addition to establishing the single national service governed by the Scottish Fire and Rescue Board, the Bill seeks to establish a formal statutory relationship between the service and each of the 32 local authorities. The Bill provides for a local senior officer to be designated for each local authority area and he/she will be the first point of contact for the local authority and other partners locally and the lead officer for the services in community planning. The relationship will be built around the development of a local plan setting out the shared priorities and outcomes to which fire and rescue services are to be directed.

7. After approval of the national strategic plan, the SFRS must prepare and submit a plan for approval to the local authority for the area to which the plan relates.

8. In the context of the development of a 3 year national strategic plan prepared on the basis of a national integrated risk management plan and developed in the context of a national budget set for the SFRS, it is entirely possible that conflict could arise if any given local authority does not feel that the local plan is sufficient for its purposes in terms of resource allocation, engagement in local initiatives or indeed the role of the local senior officer.

9. There is a broad duty on the SFRS to ensure adequate local service provision but national and local views on the extent and detailed application of that provision could differ. The Bill states that the SFRS must submit a plan prepared for approval to the local authority and if approved the SFRS must publish it. As it stands, the Bill offers no recourse for any dispute arising between the national service and the local authority, which could seriously hamper the ability of the service to engage effectively at a local level. We need to be clear on whether the service is a national service delivered locally or 32 local services delivered within the context of a national framework. It cannot be both.

10. This point is also critical in terms of the role of the Local Senior Officer (LSO). In order for the LSO to work effectively, it must be clear that the development of local plans stem from agreed local priorities sitting within the context of the national strategic plan and that the LSO’s accountability for delivery is to the Chief Officer. The LSO is carrying out delegated functions on behalf of the SFRS and although the relationship with the local authority is crucial in terms of the joint development of the local plan, reporting lines and accountabilities must be clear.

11. Local scrutiny and engagement arrangements are currently being piloted to test a range of mechanisms e.g. blue light committees through which elected
members may play a direct and formal role in shaping local priorities and scrutinising performance however we need to guard against drawing the FRS away from the multi-agency approach which has been proven to work. In terms of Community Planning and Engagement there is a need to remove duplication, build capacity and integrate services; this is best achieved through CPP arrangements. It seems that a number of reform strands now exist and there must be a connection between reform of Police and Fire and Rescue Services and the refresh of the SOA, CPP and SCG arrangements. If this were to provide a more robust legal duty and partners were bound by joint plans and performance as a result, then the need for separate police and fire committees would be obsolete.

12. The development of local plans influenced by the National Fire Strategy but driven by local priorities would seem an appropriate process for guiding and setting local arrangements. The SOA would allow this and could also present a means to challenge performance and measure outcomes. However, as referenced in paragraphs 6 and 7 there needs to be a clear understanding of the parameters within which local plans are developed and agreed.

**Financial Assumptions**

13. The Financial Memorandum attached to the Police and Fire Reform (Scotland) Bill highlights that ongoing net savings of £25.1m per annum could be achieved by the Scottish Fire and Rescue Service following a period of transition during which time one-off set up costs of £27.475m and one-off savings of £15m could arise.

14. It should be noted that these ongoing savings are net of increased costs resulting from expenditure such as VAT (£4m), Publicity (£0.33m), Remuneration of the Board (£0.242m) and Pay harmonisation (£1m). The most significant areas where savings have been identified are Corporate Services (£8.03m) and Response (£13.5m).

15. In presenting evidence to the Finance Committee, CFOAS has highlighted concerns in relation to the level of costs and savings to be achieved and the time frame for delivery, albeit that we agree that the removal of duplication will result in a level of efficiencies being generated over time. In particular, CFOAS has questioned the assumptions that significant reductions in the number of senior uniformed officers across all areas of service delivery can be achieved whilst at the same time ensuring that effective Incident Command management systems can be delivered. In relation to reductions in support staff and Control Room staff, CFOAS would question the assumption that these can be achieved through natural turnover rather than significant
numbers of staff being made redundant, albeit on a voluntary basis. Costs for redundancy have been assumed to be £4m within the Financial Memorandum whilst the equivalent figure for Police is some £80m and we therefore contend that this is significantly under estimated.

16. CFOAS would wish to highlight that since the Business Case has been prepared, expenditure levels within the Service have already reduced by some £10m and therefore some of the savings highlighted are now being delivered across Scotland. The Business Case was prepared from a baseline set in 2010/11 and these savings need to be credited to the service as part of the Government’s financial projections for reform.

17. Finally, the legal status of the new Scottish Fire and Rescue Service results in the potential loss of VAT recovery, which CFOAS estimates to be £10m per annum and not £4m as, outlined. Additionally, the new Service is not permitted to hold Reserves, something which is recognised as sound financial management practice. These detrimental impacts on the Service when compared to current practices are matters which we would ask Scottish Government to consider when reviewing the proposed legislation and legal standing of the new single Service.

**Employment Issues**

18. The Policy Memorandum attached to the Bill reflects that there are no plans to change national negotiating arrangements during transition to a single service. Whilst the memorandum also explains that future arrangements will be a matter for the new Fire and Rescue Service we assume it is intended that current arrangements will continue. It should be noted however that COSLA may continue to represent Employer interests in the negotiating framework until 31 March 2013 but as the Service will cease to be a local government service on 1 April 2013 (if that is indeed the date on which the new legal entity is established) there could potentially be a void thereafter until any new negotiating structure is established. CFOAS is urging Scottish Government to hold talks with the Employers Secretariat in London and COSLA to ensure a smooth transition.

19. The absence of any shadow arrangements and definitive commencement date for the new service as a legal entity (as existed during local government reorganisation) does mean that many transfer issues cannot be planned definitively prior to vesting date and must therefore be for the new service to resolve. Although there is a commitment that all staff will transfer and terms and conditions will be protected at the point of transfer, the lack of proper shadow arrangements will undoubtedly have an effect on employee morale and hampers the ability of current employers to provide meaningful
information to staff on their future. CFOAS has urged Scottish Government to bring forward some aspects of the Bill in relation to the appointment of the CFO to at least allow for a degree of critical decision making in advance of 1 April.

Chief Fire Officers Association Scotland
February 2012
Background

1. COSLA has been invited to provide a submission to the Scottish Parliament’s Local Government and Regeneration Committee on the Bill reforming Police and Fire and Rescue Services in Scotland. This submission concentrates on the proposed local policing and fire arrangements.

2. This submission is based on the policy memorandum and the broad intention of the Bill rather than the detailed provisions. COSLA’s position has been informed by the work of a cross-party Task Group, our Community Safety, and Community Well-being and Safety Executive Groups, and by COSLA Leaders.

3. The COSLA position repeats some of the concerns expressed in response to the earlier consultations. While we concentrate on the outstanding matters, the previous ones (while wholly or partly resolved) are briefly repeated to provide the overall thrust of Local Government’s position. There are also a number of points that so far remain unresolved. COSLA staff continue to be in active dialogue with Scottish Government officials and hope that further progress can be made prior to stage two. In the response, the term ‘Board’ ‘Local Chief Officer’ and similar, apply equally to both the proposed Fire or Police arrangements, unless specifically indicated otherwise.

National Board Arrangements

Role of local elected members

4. For COSLA, councillor representation on the National Boards is fundamental to ensure there are the diverse skills, experience and expertise required for the two national boards to perform their roles effectively. As long as the new local arrangements retain responsibility for ensuring the delivery of local police and fire outcomes, it is a prerequisite that there should be strong representation from local authorities through membership of locally elected members on the two national boards. It is difficult for members to feel anything else would be as meaningful in directly linking national and local accountability given the desired outcome of continuing, and improving, local fire and police services in the context of local community safety. Councillors, through community planning have a strong background in strategic planning across a range of public services.

5. Strong representation at the national level would help maintain a meaningful and influential Local Government interest in the top levels of the new structures. This would help ensure the success of the local governance and accountability arrangements. It would also maintain relations between the local committees and the national Board and between local elected members and the Chief Constable and Chief Fire Officer.

6. From press coverage there appears to be an assumption that the maximum number to be appointed as serving councillors would be 4 – although there is no indication as to whether this might be added to the face of the Bill. COSLA
believes that we should directly nominate the local authority members to the board in a way that explicitly recognises the cross party and geographical nature of local government’s representative voice (whatever the number of places being made available) without going through the OCPAS process, but still with relevant security clearance being undertaken.

7. COSLA recognises the hesitation that the Minister and Scottish Government officials have here. But given the seniority and experience of those likely to be nominated, plus the security checking and fact that once appointed they will be obliged to act in the Board’s best interests, COSLA believes that there is nothing to be concerned about here.

8. COSLA continues to want to see either the majority or all of the Boards being elected local government members. If this doesn’t gain support from the Committee, COSLA would want to nominate directly, or at least recommend applications, to a set number of places on the Board.

9. We support that the Boards will be able to borrow money (albeit only with Ministerial approval), and note that, unlike now, they will not be able to hold reserves. We are also disappointed at the financial implications of these single services both being subject to VAT. We understand that Scottish Government officials are in discussion with HMRC in relation to a dispensation and are confident that this will be achieved, but as yet we have seen no evidence of this. This is a sizeable sum annually being transferred from one arm of Government to another and we urge the Parliament to seek resolution of this matter. Failure to do so will require the Government to find the money – likely over £20m - and thus have a knock on effect either on the police or other public sector budgets.

10. COSLA’s position was that, rather than forming a NDPB which is subject to VAT and has various financial limitations on it, there were other alternatives, one of which could have been a single shared Local Government service, which would have allowed more financial flexibility.

Size of Board

11. The magnitude of other tasks and roles currently undertaken by current police authorities to ensure effective, necessary day to day 'business' has been highlighted, as a reason for having the right numbers and skills available to the board. Examples, though not exhaustive, were: Police Appeals Tribunals; monitoring of ill-health retirements and injury awards; police staff appeals; approval of legal expenses for police officers in certain instances; Best Value, Audit and other specific oversight groups for budgetary control etc; Equality Schemes and other such duties; Climate Change duties as a public body plus monitoring arrangements of the force; what are the actual monitoring arrangements now going to be for national policing functions; Authority training; and, the monitoring of Health and Safety responsibilities specifically assigned to police authorities.

12. The proposal is that the two boards would have between 7 to 11 members. The Bill doesn’t state what the sub-committee arrangements will be to meet the responsibilities highlighted above. Given the small number of members, it has been a suggested that a series of sub-committees be established with non-voting co-opted members to advise. However the small board numbers will also make it difficult to ensure a reasonable balance of geographical spread, gender, skills
and expertise, and that the effectiveness of the arbitrarily small board could be easily compromised with three or four people being unable to attend.

13. *Our members have said that a better size would be in the order of 15 with at least 8 being councillors, appointed by COSLA.* This would allow a larger quorum to be set to reduce the chances of what could be a very small number of people making significant decisions over Scottish policing. This is closer to the number that could be appointed to the reformed National Library (14), and would help re-enforce the traditional tripartite approach to policing in Scotland, and assure the public that the boards and services were able to exercise their independence and accountability with a separation from Ministers.

*The Chief Constable and Chief Fire Officer*

14. As the Committee know it is proposed that there be different service specific approaches. To emphasise the independence of the Chief Constable from influence of Ministers, the Bill will require the Scottish Police Authority Chairperson be involved in appointing the first Chief Constable and the SPA more generally thereafter. The Chief Constable will need then to be approved by Ministers. However, given the lesser political sensitivity over the appointment of Chief Fire Officer, the intention is for Ministers to appoint him or her directly.

15. There is considerable pressure with the April 2013 provisional start date for the two new services to make progress to recruitment as quickly as possible, so that both Chief Officers can start recruiting their senior teams, and develop their initial strategic proposals to the SFRS and SPA. COSLA’s members are very concerned that the tight timeframes involved, combined with the proposed appointment processes will undermine accountability at a time when increased accountability is given as a reason for reform. Members were keen that shadow arrangements were in place quickly following the Bill’s enactment.

16. *COSLA suggests ideally that a means be found to fast track at least the appointment of the Chairman, but if at all possible other Board members also, to allow an earlier appointment of chief officers to take place than December 2012/January 2013.* As an alternative suggestion, there may be a workable proposal based around using experienced current Board members in the selection of the chief officers. In recent discussion COSLA’s Community Safety Spokesperson has suggested to the Scottish Government that the appointment process could be brought forward if the existing Board Chairs of both Police and Fire & Rescue Services were used as a pool from which to interview applicants once the Bill has gained assent allowing the new Chief Officers to be in place possibly by early September.

*Strategic Priorities and Plan, consultation, laying before Parliament etc.*

17. The Police Priorities will be set by the Cabinet Secretary after consultation with interested parties, including COSLA and member authorities. For the SFRS it seems likely that the minister will set the priorities and objectives directly. With both services the Strategic Plans will be set by the Board / Authority after consultation with local authorities and COSLA (amongst others). The 3 year plans, once approved by ministers, will be laid before Parliament who will be able to take a view on these and annual reports, questioning both the Board / Authority and their employees as necessary.
18. COSLA has welcomed some of the clarity achieved here since the initial proposals were put forward. The next significant issue will be the timeframe over which the first draft local plans will be prepared and by who, and the extent to which they tie in with community planning arrangements.

Local Arrangements

Local Committees

19. During the consultation process COSLA made clear its position that Councils should be in the driving seat over the monitoring of the local plan and overviewsing its delivery. COSLA was concerned about the status of its members councils in the process of drafting the plan. The ambiguity in the consultation document over whether Councils were simply being consulted or something more has been removed. Members welcome this being firmed up with such plans requiring to have the approval of the council.

20. Separately, in earlier responses, COSLA argued for a formal arrangement which places in statute a right of local authorities to hold to account local chief officers and their right to receive a response, in a similar way as currently available with the existing Chief Constables and Chief Fire Officers. Members are content that this now appears to be adequately covered in the wording of the Bill.

21. By reducing the degree of variation in their form and remit it may make it easier for the Scottish Chief Fire Officer/Chief Constable to manage relations with individual local authorities and to ensure a consistent level of scrutiny across the country.

22. COSLA’s members would like to see as much detail as practical on the form the local ‘committee’ should take being on the face of the Bill, in part to provide a safeguard for local accountability to prevent it being reduced or removed through secondary legislation by a future government.

Local Senior Officers

23. The Chief Constable and the SFRS will be required to have adequate arrangements in each local authority area, with a local commander/senior fire officer being designated for each local authority area, although the local lead officer may have responsibility for more than one area. They will be responsible for involving the local authority in determining the priorities and objectives for the services in the area.

24. The local Chief Officer will have the duties of participating in community planning of the current Chief Constables/Chief Fire Officers placed on them. They will also have the responsibility of preparing and submitting the local plan for agreement with the local authority. In both cases the local senior officers will be subject to the direction and control of the Chief Constable or the SFRS as appropriate in the carrying out of their duties.

25. COSLA had been concerned that there was insufficient detail over where local elected members could go to if they had concerns about the delivery of the local services. This has largely been sorted out with clearer drafting in the Bill.
**Local plans**

26. The local plans, to be revised at least every three years, are to set out the main priorities and objectives for the local area, state what the arrangements for the delivery of these will be, identify the measurable outcomes, and be tied in with other relevant outcomes from the community planning partnership. The format for the plans will be specified by the SFRS/SPA and these will require the plans to address the issues raised in the relevant national strategic plans. Modification to the plans will be subject to the agreement of the local authority.

27. COSLA has previously stated that we believe decision making and financial responsibility cannot be separated. If local accountability and subsidiarity are really to be enhanced, budgets must be aligned to where the decisions are being taken. Each local plan should be costed and resourced so that progress can be reported on. It would form a basis on which additional local expenditure could be set against. An alternative would be to establish a scheme of delegation to the local chief officers so that they have powers to hold budgets, direct these and officers under their command, and enter into agreement with the local committees. Either would achieve the same end, although the latter would be preferable if the Christie Commission recommendation on “Forging a new concordat between the Scottish Government and Local Government to develop joined-up services, backed by funding arrangements requiring integrated provision” is to be acted on.

28. **COSLA would like to see changes to the Bill to achieve this alignment of plans and resources.** For example, councils already directly fund an additional 600 – 800 police officers (who are part of the current force of over 17,234 officers), and we need to be sure in future that the resources we are allocating to Community Safety are in fact still delivering the desired additionality. A budget would make this process transparent.

**Regional arrangements**

29. At present there is little information about what the regional arrangements will be between local authority members and national board members or between the local chief officers and the Chief Fire Officer/Chief Constable. The Government maintains a position that much of this will be at the discretion of the new board/authority or the chief officers to arrive at.

30. While deferring operational decisions over territorial arrangements within the two services may seem reasonable, ideas will need to be developed to manage regionalised work such as Strategic Co-ordination Groups, Community Justice Authorities and Regional Transport Planning.

31. COSLA also raised the issue of how relatively junior local officers would hold their own against their more senior graded ‘peers’. This is something that may be resolved if the Government officials’ view that smaller population areas could be grouped together under more senior commanders/local senior fire officers is acted on.

32. Similarly it may be useful to arrive at some early idea for arrangements with members of the SFRS or the SPA acting as liaison members with given authorities/areas, to ensure a smooth flow on information and knowledge about regional matters.
33. It has been suggested that liaison responsibilities could be placed on members of the relevant boards to ensure that the awareness of local concerns is maintained at a local committee/board level, rather than solely being managed through the command structure.

34. *The Committee is asked to satisfy itself that such an approach will be actively considered in the new arrangements.*

**Other matters**

*Resourcing local authority arrangements*

35. As one of the intentions of the Bill is “to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships’ the Local authority Fire and Police committees have a serious workload. They will be expected to: formally comment upon the Local Plan; monitor, scrutinise performance and offer improvements; seek reports, answers and explanations regarding the local plan and raise issues with the Chief Constable, Authority and the SFRS as necessary.

36. COSLA members have been asked about the additional burdens of establishing these. Initial estimates suggest that there would be a requirement of something in the order of £3-4m to have simple administrative roles in place with some policy and analytical capacity. This is an area in need of attention given earlier concerns raised by Audit Scotland and the Scottish Parliament reports regarding instances of apparently ‘flawed’ police authority scrutiny, and lack of professional officer support.

37. COSLA are not clear where informed independent professional advice on policing and fire will come from to inform the local committees. This still needs to be dealt with. Amongst the options on the police side are the establishment of a national resource providing support locally or by gaining access to the resources of the SPA - with it’s Chief Executive having a duty to meet reasonable requests for support. There will be obvious additional on-costs in providing informed local arrangements.

38. *The Committee is asked to satisfy itself that these matters are addressed either on the face of the Bill or managed through agreement with the Scottish Government.*

*Riotous Assembly*

39. Under the 1824 Act police authorities have responsibility to compensate the public and businesses for damage caused by riot. While this has not been a common problem in the recent past, the disturbances of 2011 and the need for councils to secure insurance cover for high profile events mean that this is a continuing and real burden for some authorities. As the current policing role is transferring to the new national service so should the liability for policing riotous assemblies.

40. COSLA has approached the Scottish Government over this to resolve the matter, particularly as councils they have no practical or theoretical ways of actively mitigating the risk.
41. COSLA would like to see this matter addressed in this piece of primary legislation, or a formal agreement being reached with the Scottish Government that the new Police Authority would cover all the liabilities that remain with Scottish councils.

COSLA
February 2012
Committee will wish to explore with you the issues which may need to be considered in the transfer of fire and rescue staff, and potentially some associated local authority staff, from the employment of joint fire boards to the Scottish Fire and Rescue Service, or the Scottish Fire and Rescue Service Board; and whether there are any existing local variations, or employment agreements, which should be taken into account in the transfer of staff to the new service.

In relation to the questions being asked by the Local Government and Regeneration Committee the FBU would like to make the following points:

1. The need to harmonise the conditions of service of our members is and will be a huge issue for the union. At this time we are engaged with the Scottish Government and the service with fire reform and this is taking the shape of partnership working on a number of areas, the subjects that have been identified are shown below.

![Fire Reform Business Streams Diagram](image-url)
2. The FBU are working with management on all of these subjects however at this stage we have not discussed or agreed how we will settle any disagreements as we move forward. We have access to the National Joint Council for Local Authority Fire Services however these systems are more designed for individual services and not for issue that might arise with the amalgamation of 8 to 1. We will be discussing with the service in the near future what processes we will require to assist any issues. The Government have been helpful by indicating that TUPE will be used for transfer of staff and that the NJC will still be the arena for discussions on major conditions of service (pay, leave etc).

3. Statements have been made by the Minister that no change to the local agreements will be made and that these will be for the new board and Chief Fire Officer to determine in good time. This gives our members the assurances that are need in that a firefighter from Aberdeen will not be detached to Dumfries or that an officer from Strathclyde is not sent to Edinburgh to take charge of an incident on day one and not before proper discussion and agreement from the union has taken place.

4. We do think that it is reasonable for local agreements and conditions to be transferred on day one and we look for a commitment for negotiations around these matters to be taken up by the new board with a view to harmonisation threw agreement.

5. There are currently some specific variations in the provision of, and access to training that the FBU believe need to be addressed urgently. This is an early opportunity for the benefits of a national service to be realised in terms of maintaining a consistent approach to the safety of staff.

6. Duty systems and crewing arrangements vary by service as does additional responsibility allowance and continued professional development, all of these will need to be addressed by the reform team. Some may have to be done after the new service starts and some before.

I hope these points go some way to informing the committee of the unions view and would welcome the opportunity to expand on these where need.

FBU
February 2012
1. Introduction

1.1 HMICS is grateful for the opportunity to provide evidence to the Local Government and Regeneration Committee.

2. Local democracy and accountability

2.1 It is important to be clear about what is meant by terms such as accountability. In particular, it is key to delineate and capture in any new legislation the difference between:

1. A police officer giving an account to a governing body of a past event or an intended course of action (reporting)

2. A governing body calling for an account to be given by an officer (answerability)

3. A governing body calling a police officer to account - with the potential for a form of consequence or sanction (accountability)

2.2 As drafted, the Bill provides for a single seat of governance in terms of accountability (bullet point 3 above) and this is in relation to the Chief Constable’s accountability to the Scottish Policing Authority.

2.3 It is important that the Chief Constable is clearly responsible for the day to day management of the service and control of resources.

2.4 The Bill does provide the facility to call for reports and information and certainly it is likely that, as happens now, local commanders will continue to have good relationships with local stakeholders and that they will continue to provide regular updates to local bodies on policing matters.

2.5 Further the Bill sets out a series of interactions between the local commander and the local authority focused on establishing and monitoring of local policing plans. The local commander, in preparing a local plan, must have regard for the most recently approved strategic police plan and must consult locally.

2.6 Although the local authority may approve such plans, call for reports and make recommendations, the Bill provides no implications or recourse if these aren’t concluded to its satisfaction.
2.7 Locally, the proposed arrangements provide no facility to directly hold the Chief Constable to account for that local provision. This can only be achieved through the Scottish Police Authority.

2.8 Our previous report on governance and accountability\(^1\) highlighted the problems with dual seats of accountability and the requirement ultimately for national policing needs to take precedence.

2.9 Although these arrangements appear stark in their lack of local influence over policing priorities, it is important to see how the national accountability framework should continue to enable good local policing services. Below we illustrate how the proposed legislation and scrutiny framework combine to provide assurance and hopefully reassurance of local policing services.

2.10 First, the Chief Constable,

‘must designate local commanders and ensure adequate arrangements are in place for the policing of each local authority area’

In this regard the Chief Constable is directly accountable to the Scottish Police Authority.

2.11 Second, there are important external scrutiny and inspection arrangements. These include those pursuant to Best Value requirements (falling to HMICS and the Auditor General), those falling to the Auditor General to examine the economy, efficiency and effectiveness of the police service and the specific statutory responsibility upon HMICS to,

‘inspect annually on the state, efficiency and effectiveness of the Authority and the police service’

2.12 Whilst the Bill is largely silent on the working structures and relationships to manage the inherent tension between meeting local and national policing requirements, what is clear is that the Authority and the police service cannot be deemed to be efficient and effective unless they have such arrangements in place.

3. Community planning partnerships

3.1 The police service has been a strong contributor to the community planning process. It is to be expected that the focus and duty towards this legislation will now centre on the local commander.

3.2 Expectations will be high that an increasing focus on community planning will benefit local outcomes. The Bill needs clarity about how local authority arrangements relative to policing, interact with community planning structures in a clear and complementary manner.

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3.3 That said and as highlighted above, local community planning arrangements cannot be constituted in isolation from national risks, threats and need. Whilst partnerships are strongly encouraged to work together to improve local outcomes, the direction of local resources on a day to day basis must remain with the local commander whilst the full accountability for policing remains with the Chief Constable.

3.4 If expectations are realistic and the span between national ministerial policing priorities and local policing priorities is not too great, then the policing contribution to community planning partnerships should continue to be strong and effective.

3.5 However important community planning partnerships are to local outcomes, they are not accountable structures nor at present subject to any legislatively driven audit and inspection regime. We note however that there is work underway through Audit Scotland in this area.

4. Transfer of local authority staff

4.1 Clearly organisations other than HMICS, particularly staff associations, are better mandated to highlight the particular personnel concerns surrounding workforce transitioning plans. In that context whilst acknowledging and not wishing to minimise these real concerns, we shall focus on the impact of workforce plans on service delivery.

4.2 Equally we will not comment on Scottish Government policy to maintain 17,234 police officers or to avoid compulsory redundancies but our role requires us to highlight the potential impact of these policies.

4.3 Put simply, these act as constraints on delivering police reform. Their affect on police reform and potentially by extension on policing, is exacerbated when they are combined with a challenging timescale and profile of savings provided by the Comprehensive Spending Review budget settlement.

4.4 We have yet to see a clear plan for delivering police reform that matches the scale of the task with the above constraints. We have some confidence however that this work is being advanced.

4.5 That said, in the absence of such a detailed plan it is incumbent upon us to highlight risks of police reform including those to:

- service delivery
- public confidence
- staff confidence
5. Conclusion

5.1 HMICS will continue to focus upon working with all stakeholders to ensure that changes to policing in Scotland build upon its sound foundation.

5.2 Police reform provides opportunities to:

- simplify policing across Scotland
- create the best affordable service
- improve governance and accountability

5.3 HMICS would welcome the opportunity to discuss these issues with the Local Government and Regeneration Committee.

5.4 We can provide copies of our Finance Committee and Justice Committee submissions on this matter, should they be required.

HMICS
February 2012
In my response to the Scottish Government’s consultation document: Keeping Scotland Safe and Strong, I recommended that that the new Scottish police authority should continue and develop a complaints oversight capability, which is currently exercised by boards/authorities through a sub committee or working group of that body.

This is addressed at Section 61 of the Bill which places a statutory duty on the Authority and chief constable to maintain suitable arrangements for the handling of relevant complaints and seek the views of others as to what those arrangements should be. This will be significant in terms of the relation of the Authority with local authorities and I would expect them to be consulted in relation to what these arrangements are.

This is all the more significant as I note that under the heading local policing (Chapter 7 Para’s 45 - 48) the local authority may monitor and provide feedback to the local commander in particular in relation to its views on any matter in relation to the policing of its area and to make recommendations for improvement of the policing of the area. As the local commander is specifically tasked with providing the local authority with statistical information on complaints made about the police in relation to the area, I believe that this places a duty on the local authority to hold the local commander to account in this respect.

I very much welcome this as part of the local authority role in policing. Since my appointment as commissioner I have been working in partnership with the Scottish police service and with police boards/authorities to secure continuous improvement and modernisation of police complaint handling arrangements. This has led to two significant pieces of work.

Working with ACPOS, a new six stage police complaints process with significant emphasis on local complaint handling has been developed. Over time I expect to see most police complaints dealt with at a local policing level. Full details of the model and what local police complaint handling is about are to be found in the Statutory Guidance I issued to relevant bodies including police authorities and boards in march last year.

http://www.pcc-scotland.org/quality_assurance/guidance

My 2011 report “Holding to Account”\(^1\), introduces common minimum standards for police boards and authorities scrutinising and monitoring complaints, while allowing local flexibility in response to the different circumstances which exist across the country. It provides a checklist for existing board members and should act a reference document for the formation of the new Scottish police authority and for
local authorities in carrying out an oversight of police complaints both national and at a local level.

1http://www.pcc-scotland.org/quality_assurance/2011reports/holding_to_account

I do not believe that a single national authority exercising its role in relation to police complaints will be able to do without the assistance of local authorities exercising a similar role at the local policing level. I would expect to see strong links developed between the local authority and the national authority’s ‘professional Standards’ committee. Should the local authority have concerns in relation to specific complaints or complaint handling in general it should refer these to the national authority. I would expect the Authority in normal circumstances to be the conduit of these concerns to PIRC.

Professor John McNeill
Police Complaints Commissioner for Scotland
9 February 2012
LOCAL GOVERNMENT AND REGENERATION COMMITTEE
POLICE AND FIRE REFORM (SCOTLAND) BILL
SUBMISSION FROM PROFESSOR NICHOLAS FYFE, DIRECTOR, SCOTTISH INSTITUTE FOR POLICING RESEARCH & UNIVERSITY OF DUNDEE

Introduction

This written evidence is provided in my capacity as Director of The Scottish Institute for Policing Research (SIPR), a strategic collaboration between twelve of Scotland’s universities and the Scottish police service, supported by investment from the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Funding Council and the participating universities. SIPR’s key aims are:

- To undertake high quality, independent and relevant research;
- To support knowledge exchange between researchers and practitioners and improves the evidence base for policing policy and practice;
- To expand and develop the research capacity in Scotland’s universities and the police service.

In this written evidence I highlight three areas: the importance of the Bill in terms of reshaping the landscape of police governance and accountability; using a set of democratic criteria to assess the implications for local government of the proposals around police governance; and identifying some of the challenges for local government in relation to their engagement with local policing.

Context: reshaping the landscape of police governance and local accountability in Scotland

The proposals set out in the Bill will bring about a radical restructuring in relation to existing structures of police governance and accountability which has significant implications for local government. There are two broad points I want to make in relation to this:

- **Arrangements for police governance and accountability in democratic societies have deep symbolic importance:** There is a unique relationship between the police and institutions of democracy. Give the police have formidable powers to preserve order, they way in which a society regulates and controls the powers of the police is a crucial indicator of the nature of the political and social order. The arrangements for governance and accountability are expected to represent and foster a legitimating philosophy of ‘policing by consent’, safeguard the political neutrality of the office of constable, and the operational independence of the chief constable. The Bill’s proposals recognise this. There is, for example, a requirement on local police commanders to work with local authorities to produce local policing plans and there is clarity around the fact that Scottish Ministers may not give any direction in respect of specific operations carried out by the Police Service.
• **Police governance in democratic societies should allow choices over priorities and styles of policing which reflect the wishes of citizens as well as professional experts:** Democratic societies have developed very different institutional means for realising the goal of involving citizens and professional experts in decisions about policing policy while also recognising the need to balance community opinion with the protection of minority rights. In the USA there is a strong link between the accountability of policing and the local electoral process with local police chiefs answerable to the mayor. With the introduction of elected Police and Crime Commissioners in England and Wales later this year, this type of arrangement will soon to be a feature of the police governance landscape in other areas of the UK. In other countries (including France and the Netherlands) the influence of electoral politics is restricted partly because of concerns about the threats to minority interests. In Northern Ireland, the Police Board comprises both elected and appointed members (the latter having relevant professional expertise) but there is an elected majority which Lord Patten argued strongly was essential if the new Board was to command respect and credibility.

In Scotland, the so-called tripartite system of police governance established by the Police (Scotland) Act 1967 has been the way of balancing the different interests of national and local government and of the police over the last forty five years. The approach outlined in the Bill significantly shifts the balance of power towards the professional expertise of members of the Scottish Police Authority, the Chief Constable and local commanders and away from local government. In relation to local government involvement, the Government's position outlined in the Policy Memorandum is that the Bill's proposals offer the opportunity to increase the number of local councillors participating in policing matters at a local level. This emphasis on the quantity of locally elected representatives involved should not however obscure the significant changes to the more qualitative dimensions of local engagement. Stripped of powers in relation to local police budgets and the appointment of local chief officers, local councillors are left with having to approve and monitor the local policing plans drawn up by the local police commander.

Against this background, the next sections explore in more detail the ways in which the Bill raises important questions about the nature and scope of local government involvement in shaping the delivery of policing in Scotland.

**The governance of policing: issues and implications for local government**

The complex relationship between accountability and democratic policing has prompted policing scholars to identify a set of democratic criteria that might be used to assess police governance¹. These criteria relate to equity, service delivery, responsiveness, the distribution of power, information and participation. In the table below each criterion is used to identify a set of issues which have important implications for local government within the new arrangement for police governance in Scotland.

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**Engaging with ‘local policing’: key questions for local government**

The proposals in the Bill around local policing are to be welcomed. It has long been recognised by researchers that much crime and disorder is rooted in the characteristics of localities and police effectiveness in dealing with such problems is related strongly to levels of trust, cooperation and legitimacy at a local level. Furthermore, SIPR’s review of the evidence of the impact of police mergers in other
countries highlighted issues around declining citizen satisfaction with local policing in the initial period following force amalgamations. By placing obligations on the chief constable to make ‘adequate arrangements’ for local policing and on local commanders to ensure that local policing is delivered in close consultation with local authorities, there is the basis for developing a strong framework within which local policing can develop. Nevertheless, there are several areas which are of relevance to local government where there are important questions as to how local policing will develop within the new Police Service for Scotland.

- **What is ‘local policing’?** The reconfiguration of policing associated with the reform programme means that there is now close scrutiny of how different aspects of policing are delivered, from specialist operations and training to tackling crime and partnership activity. As a result some activities and assets may be based nationally or at a regional level rather than locally. Against this background, it is important to achieve some clarity around what constitute ‘local policing’ matters and what are regional or national issues. To take a simple example: while providing a visible and accessible local presence and community engagement are clearly local policing issues, is providing an armed response, tackling drug dealing or searching for missing people, matters for local policing or the responsibility of more specialist regional or national units? Without some definitional clarity around what is meant by ‘local policing’, local authorities will be left unsure as to what they can expect in terms of resourcing local policing and what should be included in a local policing plan.

- **How will levels of local resources be determined?** Understanding what local policing is for is important because of the likely tensions between ‘national’ and ‘local’ around resources and assets made available at a local level. The Bill makes clear that this is a matter for the Chief Constable to ensure there are ‘adequate arrangements in place for the policing of each local authority’ (45(1)) but if there are disputes over the level of resources available at a local level, how will these be resolved and within what forum? A related issue is the determination of the rank of officer designated as a local commander. It is likely that this will vary across Scotland depending on the nature and complexity of the policing requirements of different areas but it may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank which may have implications in negotiations for resources;

- **How will local police plans be developed and evaluated?** the Bill makes clear the requirement on a local commander to submit a local police plan to the relevant local authority for approval. Given that such a plan must have regard to the national strategic police plan as well as priorities identified by local community planning there are areas of potential tension around the balance between a ‘bottom up’ and a ‘top down’ approach to setting priorities and objectives. Similar tensions may also exist in relation to performance measurement and performance reporting. For example, to what extent will national reporting requirements be allowed to shape local performance measurement?
- **How will the local authority execute its role in local policing?** The Bill clearly proposes that the local authority play a key role in setting priorities and objectives in consultation with the local commander. In order to execute this role effectively it is important that local authorities develop effective structures for engagement with their local commander and the capacity and capability to monitor and scrutinise local policing issues in ways which do not rely exclusively on information provided by the local police. In relation to structure, the Policy Memorandum makes clear that it is for local authorities to determine the most appropriate local mechanism for exercising their role. Given that there already exist a number of local forums in which policing issues are discussed with representatives of local authorities (for example, Community Planning Partnerships, Community Safety Partnerships and Community Councils) the challenge will be to ensure that there is not duplication of effort nor the creation of a confusing and cluttered landscape of different settings where police and local authorities interact. In relation to issues of capacity and capability, local authorities need to develop the ability to engage with their local communities in order to better understand their policing needs and concerns over crime and disorder so that these can be included in discussions about priorities and objectives along side information provided by the local police.

- **What happens to local Community Policing initiatives?** there has been a significant revival of interest in community policing in Scotland over the last five years, prompted by a combination of the publication of the ACPOS Public Reassurance Strategy (2007), the Scottish Government’s Community Policing Engagement Principles (2009) and the Scottish Parliament’s Justice Committee report into community policing (2009). As a result, most police forces have made significant changes to the way community policing is organised, resourced and delivered. SIPR has undertaken a programme of research evaluating the operation of these different approaches so that there is now an evidence base that provides insights into the strengths and weaknesses of different community policing activity. What happens to the diversity of community policing arrangements within a single police service will be an important test of the relationships between the Chief Constable, Scottish Police Authority, local commanders and local authorities. A single service clearly creates opportunities to share ‘good practice’ but there may also be local concerns about any attempts to impose a ‘top down’ approach to community policing.

**Professor Nicholas Fyfe**

10 February 2012
Purpose of the Report

On the 26 January 2012 SCSN were invited to provide written and oral evidence to the Local Government and Regeneration Committee of the Scottish Parliament in relation to the implications of the Police and Fire Reform (Scotland) Bill on Community Safety Partnerships.

Introduction

SCSN is a membership organisation set up to represent the 32 community safety partnerships (CSP) across Scotland. As well as acting as a network supporting CSP to meet one another for mutual support and share practice, the staff team also publish policy papers, maintain a database of good practice, and develop relevant training opportunities for practitioners. Working with local government, police and fire services some of our recent work includes facilitating a practice sharing event attended by the Minister for Community Safety, hosting the 4th Community Safety Convention and National Community Safety Awards. We are expecting 170 attendees at the Convention and received 68 applications for the Awards from 27 Local Authority areas. In addition, we are often invited to represent the views of the community safety sector at a national level to influence policy development.

We regularly host facilitated discussion about topics relevant to our membership and in March 2011 we hosted a consultation as part of the Police and Fire Reform (Scotland) Bill initial consultation. Because the views of our membership in relation to the proposals varied, we chose not to submit an SCSN response, preferring to leave it to local CSP.

However, we continue to have a role to support our membership in the debate and to support them to influence how Police and Fire Reform plays out locally. In fact, at the National Community Safety Convention – Building on Success, Preparing for the Future on Tuesday 21 February 2012, Police and Fire Reform will be discussed as a plenary session and further complimented with a workshop on the pathfinder projects. Feedback from this event will influence how we continue to support our membership to engage. We will be able to give you initial feedback from this event as part of the oral presentation on the afternoon of the 21 February.
Main Report

In relation to the publication of the Bill, to date it has only been possible to undertake informal discussions but Network staff have met with about 24 of the 32 CSP in recent weeks. Police and Fire Reform has tended not to have been raised in these discussions other than it being clear that CSP are aware of the reform plans and that there is engagement with local police and fire contacts. This absence of specific expressions, either in support of proposals or against, raises concerns about the extent that CSP are fully engaged in the consultation process.

Uncertainty clearly exists about the exact nature of local representation and the ‘status’ of the local area commander in whatever structure is agreed on. Concern has been raised regarding having an ‘appropriate’ level of representation at CSP and that the ‘senior officer’ of the area will require to have a sufficient degree of delegated authority to make decisions and the ability to task and deliver on initiatives. The main concern for local elected members will be the retention of locally responsive units which are sufficiently resourced to serve their communities.

Concern also clearly exists about ‘command level’ in more rural areas, in particular in the north and islands, in relation to attendance at and management of major incidents. This has significant implications for public and partner reassurance. On a more detailed basis, what arrangements are made for cover in the absence of a local commander and how competing demands will be reconciled?

Whilst the Bill is available for consideration, it lacks detail on a number of significant issues and CSP are keen on obtaining more detail of the practical implications of the proposed changes and the likely impact on the ground at a local level.

A significant concern is the independence and accountability of the national boards and the separation between Ministers, the national board and operational delivery. The proposals currently state that members of the Scottish Police Authority (SPA) and the Scottish Fire and Rescue Service Board (SFRS) would be appointed and funded by Ministers, its strategic objectives and its plans and budgetary decisions approved by Ministers. In addition, and Ministers retain the “power of direction”, albeit as a last resort. This suggests that the SPA and SFRS, at least on the basis set out in the Bill, appears on paper to be less empowered than existing Boards which have requisition powers in terms of budget and whose decisions cannot be overturned by constituent councils. This begs the question of how empowered and accountable the SPA and SFRS would be. Further clarification of where accountability will lie, how this separation will be protected and what the consequences are for our joint regional and local arrangements would be welcome and should be agreed with local partners.

The composition of the SPA and the SFRS is recommended as having between 7 and 11 members but, with 32 local authorities and related local partners, both in community planning partnerships as well as community safety partnerships, this may not be sufficient to allow for appropriate representation. The link between national governance and local accountability needs to be transparent and fit for purpose. While the Bill does not set out to create 32 Police Divisions and 32 Fire Brigades members require clarity on how and what is being devolved to a local level and what
geographical context these local levels will take i.e. where services will be shared across existing Local Authorities.

The main contribution that CSP feel that they can make is a knowledge of the local communities that they operate within as well as their interest and commitment to efficient and effective community safety at that level. CSP suggest that there is a need not only to continue to support partnership working but also to ensure engagement with communities and elected members. For a national police force (and fire service) to be seen as accountable to local communities there must be strong local links with local communities, included in this is a need for local information sharing arrangements to be sustained/protected.

Local partnership initiatives and priorities will continue to require adequate staffing and budgetary resources. It is not anticipated that the existing budgets are completely devolved as there is clearly a need to ensure the delivery of national priorities and services.

However, some concerns have been expressed about additional police resources currently funded through CSP and local authorities being included in reform totals without adequate detail or explanation being given in relation to possible continued funding at a time when local budgets are being reduced considerably. Furthermore, the position of specialist officers such as to school liaison officers and neighbourhood officers remains unclear. The question asked is how will CSP ensure that they are still getting what they agreed to pay for?

It is important that existing partnership working with local authorities including Community Planning Partnerships, Child Protection, Drugs and Alcohol Forum, the Community Justice Authority and many others which are all well established and have begun making significant changes within local communities, are maintained. The Bill refers to annual plans being developed with community planning partnerships and, although CSP are part of the community planning process, there is a need to be more explicit about the how the annual policing plan relates to existing strategic assessments and single outcome agreements. At present CSP develop partnership strategic assessments (through a nationally agreed model) to highlight police, fire and partnership priorities, which in turn are inform local outcome agreements entered into as part of the Single Outcome Agreements. Whilst this work is often led by the police there requires a commitment to ensure that these are produced and owned by all partners, and reflect/add value to partner agencies national targets. Further consideration and consultation could at this time be given to the suggestion that the Bill includes a duty on community planning partners to support community safety and the production of local strategic assessments and plans.
Conclusions

Timescales for consideration of the Bill and agreement on the range of provisions is extremely tight and the overwhelming feeling is that there is little real consultation. Without adequate time being provided for the proper consideration of the proposals, there is a real danger that CSP will not be properly engaged with. There is a concern that this could lead to a lack of ownership in the change process and a serious disconnect from local community planning processes. Whilst it is understood that the initial timetable seeks to address the ‘business’ transfer and that the full impact of the reform will take up to 2016, Network members wish to ensure that whatever is designed for implementation has been properly thought through and that they have had ample opportunity to express a view and, where necessary, influence whatever changes are being introduced.

Jacqui Doig
SCSN Manager

Donald Urquhart
SCSN Chair

10 February 2012
LOCAL GOVERNMENT AND REGENERATION COMMITTEE

POLICE AND FIRE REFORM (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH FIRE CONVENERS FORUM

The Committee has specifically asked the Forum to comment on the following areas:-

- Proposed structures of local democracy and accountability between the Scottish fire and Rescue Service and local authorities
- Implications for the local resourcing of fire and rescue services as a result of the establishment of the Scottish Fire and Rescue Service.
- The relationship between local authorities and the new Scottish Fire and Rescue Board
- Issues relating to the transfer of fire and rescue service staff

Proposed structures of local democracy and accountability

1. In addition to establishing the single national service governed by the Scottish Fire and Rescue Board, the Bill seeks to establish a formal statutory relationship between the service and each of the 32 local authorities. The aim of increasing local accountability and engagement with elected members at local level is welcomed however, there are practical considerations that need to be carefully worked through.

2. There is a broad duty on the SFRS to ensure adequate local Fire and Rescue service provision but national and local views on the extent and detailed application of that provision could differ. The Bill states that the SFRS must submit a plan prepared for approval to the local authority and if approved the SFRS must publish it. As it stands, the Bill offers no recourse for any dispute arising between the national service and the local authority, which could seriously hamper the ability of the service to engage effectively at a local level. We need to be clear on whether the service is a national service delivered locally or 32 local services delivered within the context of a national framework. It cannot be both.

3. Local scrutiny and engagement arrangements are currently being piloted to test a range of mechanisms e.g. blue light committees through which elected members may play a direct and formal role in shaping local priorities and scrutinising performance however we need to guard against drawing the FRS away from the multi-agency approach which has been proven to work. In terms of Community Planning and Engagement, there is a need to remove duplication, build capacity and integrate services.

4. The Scottish Government is committed to strengthening community planning arrangements and that is also reflected in the Bill. Care needs to be taken if the current review of the SOA and CPP arrangements provide a more robust
legal duty and partners are bound by joint plans and performance as a result. The need to separate out police and fire through their own stand alone committees should at least be examined to avoid police and fire working towards strategic objectives that sit outwith CPP priorities, duplication of activity and an unsustainable resource commitment for local authorities in the support of “blue light” committees as well as renewing a commitment to CPP and SOA arrangements.

Implications for the local resourcing of fire and rescue services because of the establishment of the Scottish Fire and Rescue Service

5. The reality of being able to shape priorities locally and engage more effectively with the service at local authority level is obviously influenced by the extent to which budget decisions are driven nationally or locally. In the context of a single national service, it must be assumed that the budget is held centrally and allocated based on the priorities established within the national strategic plan.

6. It is not clear what level of delegated budgetary control is envisaged and whether delegated responsibility will be provided to the local senior officer for the management of a local budget. It is not clear what recourse the local authority has should that allocation not be considered sufficient for its needs or indeed does not match the priorities for the area as determined through the single outcome agreement or the local service plan which must be approved by the local authority.

The relationship between the local authorities and the Scottish Fire and Rescue Services Board

7. It is not clear from the Bill provision what arrangements will be in place to formalise the relationship between local authorities and the national Board or how local committees can formally raise matters of concern. As referenced previously, in the context of the development of a 3 year national strategic plan prepared on the basis of a national integrated risk management plan and developed in the context of a national budget set for the SFRS, it is entirely possible that conflict could arise if any given local authority does not feel that the local plan is sufficient for its purposes in terms of resource allocation, engagement in local initiatives or indeed the role of the local senior officer.

8. There is a broad duty on the SFRS to ensure adequate local service provision but national and local views on the extent and detailed application of that provision could differ.

Issues relating to the transfer of fire and rescue service staff

9. It is welcome that the SG commits to all staff directly employed by the 8 services and relevant staff employed by the unitary authorities transferring on the day of establishment of the new service with a commitment to retaining their terms and conditions on transfer. Ministers have publicly made a
commitment to no compulsory redundancies, which is a welcome commitment for our staff. However, the assumptions around costs and savings as set out in the Financial Memorandum are challenged by a range of stakeholders and the real financial impact of this commitment is not considered to have been accurately reflected.

10. There will be a number of local variations to national conditions (all groups) and these will be “protected” under the Transfer commitment and carry forward. Where national frameworks exist each of the existing 8 will have negotiated locally on content and there may be wording differences as a minimum and probably policy differences. It is of real benefit to obviously seek to harmonise critical policies at Day 1 but there will be many other areas of variation e.g. shift systems, additional allowances, public holidays and so on where negotiation may take some time to achieve a satisfactory position. This could impact on costs and the timescales associated with achieving a standardised employment framework for the new SFRS.

PLEASE NOTE THAT THE CONVENER OF FIFE POLICE, FIRE AND SAFETY COMMITTEE DOES NOT ENDORSE THIS SUBMISSION

Scottish Fire Conveners Forum
February 2012
1. Background

The ‘Police and Fire & Rescue (Scotland) Bill’ was introduced to the Scottish Parliament on 16 January 2012. The Justice Committee was designated as Lead Committee to oversee the Bill process and the Local Government and Regeneration Committee was designated as the Secondary Committee. While the Bill considers issues around both Police and Fire & Rescue Services, this submission deals only with issues pertaining to the Police and for ease of reference follows the Bill Chapters and headings with relevant comment immediately underneath.

2. Chapter 1 (including Schedule 1)

The principle of the SPA having the sufficiency of correct skills, experience and expertise to collectively govern and hold the Chief Constable to account is supported. However the Bill content does not remove a number of continuing concerns:

- Section 2(3) indicates the SPA must carry out its functions in a way which is ‘proportionate, accountable and transparent and which is consistent with any principle of good governance….’. At this point there is no specific detail in regard to practical functionality or how it will conduct business. Presumably this means that the SPA will (in general) meet in public as police authorities do at present? It is expected that the detail of Standing Orders and Terms of Reference for committees etc will be agreed once the relevant appointments are made towards the end of 2012. The Scottish Government has responsibility for developing the workstream which will provide and recommend, to the Authority designate at this time, a framework for structure and functionality. Work is ongoing by them to develop a framework for structure and functionality and police authorities look forward to contributing to this workstream in due course.

- In general terms the Bill structures the SPA as an NDPB. We cannot support this principle. The Authority should have a specific legal identity where it retains financial functions in terms of borrowing capability, reserves and carry forward facilities. The necessity of being able to hold, and utilise, reserves to smooth out unexpected operational demand is essential and well proven by current police authorities. In particular, the SPA simply must be able to recover VAT.

- Schedule 1, section 2(1) indicates an SPA membership of 7 – 11 members. We believe that this possible range of members is too low, and in particular consider that a membership range of 13 – 18 members would be more appropriate arising from past experience within existing police authorities. Unfortunately, with the total absence of detail as to how the actual SPA business will be structured and
conducted, this effectively introduces an element of guesswork into the process. In terms of appointments to the Authority, the issue of appropriate levels of vetting required by members and staff has also yet to be considered.

- The Chief Constable has responsibility under sections 17(1), 17(2)(e) and 45 to ensure ‘local policing arrangements’ and relevant oversight of such responsibilities rests with the Authority. Given this oversight duty we believe that a minimum of 50% of Authority members should be drawn from suitably experienced locally elected representatives.

- Schedule 1, section 10 introduces the establishment of committees and sub-committees, and also the concept of membership of such committees by persons who are ‘not members of the Authority’. While non-members do not possess voting rights, we are against this particular principle. It serves to reinforce the current lack of detail as to how the Authority will actually conduct its business. For example, what levels of members and non-members are expected to constitute the different committees and sub-committees, and indeed, what numbers would constitute a quorum? Could it be that 1 member and a number of non-members could provide competency and quorum to a committee? It is unclear as to whom the non-members are there to represent, or as to whom, and how, they would be accountable.

- Section 5, indicates that the Authority must comply with any direction (general or specific) given by Scottish Ministers. While section 5(2) seems to separate matters of operational policing and enshrine the independence of the Chief Constable in such matters, we do not agree with this overarching power being afforded to Ministers. If one aim of the Bill is to keep policing separate from Ministerial control, then the general or specific power of direction does not provide this essential separation. Such direction should, in principle, only be capable of enactment subsequent to relevant necessity arising from inspection processes, for example, by HMICS, as at section 78 of the Bill.

Chapter 2 - Police Service of Scotland

- Section 7(a) indicates that the Authority must appoint the Chief Constable. Recent papers to the Scottish Policing Board indicated that different arrangements could be put in place whereby an Authority Chair designate and a panel may appoint the first Chief Constable. Subsequent discussion considered alternative proposals to effect as early an appointment as possible. In principle, should any future, workable proposals be put forward with the full support of all relevant parties, then we would be, generally, supportive of the process. That would of course be subject to any such alternative proposals being considered competent in terms of the Bill process and all relevant legislation.
Chapter 3 - Forensic Services

- Section 31 sets out provision of forensic services by the Authority. While agreeing with the principle, no supporting detail is available at this time which makes it difficult to provide meaningful comment. In particular, it is unclear as to the practical implementation of procedures necessary for the Authority to ensure meaningful scrutiny of such services.

Chapter 4 - Principles, Priorities, Objectives and Plans

- Section 34 introduces a duty on the Authority to make such arrangements as are necessary to obtain the views of relevant persons to assist in preparing a Strategic Police Plan. Section 35 sets out arrangements for Annual Police Plans and 36 sets out arrangements between the Authority and Chief Constable in this regard. These are new duties placed on a police authority and will require further detail in regard to how such arrangements will be effected in practice.

Chapter 6 - Annual Reports Accounts, Audit and Examination

- Section 40 introduces a duty on the Authority to prepare and publish an Annual Report assessing the performance of both the Authority and the Police Service. Again, this is a new duty placed on a police authority. A workstream has commenced to consider what an appropriate performance regime might look like in respect of a single force and identify what performance indicators and outcomes would be necessary. While the Scottish Policing Performance Framework is utilised at present by police authorities, in conjunction with other measures, to assist in performance reporting by Chief Constables, we are unable at this time to indicate what a future performance model will look like.

Chapter 7 - Local Policing

[Note:- Before commenting on specific sections of the Bill, there are a number of general principles regarding the implementation of new local policing arrangements to consider. The SPA will have limited scope to address local accountability and scrutiny, compared to present arrangements and concerns have been expressed that the proposed new arrangements may simply become ‘talking shops’ without any real powers, which would result in a serious diminution of local accountability over policing. The role and powers of the proposed new local arrangements therefore need to be clearly defined to ensure that they have real impact, and can deliver effective local accountability. There are four key points:

1. clear recognition that the role of the local arrangements is to deliver local accountability and scrutiny of all policing activities provided in the local area, and this role complements the national scrutiny and accountability by the national authority (this point is particularly important given the limited number of councillors proposed for the national authority);
2. creating an effective mechanism for resolving disputes between the local body and the local commander, should they arise;
3. providing greater clarity on the balance between operational independence and scope for scrutiny;]
4 creation of effective mechanisms to deal with issues over the distribution of resources.]

- Section 46 sets out arrangements for the ‘local authority role’ in policing. Section 46(3) details what a local police commander must provide to a local authority and states ‘(3) a local commander must provide to the local authority such – (c) other information about the policing of its area, as the local authority may reasonably require.’ There is a similar provision at section 81(3) in respect of a reasonable requirement by the Authority on the Chief Constable to provide reports or other information. However, sub-sections within section 81 then detail a process to define and arbitrate upon what ‘may reasonably require’ means in practice. There is a need to consider a suitable process of arbitration at a local policing level in terms of section 46(3). At present HMICS can provide professional advice to all police authorities should they so request it. While not explicit within the Bill, it begs the question as to whether this provision of professional advice is likely to be extended to local authorities, should they so request it, in terms of their ‘local policing arrangements’?

- Section 48 sets out arrangements for Local Police Plans (LPP) and 48(1) and (4) indicates that the local authority must ‘approve’ an LPP prior to it being published. While appreciative of the principle of enhanced local accountability, the current lack of practical detail highlights concerns as to what procedures are available if ‘approval’ is not given? For effective scrutiny and accountability the relationship with the local commander must be positive and constructive while allowing scope for challenge. A point which should be clearly reflected in legislation.

- The above two bullet points are relative to general concerns around local policing. It is unclear as to what formal links and procedures will exist between the local policing areas and the national Authority. While individual local authorities may monitor policing performance within their own areas, how will the Authority provide overall, meaningful scrutiny in terms of its overall accountability for ensuring delivery of all local policing arrangements? All of this is closely linked to resource allocation to local commanders which will (ultimately) determine what policing services local authorities will receive, and what remedies might exist should local authorities consider that they have not received an equitable allocation?

- At paragraph 184 of the Financial memorandum, COSLA estimated a joint cost of £3m to £4m for local authorities to engage with local policing and Fire and Rescue services. However, this paragraph also indicates a believed, overall cost-neutral scenario will ensue given the savings occurring from the dissolution of current arrangements for joint police and Fire and Rescue Boards and unitary authorities. However, as the current funding available to local authorities in respect of these arrangements will cease on their dissolution, it appears more likely that local authorities will be in an overall net-loss position by losing funding yet having to support the new, incoming local arrangements? These new arrangements will carry fixed costs regarding meetings and professional support (for effective scrutiny) and it will be essential, for them to be effective, that funding is provided to local authorities to meet such requirements. Similarly, some police authorities run local schemes such as Diversity Lay Advisers and clarification is
required as to how these successful schemes will continue to be resourced in the future? There is also the risk of losing expertise and specialist knowledge should staff be transferred to the new Authority requiring replacement at further additional cost. While understanding that various workstreams and projects are currently being initiated in regard to all aspects of a single police force, no detail exists to presently understand what local authority arrangements will ultimately look like. This is an area of overall risk to ensure meaningful democratic accountability.

Chapter 8 - Governance and Administration of Police

- Section 49 refers to ‘regulations’ which will require to be made regarding the governance, administration and conditions of service of constables and cadets. While noting the requirement for regulations to be made, there is concern regarding the substantial volume to be produced within such a short timescale.

Chapter 9 - Police Appeals Tribunals (including Schedule 3)

[Note:- The Police (S) Act 1967, Schedule 3 currently sets out two different arrangements for Police Appeals Tribunals in respect of ‘senior officers’ (those appointed to Chief Officer rank) and those constables of Chief Superintendent rank and below. Membership of Tribunals, as proposed by the Bill, is different from either of the arrangements existing at present. It is understood that the Police Investigations and Review Commissioner (PIRC) will have responsibility for the future investigation of complaints against ‘senior officers’ in the single force, but with the lack of detail pertaining to future regulations yet to be made under section 49 of the Bill, it is not clear at this time how the two current sets of arrangements are going to be assimilated in any practical sense for future application across all ranks.]

- Section 57 sets out the detail for Police Appeals Tribunals and Schedule 3, section 1(3)(a) and (b) introduces new arrangements for members. Specifically that all members must be practising solicitors or advocates in Scotland. We cannot support that principle and would seek membership to consist of three members, The Chair to be held by member from a list nominated by the Lord President and supported by a former Chief Constable and a retired constable of appropriate rank. Previous Tribunal hearings have resulted in expertise being retained by such members in terms of regulations, police procedures and practice with past decisions, in effect, providing a background of case law.

- Section 58(2) intimates that either party may require that the representations (to the Tribunal) are to be made by way of oral hearing. We cannot support that principle. It does not seem fit and proper that either party can dictate to a Tribunal in what manner it will receive representation. It should be incumbent upon the Tribunal to determine the manner in which it will receive representation.

Chapter 10 - Complaints and Investigations

- Section 61 introduces new arrangements in respect of complaints and investigations. While supportive of the principle of the new arrangements and the
introduction of a PIRC we are aware that further work is presently ongoing to
develop the arrangements.

- Section 63(e) relates to functions imposed on the Commissioner under section 49
  of the Police & Fire Reform (Scotland) Act 2012 (asp 00) in relation to procedures
  for dealing with constables whose standard of behaviour or performance in
  unsatisfactory. It is unclear what this will refer to as none of the relevant
  regulations to be issued under section 49 have been promulgated.

- Again, the lack of detail at present makes it unclear as to the practicalities as to
  how the Authority will maintain suitable arrangements for the handling of
  complaints at both local and national levels. This is an area of concern given the
  significant amount of work presently undertaken by police authorities in respect of
  the monitoring of complaints under current arrangements, notwithstanding how a
  small, centralised Authority will cope with the enhanced complaints functions
  being developed in accordance with the Bill at section 61.

Chapter 16 - Independent Custody Visiting

- Sections 90 and 91 introduces the purpose and arrangements for Independent
  Custody Visiting. While fully supportive of this becoming a statutory obligation in
  Scotland, there is no detail available as to how a small, centralised Authority will
  undertake the practical recruitment, training, management and co-ordination of
  Custody Visiting as currently exists across Scotland. The earlier consultation
  indicated a willingness to build upon ‘existing skills and experience’ and further
  information is currently awaited as to how this will be facilitated in practice in the
  future.

Schedule 4 - Transfer of constables, staff and property etc.

- Schedule 4, section 10 identifies what individuals will be regarded as ‘police
  employees’ for the Authority, and section 10(3) specifically notes that the SPA will
determine whether or not a police employee is to be a member of staff under the
control and direction of the Chief Constable, or under the control and direction of
the Authority. At this time there is no information available as to when such
decisions may be taken, or to otherwise indicate the numbers, roles or functions
of any staff under the control and direction of the Authority.
3. Conclusion

In setting out the general powers of the SPA within the Bill, it is clearly limited in function and legal identity in comparison to the police authorities which it replaces. To fully reflect the tripartite safeguards currently enacted in legislation the Authority must, as an underlying principle, be wholly separated from government by virtue of having a stand-alone legal identity and not merely exist as a governmental, arms length body. The proposed lack of treasury function, ability to carry-forward reserve funding, constraints on borrowing capabilities, potential inability to recover VAT and being subject to general or specific Ministerial direction clearly do not achieve the essential separation from Scottish Ministers and the Authority will therefore remain too closely linked to government.

There are a number of high-level principles within the Bill that many will support. However the Bill is, in essence, merely enabling legislation. The concern at this time is the complete lack of practical detail as to how the proposed new Authority will actually function, in terms of structure and staff, and how it will practically conduct its business. With organisational and operational detail for the Authority to be considered and agreed upon at a later date in conjunction with a designate Chief Constable and Authority members, the Authority has the potential to be an entirely different entity from that of police authorities as they are known and understood at present.

While understanding that a number of workstreams and projects are commencing to determine functional and operational details regarding the Police Service and Authority, there is real concern in regard to the extremely short timescale involved. This is particularly relevant in regard to achieving suitable arrangements around local policing and meaningful local democratic accountability. The Police Reform Sub-Group has a role in monitoring the progress of the various workstreams and efforts will be directed through this sub-group on an ongoing basis to alleviate the concerns and issues raised within this response.

Scottish Police Authorities Conveners Forum

February 2012
Police and Fire Reform (Scotland) Bill

I refer to the above and on behalf of the Scottish Police Federation (SPF) thank you for the opportunity to provide comment and give evidence to your Committee.

The SPF represents over 98% of all Scottish Police Officers from the rank of Constable to Chief Inspector. We are concerned that the Bill proposes changes to accountability and governance which could affect operational independence and amount to inappropriate political direction. What follows is a summary of our concerns and observations on key elements of the Bill;

Part 1 - Police Reform

Chapter 1 – The Scottish Police Authority

S5(2)  In addition to the constraints outlined in the Bill the SPF wishes to ensure that neither Scottish Ministers nor the Scottish Police Authority (SPA) can give direction on any operation, not just being carried out by the Police Service as stated in the Bill, but on any specific or class of operation which is or might be carried out by the Police Service.

There is no reference in the Bill to any requirement for engagement between the SPA, local authorities and the public. The SPF believes this has the potential to create a disconnection and may harm local policing.

Chapter 2 – The Police Service of Scotland

S17(2)(c)  The Chief Constable should prepare the strategic plan not merely be 'involved' in its preparation.

S17(4) & (5)  We believe this impinges on operational independence and should simply read, 'The Chief Constable must seek to ensure that the policing of Scotland is done with due regard for the law'.

Chapter 3 – Forensic Services

The SPF is concerned about the quality of service and costs incurred (reputational and actual) by the police if forensic services are not delivered properly and timeously. To that end it is our view the operational side of the business (gathering of evidence)
should be under the control and direction of the Chief Constable with the analysis side a matter for the new forensic service body. It should be noted the criticism of forensic services following the McKie inquiry was not as a consequence of the Chief Constable having this authority.

Staff in this area of policing have been already subject to great change with the creation of the Scottish Police Services Authority and their subsequent transfer to its direction and control. Despite best intentions, this has seen a poorer and more costly service being delivered with significant and unnecessary levels of bureaucracy created.

Chapter 4 – Principles, Priorities, Objectives and Plans
S34(1) & 36 As previously stated it is the view of the SPF, the Chief Constable should be responsible for the preparation of the strategic plan.

The SPF believes there must be a connection between the local policing plans and the strategic and annual plans referred to in order to ensure that local plans are informed by their content.

Chapter 6 – Annual Reports, Accounts, Audit and Examination
S48 Please refer to our comment re S17(2)(c).

Chapter 7 – Local Policing
Local policing is delivered well and in a variety of different ways across Scotland. Delivery methods reflect the needs of communities and have resulted in exceptional levels of satisfaction and confidence in the police service. Whilst record lows in crime and highs in detection rates are a part of this, we believe it is the day to day interaction between officers and the public which is the greatest contributory factor in this regard. It is therefore our belief that nothing should be created which could damage these significant achievements.

S46 The SPF believes that unless some definition is created the local authority role in policing could be subject to thirty two different interpretations and potentially place an undue burden on local commanders. Not doing so could create enormous bureaucracy and at significant cost to policing.

S48 It is unclear who has primacy in the event of non approval and there is no mechanism for resolving disputes.

Chapter 14 – Grants
S86 We are concerned the distinction between the provision of facilities for the SPF (currently provided by police boards and authorities) and Grant in Aid for the SPF (currently provided directly from the Scottish Government) will
get lost if greater clarity is not introduced in this section. Loss of facilities will undoubtedly have a negative impact on the delivery of services locally as the SPF role extends not only to the welfare of our members but also to the efficiency of the wider service.

Chapter 17 – Miscellaneous and General

S94 We believe that the facility to discuss non-negotiable terms and conditions with other stakeholders is valuable and that what is intended to replace PABS requires to be identified. The absence of any similar forum could create widespread disparities across the country and lead to work force disharmony.

Schedule 1 – The Scottish Police Authority

Part 1 Status, Structure and Governance

Membership

2(1) We believe a body with such responsibility would lack resilience if too small and would be unable to properly service the myriad of sub committees we believe will be inevitable at least in the early years of the new service. Our suggestion is 15 members.

The SPF has modified its position in recognition of the test applied to other appointees. We do believe there should be place for representation from local authorities to the SPA with the caveat their selection should be subject to the same criteria as for all other members.

Tenure

4(3) The SPF believes this should be subject to a maximum of two terms.

Schedule 4 – Transfer of Constables, Staff and Property etc

Limitation on mobility of constables

9(4)(b) This provision was not included in previous police force amalgamations. The SPF believes this has the potential to prove enormously costly and result in many officers living remotely from their place of work. Consequently this would inevitably impact negatively on local communities and lead to a deterioration in relationships locally. It is therefore our view this provision should be removed.
Conclusion

The SPF is committed to the restructuring of the service and is anxious to ensure that service delivery is not adversely affected. Operational policing in Scotland is recognised worldwide and its policies and practices are rightly sought across the globe.

We recognise the reality of reducing finances and the need to realise efficiencies in the delivery of services to the public. This cannot however be at the expense of the terms and conditions of those delivering the service as by default this will reduce the quality of service to the public. We are of no doubt that the unique nature of policing means policing and police officers cannot be properly compared to any other service or employee; public sector or otherwise.

We instinctively recognise and appreciate the opportunities for significant savings by not replicating existing functions eight times over. However we balance this with the potential to replace eight local bureaucracies with thirty two and believe this should be guarded against at all costs.

The Scottish Government is committed to maintaining police officers numbers and much of the savings to be realised comes from the rationalisation of police staff numbers. We recognise and are sympathetic with the difficulties this causes many of our colleagues. It is however the view of the SPF that the argument over the potential for police officers to undertake roles currently being performed by police support staff to be the wrong one. We believe the focus should not be on the who does the job but on the why the job is done in the first place.

Calum Steele
General Secretary
12 February 2012
Purpose:

To provide the Local Government and Regeneration Committee with an overview of SPSA’s experience relating to the process of amalgamating separate police organisations into a single structure and in particular the staff transfer schemes.

Local Authority experience is not referenced within the scope of this document as this is not considered an area of expertise for SPSA.

SPSA Experience in Organisation Merger and Integration:

SPSA has direct experience in multiple organisation merger and integration as a consequence of the formation of SPSA from multiple policing organisations. Much of this experience is similar to the challenges faced by the police reform agenda, albeit that some of the activities were on a smaller scale. Nonetheless this experience has numerous parallels and a number of lessons learned are worth documenting.

Our experience and approach can been documented across the four main phases of the SPSA formation and launch:

- Design and Planning
- Pre Go Live
- Launch and Go live
- Post Launch

Staff Transfer Schemes

Staff transfer schemes are the mechanism by which staff are legally transferred from one entity to another.

From the SPSA experience, three transfer schemes facilitated the transfer process of staff from each of the Scottish Police Forces and Common Police Services Agencies (Scottish Criminal Record Office (SCRO), Scottish Police Information Strategy (SPIS), Scottish Police College (SPC) and Scottish Crime and Drug Enforcement Agency (SCDEA), as follows:

- Police Staff (civilians)
- Police Officers seconded to Forces (Forensics); and
- Police Officers seconded to central service (SCRO, SPIS, SPC, SCDEA)
The issues which need to be considered in the transfer of police staff include:

- the requirement to identify the group/entity which will transfer;
- the names of staff within each group/entity which will transfer;
- the accuracy of the data included within the transfer schemes;
- the appropriate consultation process by both parties in advance of the transfer;
- a clear understanding by all parties around the purpose and requirements associated with the staff transfer schemes.

The due diligence information was provided by the Transferor to the Transferee (SPSA) by an agreed date prior to transfer. Given the level of checking required on the detail relating to due diligence, it was helpful to have dates agreed as early as reasonably possible.

In advance of the transfer to SPSA, and as part of the due diligence exercise, local variations to employment agreements were requested and established. Given the passage of time, it is appropriate to establish the current position as part of the due diligence associated with Police Reform.

More generally the SPSA experience of amalgamating separate police organisations is highlighted within the four main phases described above:

**Design and Planning**

**Governance** – In early 2006 a project team was set up to plan, prepare and manage the merger of the four Common Police Services Agencies and the forensic services which were incorporated into each force area’s core business. A key part of this governance programme was accountability for matters relating to staff, and managing the staff related requirements.

In the early planning stage a critical piece of work was identified and progressed in relation to a ‘scheme of delegation’ – this established the decision making protocols including levels of financial authority etc.

**Policies** – The policies required to support a new organisation were identified as a requirement in advance of the go-live date, particularly given the requirement to recruit new staff in advance of that date. Additionally the need to identify and understand the Terms & Conditions and supporting policies of transferring staff was established as being a key requirement.

**Processes and Systems** – The process required to support the policies within each workstream were identified. The resource requirement for this element of work was significant and included support from Business Analysts to support the workstream experts. The integration of disparate systems, for example HR and Finance systems, was a significant challenge and this hindered the effectiveness of the support functions particularly in terms of efficiency and effectiveness. The very limited report functionality delayed the ability to provide current and accurate management information and presented significant challenges in terms of payroll administration and reconciliation.
**People** – Project resourcing was a critical area, both in terms of the *number* and *timing* of people deployed to the project. The timing being determined from the go-live date and a work back to allow due process to be followed in areas such as consultation and negotiation with trade unions etc.

HR resource was fully deployed in advance of go live date for SPSA, to establish new terms and conditions by the go-live date. A key requirement at this stage was also the identification of the relevant bargaining unit (employee representatives) bearing in mind the transfer of recognition rights under the principles of TUPE. It was also a requirement at this early stage to fully understand the legal position in terms of the transfer and the practical implications and requirements.

**Key Experience and considerations** – The early establishment of a ‘scheme of delegation’ to clarify decision making responsibilities and accountabilities is an essential requirement, as is a well managed risk register. The establishment of a negotiating forum of employee representatives should be established quickly along with a Recognition and Procedural Agreement (RPA) which outlines the constitutional and brokering arrangements.

**Lessons Learned:**

- sufficient planning;
- project resource allocation and timing of resource deployment;
- resourcing analysis of all project plan activities within each workstream;
- autonomy for decision making established at earliest possible stage
- protocols for decision making; and
- robust governance arrangements.

**Pre Go live**

**Governance** – In order to progress the project at pace, robust yet non bureaucratic decision making protocols are essential. The SPSA experience of delegated authority and autonomy (albeit a very small project team) for organisational structure and people issues, including terms and conditions, was fundamental to the delivery of the ultimate project milestone – SPSA go live on target date.

**Policy** – In the pre go live stage there was an extensive due diligence exercise in order to establish the ‘as is’ position in relation to all budgets, policies, terms and conditions, contractual, non-contractual and custom and practice issues. In addition there is also a requirement to put in place policies, processes etc for the new ‘start-up’ organisation including terms and conditions and employment contracts.

**Processes** – The identification of existing processes was a significant piece of work. This work, including the mapping of ‘as is’ and ‘to be’ processes, is appropriately assigned to a business analyst.

**People** – Communication and employee engagement was a critical element of this stage. The Corporate Communications team were also focussed on branding the new organisation. Roadshows involving senior personnel was a key element as was
ongoing updating of accessible Q and A documentation. The organisational restructure particularly of back-office functions was an important feature of this stage including the associated consultation, job matching and selection processes.

**Key Experiences and Considerations** – any issues surrounding clarity on the decision making process and protocols requires early resolution. Due diligence, organisational design and the strategy for staff engagement are key elements of the stage. An understanding of existing contractual arrangements, via due diligence, on current contractual arrangements including break clauses was an essential piece of work as was the tendering required for new contracts. In terms of pension arrangements, the status of the organisation required to be determined (Scheduled or Admitted body) and arrangements put in place for new employees, establishing through agreement, which Local Government Pension Scheme Fund new staff would join. Consideration was given to the transfer of staff pension arrangements to a single fund, but this option was dismissed on the grounds of being cost prohibitive.

**Lessons Learned:**

- focus on the longer term requirements for terms and conditions and build these in at organisational start-up;
- establish ‘single points of contact’ (within workstream areas) for due diligence information;
- establish key relationships and foster a ‘working together to achieve results’ approach to the delivery of key project milestones;
- business continuity plans for potential critical system failures, for example payroll;
- dedicated project workstream for procurement/contracts; and
- advice and early engagement on pensions to establish options.

**Launch and Go live**

**Governance** – all governance arrangements should be in place in advance of go-live.

**Policy** – Policies were in a common agreed format available to all staff and managers – particularly given the scope for managing staff under nine sets of terms and conditions (eight forces and SPSA).

**Processes** – Process maps and procedures supported by training awareness sessions were made widely available to all managers and staff.

**People** – Communication and engagement were key elements of this stage and the potential to establish cultural norms and behaviours.

**Key Experiences and Considerations** – Employee access to corporate communications and policy and process information and designated points of
contact for Q and A were essential requirements for launch. From SPSA experience, high volumes of enquiries were experienced in support functions such as HR and Finance.

**Lessons Learned**

- resource implications for day one and immediately thereafter;
- potential logistical and coordination issues for common changed process;
- intranet access for all staff; and
- media and FOI interest.

**Post Formation**

**Governance** – Establishment of committee roles and responsibilities (for information or authorisation etc) was key consideration of the next project phase included job evaluation, harmonisation and the establishment of a risk register.

**Policy** – The embedding, monitoring and tracking application of policies post go-live to establish compliance and inconsistencies informed further communication and training requirements.

**Processes** – Robust validation measures were required to confirm compliance, particularly in relation to payroll.

**People** – SPSA experienced a proportionately high level of resignations by senior staff in the immediate pre and post go-live periods.

**Key Experiences and Considerations** – Employee engagement in order to facilitate staff alignment to the organisation was a significant challenge, particularly given the significant change and reform agenda of the organisation.

**Lessons Learned:**

- business continuity arrangements for senior roles;
- establishment of organisational values, behaviours and culture;
- employee engagement – run face-to face ‘surgeries’; and
- clear communication on ‘what this means to you’ etc.

**Summary**

The SPSA fully supports the principles of Police Reform and is committed to the success of the project and the management and implementation of this business transformation programme. We believe we can make a valuable contribution to the success of the project based on our commercial experience and the parallels with the implementation of SPSA.

**February 2012**
Police Reform Consultation

1. The Scottish Government has now announced its intention to legislate for the creation of a single National Police Service for Scotland, replacing the current eight regional Police Forces that have existed since 1975. A consultation document has been published setting out the Government’s proposals and responses are sought by 2nd November 2011. This paper sets out Solace’s response.

2. Solace’s position in responding to the original consultation on options for reform of Policing in Scotland was that reform was to be welcomed where it would improve outcomes and efficiency and where the costs and potential disruption associated with reform would be outweighed by these benefits. Solace remains unconvinced that a strong enough case has been made for the proposed move to a single National Police Service. The business case is deficient in many respects. It is not clear how the proposed reform will improve outcomes that are already very impressive (eg. lowest recorded crime levels for over 30 years). The claimed efficiency savings (circa £130M) rest upon some questionable assumptions, but even if accepted Solace questions whether they are sufficient to warrant the likely cost and disruption involved in moving to the new National Police Service.

3. That said, the political decision to legislate for the establishment of a single Scottish Police Service has been made and Solace is committed to working with the Government to ensure that the transition to the new Service is successful. There are a number of key concerns regarding the establishment of the new Service that Solace believes need to be addressed through this further period of consultation and in framing the legislative framework to ensure that the new National Police Service effectively balances national and local policing priorities so as to maximise its potential to achieve improved outcomes while delivering efficiencies. Of equal concern is that the transition to the New National Police Service and the way it is structured and operates is such that the potential for disruption to local Community Planning and other critical cross-agency partnership working arrangements is minimised.

4. Central to these concerns is the essential nature of the new National Police Service and the extent of real local government influence in the new Service. Policing is currently a local government function (albeit funded to the extent of 51% by direct Police Grant from the Scottish Government). It is accepted that the decision has been taken that Policing should no longer remain with local government. However, Solace would question whether it necessarily follows that the only alternative is the centralisation of Policing in a new quango under a board wholly appointed and funded by Scottish Government as set out in the consultation paper. Drawing from experience of what works elsewhere
(eg. London Metropolitan Police), the new Service could be designed as a genuine partnership between national and local government. The board could be appointed on a 50/50 basis by Scottish Government and by local government. Funding could continue on the current basis with Police Grant being paid direct to the board and the balance coming from local government.

5. It is appreciated that there are some complex and detailed issues that would have to be satisfactorily worked through in designing such a model (eg. how would the local government members of the board be appointed? and how would funding flow from local government to the Service?) but Solace believes these issues can be resolved if there is the will to establish a genuine national/local partnership at the heart of the new Service. The question is: to what extent is there that will, or has it already been determined that the new Service will be a wholly national function with some minority (tokenistic?) representation on the board for Local Government and Local Government’s influence in effect confined to the locality?

6. Solace believes that the case for a genuine national/local partnership on Policing is compelling. Both from a Police and a Local Government view, there are many critical issues that do not neatly fit into a simplistic categorisation as either ‘national’ or ‘local’ policing and therefore effective partnership working between national and local levels, between the strategic and operational leadership of agencies and also across agencies at both national and local levels is essential if these critical issues are to be addressed effectively.

7. For example, the consequences of serious and organised crime at the national (or indeed international) level are drug dealing, drug dependency, petty crime, dysfunctional family units, disruptive individuals, chaotic lifestyles and other social problems in localities. Important intelligence critical to combating serious and organised crime is gathered in localities.

8. Critical issues such as public protection and community resilience are both national and local in scope. The Scottish Government has set out a range of social policy objectives such as Early Years Framework and GIRFEC. The recent Comprehensive Spending Review called for increased focus on outcomes and a shift of spending and action to Early Intervention and Prevention. Successful delivery of all of this requires effective local partnership working across Police, Local Government and other agencies. Further, partnership working must exist at both the strategic and operational levels. For example, all inspections of services to protect children have stressed the need for good partnership working across Social Work, Education, Health, Police and others and that this needs visible, committed, consistent leadership from Chief Officers.

9. For all these reasons, Local Government’s role and influence in the new National Police Service cannot be confined to the proposed arrangements for accountability of local policing. There also must be strong connections between the strategic leadership of local authorities and that of the National Police Service, as well as between operational service management in local
authorities and the command of policing in localities. To ensure all that of this works effectively Solace would argue there must be real Local Government influence at the national level of the new National Police Service. This can best be achieved by establishing the new National Service as a real national/local partnership as suggested above.

10. Solace welcomes the proposal that the basic building block of the new Service will be the 32 local authority areas, each constituting a local policing area headed by a local area commander. Solace believes that the framework should allow for voluntary combinations of local authority areas to form larger local policing areas.

11. Solace has concerns about the level of seniority and degree of local autonomy of the local area commanders. These issues are inter-related. The proposal is that the local area commander could be any rank from Chief Superintendent to Inspector, depending on the size of the local policing area. This is an unacceptably wide range of seniority that could result in significant divergences in the degree of autonomy of local area commanders. Solace believes this poses risks to effective partnership working in local policing areas. To address this concern, Solace believes the legislative framework should provide for a formal scheme of delegation that will entrench the local operational autonomy of the local area commander. Consideration should also be given to the minimum rank for local area commander.

12. As stated above, partnership working is most effective when the commitment exists at both the strategic and operational levels. Therefore, in addition to the local area commander, Solace believes there should be a designated senior officer, probably one of the Assistant Chief Constables, for every local policing area. This senior officer should be a signatory to the proposed Local Policing Plan, along with the local area commander, and both should be accountable to the Local Authority for its delivery.

13. As regards the Local Policing Plan, the consultation document is unclear whether the local authority role is envisaged as de facto ‘Local Police Authority’ to approve the plan and then hold the local area commander to account for its delivery, or is merely that of a local consultee whose views on the Local Policing Plan should be taken into account before it is finalised. Solace believes that if genuine local accountability for policing in localities is an objective, then role must be the former. As the proposals are taken forward in legislation consideration will need to be given to how a local authority’s refusal to approve a Local Policing Plan is resolved.

14. It is appreciated that the consultation document sets out a number of specific questions on which views are sought. Solace has determined to focus its response on governance and accountability, as set out above. Turning to the specific questions Solace would add further comment as follows.

15. As regards Question 1 (purpose of policing) Solace believes the purpose should include ‘to improve the safety and well-being of individuals, families and communities in Scotland’ and there should be an explicit requirement on
the new National Service to participate fully in Community Planning, in particular public protection and community safety. This may be an opportune moment to introduce a legislative requirement on the Police Service to deliver Best Value and to participate in Community Planning.

16. As regards Question 3, Solace notes the proposal to consult on the future relationship between the new National Service and Strategic Coordinating Groups, including a possible restructuring of SCGs. Solace believes that the existing SCG structure provides effective coordination of contingency planning, resilience, contingencies response and recovery activities, however the move to a National Police Service affords the opportunity to review current arrangements. Again, the critical issue will be how best to achieve the most appropriate balance between national and local interests.

17. As regards Questions 4, 5, 6 and 7, Solace would argue for the national/local partnership model suggested above. If this is not acceptable to Scottish Government, then Solace believes consideration must be given to how best to ensure that Local Government has real influence at the national level as well as the local. This cannot be achieved simply by reserving a minority of places for Local Government on the National Board. Consideration should be given to ways of making the National Board accountable to Local Government as a whole, in addition to its formal accountability to Parliament through Scottish Ministers. In terms of local accountability (Question 6) Solace’s position is set out in paragraphs 10, 11, 12 and 13 above. As regards, Question 7 (funding), as set out about, Solace believes that some control over an element of funding is essential to ensure real Local Government influence over matters of local concern – these being wider than simply local operational policing. Short of that element of control, there needs at the very least to be complete transparency around the allocation of resources to policing in localities and the ability for local authorities to question and challenge this.

18. Solace hopes that the above response to the consultation document is helpful and looks forward to continuing to work with Scottish Government officials as the legislation giving effect to the new National Service is developed and taken forward through the legislative process.
Fire & Rescue Services Reform Consultation

19. The Scottish Government has now announced its intention to legislate for the creation of a single National Fire & Rescue Service for Scotland, replacing the current eight regional Fire & Rescue Services that have existed since 1975. A consultation document has been published setting out the Government’s proposals and responses are sought by 2nd November 2011. This paper sets out Solace’s response.

20. Solace’s position in responding to the original consultation on options for reform of Fire & Rescue Services in Scotland was that reform was to be welcomed where it would improve outcomes and efficiency and where the costs and potential disruption associated with reform would be outweighed by these benefits. Solace remains unconvinced that a strong enough case has been made for the proposed move to a single National Fire & Rescue Service. The business case is deficient in many respects. It is not clear how the proposed reform will improve outcomes that are already very impressive. The claimed efficiency savings rest upon some questionable assumptions, but even if accepted Solace questions whether they are sufficient to warrant the likely cost and disruption involved in moving to the new National Service.

21. That said, the political decision to legislate for the establishment of a single Scottish Fire & Rescue Service has been made and Solace is committed to working with the Government to ensure that the transition to the new Service is successful. There are a number of key concerns regarding the establishment of the new Service that Solace believes need to be addressed through this further period of consultation and in framing the legislative framework to ensure that the new National Fire & Rescue Service effectively balances national and local priorities so as to maximise its potential to achieve improved outcomes while delivering efficiencies. Of equal concern is that the transition to the new National Service and the way it is structured and operates is such that the potential for disruption to local Community Planning and other critical cross-agency partnership working arrangements is minimised.

22. The consultation document poses a number of specific questions and Solace’s response to these is set out in the following paragraphs.

23. Question 13 (Purpose): Solace suggests that the purpose of fire and rescue should include ‘to improve the safety and well-being of individuals, families and communities’ and that the new National Fire & Rescue Service should be subject to a statutory requirement to deliver Best Value and to participate fully in Community Planning.

24. Questions 16 and 17 (National Board): Solace believes there is an opportunity to establish the new National Fire & Rescue Service as a real national/local partnership with an appropriate balance of the national and local interests, rather than as a centralised service constituted as a new quango. A strong and influential role for Local Government at the national level is essential if the proposals for enhanced local accountability are to work well. Local
Government representatives should be appointed by Local Government and should comprise at least half of the proposed National Fire & Rescue Board.

25. Question 18 (Governance/Accountability): Solace welcomes the proposal that the basic building block of the new National Service will be the 32 local authority areas. The legislative framework should allow for local authorities to combine together to form larger local fire and rescue areas. Solace believes that the legislation should provide for clear delegation of powers to and accountability of the proposed Local Senior Officer and that this officer should be required to work closely in partnership with the local authority and other partnership agencies in the locality within the context of Community Planning. The local authority should have the role of approving the Local Fire & Rescue Plan, rather than simply being consulted about it. Consideration needs to be given to how any refusal by a local authority to approve the plan is to be resolved. In addition, effective partnership working requires leadership commitment at both the strategic and operational levels. Therefore, in addition to the designated Local Senior Officer, Solace believes there should be a designated senior officer at the Chief Officer level for every local policing area. This senior officer should be also a signatory to the proposed Local Fire & Rescue Plan, along with the designated Local Senior Officer, and both should be accountable to the local authority for its delivery.

26. Question 19 (Funding): In the spirit of comments above about establishing the new National Fire & Rescue Service as a real national/local partnership, Solace believes that Local Government should continue to have a significant role in funding the Service. Without this, the influence of Local Government on the new National Service will be limited, possibly to the detriment of the objective of enhancing local accountability for local fire and rescue. At the very least there must be full transparency of the allocation of resources to localities and the ability to scrutinise, question and challenge resource allocation and use.

27. Solace hopes that the above response to the consultation document is helpful and looks forward to continuing to work with Scottish Government officials as the legislation giving effect to the new National Service is developed and taken forward through the legislative process.

Solace Scotland
2 November 2011
LOCAL GOVERNMENT AND REGENERATION COMMITTEE
POLICE AND FIRE REFORM (SCOTLAND) BILL
SUBMISSION FROM UNISON SCOTLAND

Introduction

1. UNISON Scotland welcomes the opportunity to respond to the call for written evidence from the Scottish Parliament’s Local Government Committee regarding the above Bill.

2. UNISON is Scotland’s largest trade union representing over 162,000 members working in the public sector in Scotland, and represents police staffs as well as Fire and Rescue control room and support staff in Scotland. UNISON Scotland welcomes the opportunity to respond to this consultation exercise.

UNISON Scotland’s Response

3. UNISON Scotland submitted a response to both Scottish Government consultation exercises on this Bill and responded to the Scottish Parliament’s Finance Committee’s Call for Evidence on the Financial Memorandum. As well as participating in this Call for Evidence, we will also be submitting information to the Call for Evidence by the Scottish Parliament’s Justice Committee.

4. The focus of our response is on how the proposed reforms will interact with local government and the impact the changes will have on staff transferring to the new organisations.

Transfer of Staff

5. UNISON Scotland is concerned about a number of issues relating to workforce planning particularly for staff who may be currently employed by local authorities but are working for police forces. This could include staff in shared services, such as camera safety partnerships and elsewhere, who may be employed primarily with a local authority or other agency. The Bill states that such staff will be transferred, subject to a staff transfer scheme but there is little detail about this within the Bill.

6. UNISON Scotland would like further clarification on whether police staffs, once transferred to the new SPA, would be subject to the Scottish Government guidance on non compulsory redundancies. There is a concern that the projected savings from the move to a single police force will be mainly achieved by drastically reducing the number of police staffs – a recent ACPOS paper indicated as many as 2,000 posts were under threat. UNISON Scotland would like further clarification on this issue. This is causing anxiety and uncertainty around staff transfer. In order to ensure that Ministerial statements on jobs and conditions are met there may be a need for a statutory transfer order in the legislation.
7. With regards to the new Scottish Fire and Rescue Service, UNISON Scotland would like clarification on whether control room staff and support staff, once transferred to the new body would be subject to the Scottish Government guidance on non compulsory redundancies. This would include greater clarification on which staff are transferred in areas where the delivery of services are provided by local authorities.

Local Accountability

8. One of the key issues for the new Police Service of Scotland will be how it interacts with local government and provides a level of local accountability. The Structure diagram within the original consultation showed that potentially 32 local commanders each will report to their local council but the councils can still call on the chief constable. However, it is the nature of public bodies to want to deal with the head so it is possible that the chief constable would end up attending 32 police authority meetings resulting in doing the same thing 32 times.

9. UNISON Scotland also has a concern regarding the varying ranks of local commanders. There is a concern that in the police hierarchy, more senior officers will have more control and influence over other officers, and that some councils who have relatively junior local commanders may have less influence and would not be able to access their fair share of resources for local policing. Local authorities may also feel that they deserve the same ranked commander as neighbouring authorities or the same number of police officers as their neighbours, creating an unhealthy competition between councils unless a clear criteria is set on the distribution of resources. UNISON Scotland is also concerned that this could lead to police staff being redeployed to other areas, possibly at short notice and disruption to work life balance.

10. The Bill also doesn’t set out how the relationship between local commander and local authority should operate locally- leaving it up to each local authority to determine. This also raises the question of who is the local commander answerable to – is it the local authority for the area he/she covers and which may argue for one thing on behalf of its electorate, of the chief constable who may have other priorities? The police is arguably the most command and control oriented public service.

11. Similarly there are concerns about the democratic accountability of a single police force, how much representation will be afforded to areas such as the Highlands and Islands which have to cover a large land mass but has a lower population. There is a concern that any board meetings would be difficult for representatives from all across Scotland to attend and that many areas would have insufficient representation. This would break the link between communities and their local police force. UNISON Scotland is also concerned that the move to a national police force fails to meet the criteria for the Christie Commission for reform of public services.

12. More detail is also required on the issue of local budgets and whether or not there should be some funding specifically set aside for this. UNISON Scotland is concerned that local authorities may end up with additional budgetary pressures paying for the scrutiny of complaints, training for members, or even the
administration of a local police board – when this should come from the SPA resources rather than from local authorities own funding streams.

Contact: Dave Watson d.watson@unison.co.uk

Contact UNISON’s Bargaining & Campaigns team:
UNISON House
14 West Campbell Street
Glasgow
G2 6RX

0845 355 0845

February 2012
**SCOTTISH FIRE AND RESCUE SERVICE REFORM**

**SUPPLEMENTARY EVIDENCE FROM THE SCOTTISH FIRE CONVENERS FORUM TO THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE**

<table>
<thead>
<tr>
<th>SERVICE</th>
<th>FIRE BOARD</th>
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<tbody>
<tr>
<td>CENTRAL SCOTLAND</td>
<td>5 of the 11 members are senior councillors</td>
</tr>
<tr>
<td>DUMFRIES &amp; GALLOWAY</td>
<td>11 members on the Police and Fire Authority/Police and Fire and Rescue Service Committee. Four are 'Senior Councillors' (out of the Council’s 14 positions) by virtue of their being Chair or Vice Chair of another Committee. One Member is the Business Manager for the Council’s largest Group (Conservative) and three Members of the Police and Fire Authority are Deputy Leader of their Political Groups (SNP, Lib Dem and Independent)</td>
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<tr>
<td>FIFE</td>
<td>Fife is a unitary authority with a Police and Fire Committee which considers both police and fire issues. 15 elected members 1 senior councillor 0 Leaders of Administration 1 NHS member (in a non-voting capacity)</td>
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<tr>
<td>GRAMPIAN</td>
<td>NONE of the 3 Council Leaders sit on GJFRB. However, the membership does include experienced &amp; long-standing Cllrs from all 3 authorities (Aberdeen, Aberdeen City &amp; Moray). Some members have sat on predecessor Fire Boards. From an Aberdeenshire perspective, 6 members of GJFRB are experienced &amp; proactive Aberdeenshire Councillors. 2 Group Leaders from Aberdeen City Council Council Leader/Aberdeen City (substitute member) Former Lord Provost/Aberdeen City (Now off the Board but now a COSLA Vice President)</td>
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| HIGHLAND & ISLANDS | ONE (Opposition) member is Chair of the Audit & Scrutiny Committee and Chair of the South Planning Applications Committee.  
THREE members are Vice Chairs (Resources Committee, Education, Culture and Sport Committee and Gaelic Committee) and another is Vice Convener of the Highland Licensing Committee and Board.  
ONE of the 2 Orkney Board members is Vice Chair of Orkney’s Development and Regeneration Committee.  
ONE of the 2 Shetland Board members is Chair of Shetland’s Development Committee and Vice Chair of the Harbour Board. The other is Vice Chair of the Audit & Standards Committee and also the Social Services Committee.  
None of the 4 Western Isles members is a Committee Chair or Vice Chair. However, one of them is Police Board Convener. |
| LOTHIAN AND BORDERS | Following senior members are members of the Fire Board:-  
The Leader of City of Edinburgh Council  
The Leader of West Lothian Council  
Vice-Convener Regulatory Committee and Vice Convener for Education, both Edinburgh  
Cabinet Member for Housing at East Lothian  
The Young Peoples Champion, Scottish Borders and the portfolio holder for Education, Scottish Borders  
Depute Provost of Midlothian Council and the Cabinet Spokesperson for Social Work in Midlothian |
| STRATHCLYDE | There are 34 elected members on the Fire Board. Of these members, 12 are Senior Councillors (1 being a Depute Leader) and a further 4 Councillors hold positions of authority i.e. chair of a Committee, Provost/Depute Provost. |
| TAYSIDE  | Of the 18 members of TFRB, 14 are Senior Councillors, holding either the office of Convener, Depute/Vice Convener or leader(s) of the opposition. ONE member of the Board is a Council Leader (Angus Council) |
Number of Council leaders and senior councillors service on Joint Police Boards/ Unitary Police Authorities in 2012.

<table>
<thead>
<tr>
<th>Joint Police Boards</th>
<th>No of board members</th>
<th>Leaders</th>
<th>Senior Councillors</th>
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<tr>
<td>Central</td>
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<td>1</td>
<td>4</td>
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<tr>
<td>Grampian</td>
<td>15</td>
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<td>Lothian &amp; Borders</td>
<td>18</td>
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<tr>
<td>Northern</td>
<td>24</td>
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<td>Strathclyde</td>
<td>34</td>
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<td>Tayside</td>
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<th>Unitary Police Authorities</th>
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<tr>
<td>Fife</td>
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Dumfries & Galloway 47 See Annexe
## Members' Salaries & Expenses 2010/2011

The Local Government (Payments and Expenditure Control) Regulations 2003 as amended, require the Council to keep a record of payments made to Members and to publish the information for the preceding year by 1 June.

Payments made to Members of Governors and the Advisory Council for the year ending 31 March 2011 were as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Salary (Jan 1)</th>
<th>Per Diem (as a % of Pay)</th>
<th>Subsidy (Jan 1)</th>
<th>Subsidy Urban (as a % of Pay)</th>
<th>Subsidy Rural (as a % of Pay)</th>
<th>Subsidy Travel (as a % of Pay)</th>
<th>Subsidy Admission (as a % of Pay)</th>
<th>Subsidy Room &amp; Board (as a % of Pay)</th>
<th>Total Subsidy</th>
<th>Total Expenses</th>
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POLICE AND FIRE REFORM (SCOTLAND) BILL – BRIEFING FOR THE LOCAL GOVERNMENT AND REGENERATION COMMITTEE

This note sets out the key features of the Police and Fire Reform (Scotland) Bill which relate to local government and the interests of local communities, and which may therefore be of particular interest to the Local Government and Regeneration Committee in its Stage 1 consideration of the Bill.

A new purpose for policing and fire and rescue:

The new statutory principles for policing will place communities at the heart of service provision:

- The policing principles set out that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland;

- The purpose is underpinned by a statutory requirement for the service to work in partnership with others to ensure policing is accessible to and engaged with local communities and promotes measure to prevent crime, harm and disorder.

A similar statutory purpose for the fire and rescue service will be included in a new Fire and Rescue Framework under the Fire (Scotland) Act 2005.

National focus on local services:

Within the national governance structures for the new Scottish Police Authority and the new Scottish Fire and Rescue Service, the Bill ensures an enhanced focus on local delivery of policing and fire and rescue functions:

- The Scottish Police Authority and the Scottish Fire and Rescue Service will be under a statutory duty to ensure adequate arrangements for policing and fire and rescue services in all 32 of Scotland’s local authority areas;

- The Scottish Ministers will appoint members to the Scottish Police Authority and the Scottish Fire and Rescue Service Board on the basis of their skills and expertise. Ministers have made clear that this will include a number of members who will be appointed on the basis of their skills and expertise relating to local government;

- The Chief Constable and the Chief Officer must designate a local commander and local senior fire officer for each local authority
area, who will be accountable for local service delivery through the Chief Constable and Chief Officer to the national boards.

**A role for local government at national level:**

Local authorities will have the right to have a say in the national strategic direction of the new services:

- The Scottish Ministers will have a statutory duty to consult local authority representative bodies before determining strategic police priorities;
- The Scottish Police Authority and the Scottish Fire and Rescue Service will have a statutory duty to consult all local authorities on their strategic plans.

**A clear role for local government in local service delivery:**

For the first time, each local authority in Scotland will directly influence the delivery of police and fire and rescue functions in their areas:

- The local commander and local senior officer will have a statutory duty to work with the local authority to set priorities and objectives for police and fire and rescue services in the local area;
- The local commander and local senior officer will be required to prepare the local plan for police and a local plan for fire and rescue, that meets the needs of the local area for agreement with the local authority;
- The local authority will have statutory powers to monitor the delivery of police and fire and rescue functions in the area;
- The local authority will have statutory powers to provide feedback to the local commander and local senior officer and to make recommendations for improvements.

The Scottish Government is working with local government and the services to support local partners in trialling these new local monitoring and engagement arrangements. The learning and good practice gathered will help to inform the development of the new arrangements.

**Integration with community planning partnerships:**

The Bill ensures that the structures for local delivery of police and fire and rescue functions is fully integrated with community planning:

- The local commander and local senior officer will have a statutory duty to participate in the community planning partnership for the local area;
There will be a statutory requirement on the local commander and local senior officer to include information on community planning in the local plan for police and the local plan for fire and rescue.

**A transparent and consultative approach to local planning:**

The local commander and local senior officer will have a statutory duty to prepare a police plan and a fire and rescue plan for their area, which will be required to:

- build on the principles set out in the national priorities and objectives for the services;
- incorporate the local priorities and objectives developed with the local authority;
- be prepared in consultation with the local authority and other interested parties, for the agreement of the local authority;
- set out the proposed arrangements for delivery of police and fire and rescue functions in the area, ranging from community policing and fire safety to incident response and provision of specialist capacity;
- identify outcomes against the achievement of priorities and objectives may be measured;
- make clear how the arrangements for local service delivery will contribute to the outcomes identified through local authority community planning partnerships.

**Direct funding for the new services:**

The Bill sets out clear funding arrangements for the new services:

- The Scottish Police Authority and the Scottish Fire and Rescue Service will be directly grant funded by the Scottish Ministers;
- Any changes to the local government settlement arising from this will be negotiated through the Settlement and Distribution Group which advises Scottish Ministers and COSLA on the settlement.

**Clear arrangements for transfer of staff:**

Arrangements are set out in the Bill for the transfer of staff – including firefighters - to the new services, to ensure clarity for employees:

- All staff employed by police joint boards (as well as the Scottish Police Services Authority and the Scottish Crime and Drug
Enforcement Agency) will transfer to the Scottish Police Authority on a date set by the Scottish Ministers;

- All staff employed by fire and rescue joint boards will transfer to the Scottish Fire and Rescue Service on a date set by the Scottish Ministers;

- The Scottish Ministers will make a staff transfer scheme to transfer to the new services staff employed by individual local authorities on police and fire functions;

- An employee’s contract has effect on and after the day of transfer as if it was originally made between the employee and their new employer – i.e. the Scottish Police Authority or the Scottish Fire and Rescue Service;

- Staff will remain eligible to continue in the local government pension schemes after the transfer.

Clear arrangements for transfer of property:

The Scottish Ministers will make property transfer schemes in consultation with the services and local government to ensure fair and transparent transfers of property:

- The statutory transfer schemes will transfer property, rights, liabilities and obligations from local authorities and joint boards to the Scottish Police Authority, the Scottish Fire and Rescue Service where appropriate;

- The statutory transfer schemes can also transfer property, rights, liabilities and obligations from joint boards to individual local authorities;

- The schemes will set out clearly the date of transfer, whether any consideration is payable and any conditions attached to the transfer.
The Committee reports to the Justice Committee as follows—

INTRODUCTION

1. The Police and Fire Reform (Scotland) Bill was introduced in the Parliament on 16 January 2012.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s Financial Memorandum (FM). In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

3. At its meeting on 18 January 2012, the Committee agreed to seek written evidence from a number of organisations potentially affected by the Bill. Submissions were received from—

- Association of Chief Police Officers in Scotland
- Association of Principal Fire Officers Scotland
- Association of Scottish Police Superintendents
- Board of Strathclyde Fire and Rescue
- Chief Fire Officers Association of Scotland
- CIPFA
- COSLA
- Crown Office and Procurator Fiscal Service
- Dumfries & Galloway Police and Fire and Rescue Authority
- Fife Fire and Rescue Service
- Fire Brigades Union
- Grampian Joint Fire and Rescue Board
- Highland Council
- Her Majesty’s Inspectorate for Constabulary Scotland
- Northern Constabulary
- Northern Joint Police Board & Highland and Islands Fire Board
- Police Complaints Commissioner for Scotland
- Scottish Courts Service
Scottish Fire Convenors Forum
Scottish Police Federation
Scottish Police Services Authority
Unison

4. All written submissions can be accessed from the Committee’s webpage at the link below—
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/47006.aspx

5. At its meeting on 22 February 2012, the Committee took evidence from the Association of Chief Police Officers in Scotland (ACPOS), the Chief Fire Officers Association of Scotland (CFOAS), the Fire Brigades Union (FBU), Her Majesty’s Inspectorate for Constabulary Scotland (HMICS), the Scottish Police Federation (SPF) and John Connarty, Business Support Manager at the City of Edinburgh Council and a member of COSLA’s police and fire reform task group. The Committee also took evidence from the Bill team. The Official Report of the evidence sessions can be found on the Parliament’s website, at—

THE BILL

6. The Policy Memorandum¹ accompanying the Bill states that the main policy objectives of the Bill are to create a single police service and a single fire and rescue service in order to deliver the policy aims set out below—

- To protect and improve local services despite financial cuts; by stopping duplication of support services eight times over and not cutting front line services;

- To create more equal access to specialist support and national capacity—like murder investigation teams, firearms teams or flood rescue—where and when they are needed; and

- To strengthen the connection between services and communities, by creating new formal relationship with each of the 32 local authorities, involving many more locally elected members and better integrating with community planning partnerships.

7. The Bill will establish the Scottish Police Authority (SPA), which will oversee the Police Service of Scotland, and a single Scottish Fire and Rescue Service (SFRS). It provides that the functions, staff, resources, assets and liabilities of the current police and fire and rescue services will be transferred to the new statutory SPA and SFRS respectively.

¹ Police and Fire Reform (Scotland) Bill. Policy Memorandum, paragraph 3.
http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Policy_Memo.pdf [Accessed 24 February 2012]
Proposed funding arrangements

8. Funding arrangements for both the police and fire and rescue service will change significantly under the Bill. Currently, the police services are funded jointly by the Scottish Government and by local authorities, with total revenue funding for 2011-12 set at £1,370m.\(^2\) Funding for the fire and rescue services is currently provided by the constituent local authorities, via the local government settlement with pension costs and revenue support for the Scottish Fire Services College at Gullane and for the Firelink communication system provided by the Scottish Government. Total revenue funding for 2011-12 is £335m.

9. The Bill seeks to consolidate the various existing funding streams into a single funding stream provided directly by the Scottish Government to the SPA and SFRS. This funding will be subject to the approval of the Scottish Parliament through the normal budget process. Section 85 of the Bill seeks to give the Scottish Ministers powers to make grants to the SPA, as they determine, and subject to any conditions they may specify.\(^3\)

10. The FM to the Bill points to a clear financial imperative for legislating to create single police and fire and rescue services. For example, with regard to police, the FM states—

“Police forces across Scotland continue to perform strongly, with recorded crime at a 35-year low, improved detection rates, and high levels of public satisfaction. In the face of significant cuts to public sector budgets, the Scottish Government wishes to protect this level of performance as far as possible. It is not possible to meet this challenge in the current structure and organisation of policing in Scotland. The decision to move to a single police service provides for long-term sustainability. It provides the best way to deliver savings – through reduced duplication, rationalised and simplified support functions and standardised business processes - while protecting front-line services to communities.”\(^4\)

11. In near identical language, with regard to the fire and rescue service, the FM states—

“Scotland’s fire and rescue services have performed well, helping to reduce deaths from fire by almost 50% over the last 10 years. In the face of significant cuts to public sector budgets, the Scottish Government wishes to protect this level of performance as far as possible. It is not possible to meet that challenge in the current structure and organisation of fire and rescue services in Scotland. The decision to move to a single fire and rescue service provides for long-term sustainability. It provides the best way to deliver savings - through reduced duplication, rationalised and simplified


\(^3\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.

\(^4\) Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 152.
support functions and standardised business processes – while protecting front-line services to communities.\textsuperscript{5}

12. In its evidence to the Committee the Bill team confirmed this financial imperative behind reform of the police and fire and rescue services. It stated that—

“Our projections are that budgets are going to go down, whether there is reform or not. Reform is a way of coping with those decreasing budgets more intelligently and protecting frontline services.”\textsuperscript{6}

13. The Bill team went on to state that—

“The consequence of reducing budgets without reform is potentially a weaker front line in some parts of Scotland than in others—fewer police officers, firefighters and so on. One of the major motivations for engaging in reform was the aim to maintain the front-line capacity in both police and fire services despite there being less money to spend on them.”

Outline business cases

14. The FM states that it “has been developed using the best available evidence, as summarised in the police and the fire and rescue Outline Business Cases (OBCs).”\textsuperscript{7} The OBCs were published in September 2011, and form the basis for the calculations included in the FM. The FM states that the OBCs were developed by stakeholders from the police and fire services.\textsuperscript{8}

15. Each OBC used Target Operating Model (TOM) methods to assess the most efficient way of delivering the key service functions. The fire OBC describes the TOM as “representing the most effective and efficient way in which to deliver services in a world without constraints, and is developed independent of existing structural configurations”.\textsuperscript{9} The overall service TOM was then applied to three reform options—

- Enhanced eight forces/eight brigades with greater collaboration
- A regional structure of three or four forces/brigades
- Single national police and fire and rescue services

Police OBC

16. The police OBC found that significant efficiency savings could be made regardless of force structure and that most of these savings would be realised within the first five years. Thereafter, the OBC assumes a “steady state” under which this level of savings will continue over a projected 15 year period. Similarly, the costs of reform are estimated to peak after 5 years, reduce the following year then remain at that level for the projected 15 year period.\textsuperscript{10}

\begin{footnotesize}
\begin{itemize}
  \item Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 222.
  \item Scottish Parliament Finance Committee. Official Report, 22 February 2012, Col.724
  \item Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 133.
  \item Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 139.
  \item Fire and Rescue Reform: Outline Business Case, page 6.
  \item SPICe Briefing 12-14 Police and Fire Reform (Scotland) Bill
\end{itemize}
\end{footnotesize}
the financial costs and benefits of each model over 15 years are presented in Table 1 below.

**Table 1: Police Financial Appraisal – Assessment of affordability (excludes non-cashable savings) (Over 15 years) (£000)**

<table>
<thead>
<tr>
<th>Option</th>
<th>Costs (15 years)</th>
<th>Cashable savings</th>
<th>Net Savings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eight forces (enhanced)</td>
<td>356,197</td>
<td>1,311,160</td>
<td>954,963</td>
</tr>
<tr>
<td>Regional force</td>
<td>367,487</td>
<td>1,454,350</td>
<td>1,086,864</td>
</tr>
<tr>
<td>Single force</td>
<td>485,129</td>
<td>1,660,634</td>
<td>1,175,505</td>
</tr>
</tbody>
</table>

*Source: Table A13, A14 and A15, Police OBC*

17. In financial terms, the option which offers the largest projected savings over a 15 year period is the single force option. However, significant financial savings would also be achieved by applying the TOM to both the enhanced eight force structure and the regional force structure. In terms of annual savings, the OBC estimates that, after the fifth year, the single force option would result in savings of around £106m per year compared to almost £97m per year for the regional option and just over £85m per year for the enhanced eight force option. It is clear therefore that the single structural option differs only marginally in the scale of savings when considered over a 15-year period.11

**Fire and Rescue Service OBC**

18. The fire and rescue service OBC builds on work by the Ministerial Advisory Group (MAG) subgroup, and by others to produce costed options for structural reform of the service. Like the police OBC, the fire and rescue OBC suggests that significant financial and non-financial savings would result by adopting a TOM and that these savings would vary depending on which structural option was chosen.12 Table 2 below presents the OBC’s estimates of the financial costs and benefits of each model over 15 years.

**Table 2: Fire and Rescue Financial Appraisal – Assessment of affordability (excludes non-cashable savings) (Over 15 years) (£000)**

<table>
<thead>
<tr>
<th>£,000</th>
<th>Transition Costs</th>
<th>Efficiencies</th>
<th>Efficiencies minus costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option 1 (8 brigades)</td>
<td>1,412</td>
<td>96,650</td>
<td>95,238</td>
</tr>
<tr>
<td>Option 2 (regional)</td>
<td>40,026</td>
<td>318,745</td>
<td>278,719</td>
</tr>
<tr>
<td>Option 3 (single service)</td>
<td>116,632</td>
<td>435,400</td>
<td>322,768</td>
</tr>
</tbody>
</table>

*Source: adapted from Appendix 4, Fire Services OBC, page 84 - through addition of redundancy costs*

19. As for the police OBC, the single service option would result in the largest potential savings. In terms of annual savings, the OBC estimates that the enhanced collaboration eight brigade option would deliver net financial savings of over £7m per year, the regional service option would deliver savings of nearly £22m per year, and the single service option would deliver savings of just over £25m per year.\(^\text{13}\)

20. The OBCs, however, did not consider only the financial benefits resulting in the different structures. Both also consider that non-financial benefits would result using the TOM and that these would vary in scale under the different structural options. For the police OBC, these non-financial benefits are considered under three broad headings; benefits which improve—

- policing outcomes through eg increasing the effectiveness of policing functions;
- wider public sector outcomes through eg increasing the effectiveness of partnerships;
- underlying organisational ability through eg reducing organisational complexity and streamlining internal processes\(^\text{14}\)

21. These ‘benefit categories’ were then weighted (50%, 30% and 20% respectively) and assessed against each structural option using a 0 to 10 scoring system under which a score of 0 meant that the structural option was capable of maintaining current outcomes and 10 meant it was capable of delivering significant improvement. The police OBC non-financial benefit analysis found that, for all three benefit categories, the regional force structure scored higher than the enhanced eight force structure and the single service structure scored significantly higher than either the eight force structure or the regional force structure.\(^\text{15}\)

22. The fire OBC identified and weighted a series of outcomes and a scoring exercise was undertaken to rank each of the structural models in terms of their potential to deliver against the chosen outcomes. Like the police OBC, only marginal benefits were assessed as coming from the eight brigade structure while the regional structure had the potential to produce more significant non-monetary benefits and the single national structure, the highest level of non-monetary benefits.\(^\text{16}\)

23. In its written evidence to the Committee APFOS suggested that different methodologies (including margins of uncertainty) had been applied to fire and police without sufficient explanation.\(^\text{17}\)

24. In its response to the Committee on this issue the Bill team stated that—

“As far as we can, we have used the same methodology and have been advised on how to do that by economists in the Scottish Government who are experts in it. Although the basic structure of the two services is similar in one

\(^\text{13}\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
\(^\text{14}\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
\(^\text{15}\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
\(^\text{16}\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
\(^\text{17}\) Association of Principal Fire Officers Scotland. Written submission.
sense, it is different in others and the information from each service is structured differently, so it is inevitable that there are sometimes differences in the presentation of information for the two services."\textsuperscript{18}

25. While it is not for this Committee to examine the policy imperative behind a Bill, the Committee notes that in identifying the single structure as the preferred option for both police and fire services that decision was reached on a range of considerations, both financial and non-financial.

26. This point is illustrated by a table produced by the Scottish Parliament's Financial Scrutiny Unit and adapted from Table 1c in the FM. Table 1c sets out the best estimated costs and savings arising from police and fire reform, the best estimated costs and savings arising from police and fire reform adjusted for optimism bias on costs and assuming a 30% reduction in savings and the costs and savings potentially arising due to structure.

27. The FM explains that the figures relating to structure (summarised in Table 1c and set out in tables 2.3 and 3.3) were calculated by looking at the difference between the costs and savings estimates for an 8 force model with enhanced national delivery (police) and increased collaboration (fire and rescue) and those associated with a single service as appraised in the OBCs.\textsuperscript{19}

28. The figure below shows the profile of savings over the years covered in the FM and the difference between total savings, savings adjusted for optimism bias and savings due to the proposed single police force and a single fire and rescue services structure.

\textsuperscript{19} Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 149.
29. The Committee notes that the table demonstrates that approximately 75% of the claimed efficiency savings could be achieved by reform of the existing structure rather than through the creation of single services.

30. The Committee also notes, however, the comments from the Bill team which indicated that while the other structures considered by the OBC could deliver benefits, they could not deliver the same level of benefits as the single service model. The Bill team went on to state that—

“There is a higher risk attached to the delivery of benefits in an eight-force structure or a regional structure, because the benefits would have to be delivered across organisational boundaries.”

COMMITTEE CONSIDERATION

Requirements of Standing Orders

31. Rule 9.3.2 of the Standing Orders sets out the requirements for the FM accompanying a Bill. The FM should set out—

“the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the
timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

32. The FM must distinguish separately such costs as would fall upon—
   (a) the Scottish Administration;
   (b) local authorities; and
   (c) other bodies, individuals and businesses.

33. The Committee’s report considers each aspect of the requirements of the Standing Orders in turn.

General

34. The Committee notes that, in general, there is strong support among stakeholders for the policy objectives of the Bill. In particular, there was acceptance among respondents that it was necessary for the police and fire service to work within reduced budgets and that savings could be achieved through reform and restructuring. There was also a commitment to work with the Scottish Government and central police and fire bodies in delivering the reform agenda. For example, Chief Constable Smith from ACPOS stated in his oral evidence to the Committee—

   “I want to be absolutely clear with the committee that there is no doubt that there is a great prize for Scotland in a reformed police service, and we are absolutely committed to delivering it.”20

35. While the Association of Scottish Police Superintendents (ASPS) confirmed its support for a single police service, stating that—

   “We recognise the reality of the challenging economic environment which has led to a need to reduce the cost of policing whilst ensuring improved outcomes for communities.”21

36. The SPF also noted that “we are of the view that it is instinctive and logical that the removal of needless duplication, the replacing of 8 headquarters (and all the associated costs) with 1 will in itself deliver longer term savings and provide the service additional financial capacity to meet these challenges when presented.”22

37. While Northern Constabulary affirmed that it was “fully committed to all of the Scottish Government consultation exercises.”23

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21 Association of Scottish Police Superintendents. Written submission.
22 Scottish Police Federation. Written submission.
23 Northern Constabulary. Written submission.
38. From a fire service perspective, Eileen Baird from CFOAS highlighted that “CFOAS accepts that a national service is the way forward.” She indicated that CFOAS would “work with all stakeholders to deliver that national service.”

39. Nonetheless, stakeholders clearly had concerns regarding some of the detail within the FM and, in particular, the level of projected savings and the timescale over which such savings could be achieved particularly given Scottish Government commitments. For example, ACPOS indicated that there were “some challenges and constraints in meeting reform objectives while continuing to deliver our record levels of performance within the financial settlement.”

40. While HMICS stated that—

“This is a challenging environment for implementing change of the scale and complexity anticipated under police reform. HMICS fully accepts the right of government to set such constraints. We raise the issue only to highlight the fact that since we have yet to see detailed plans for how this change can be successfully implemented within this context, that we have difficulty providing public reassurance that such changes are possible without risks, including those to performance.”

Best estimates of the costs and savings

To which the provisions of the Bill give rise

41. As noted above, Rule 9.3.2 of the Standing Orders requires the FM to provide the best estimates of the costs “to which the provisions of the Bill would give rise.” Given their interdependency both estimates related to costs and savings in the FM have been considered by the Committee. A potential area of difficulty for the Committee has been in determining which costs and savings are attributable "to the provisions of the Bill", that is in the creation of single police and fire and rescue services, and the extent to which these figures can be distinguished from those relating to the broader reform agenda.

42. The FM sets out the costs implications that may arise directly from the provisions of the Bill and estimates of the broader costs which may arise as a consequence of the Bill and the associated process of reform. The FM also outlines the estimated savings. However, in relation to the savings, the FM does not distinguish between those savings resulting directly from the provisions of the Bill and those arising from the consequences of the Bill and the broader reform. However, it does attempt to separately identify costs arising from structure, but it should be noted that such costs cannot simply be equated to costs arising from the Bill.

43. The FM indicates that tables 2.1 and 3.1 give the best estimates of the financial implications of police and fire reform. It goes on to state that—

“However tables 2.3 and 3.3 present an alternate way of looking at the figures, by assuming that some costs and savings may potentially have

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26 HM Inspectorate for Constabulary Scotland. Written submission.
been incurred by means other than establishing single services, for example, by enhancing national delivery and increasing collaboration. It is difficult to predict exactly which costs and savings will be attributable to the single service structures and those which may have been achieved by taking other measures, particularly given that much of the current work, costs incurred and savings anticipate the establishment of a single service. Therefore, for consistency, figures in tables 2.3 and 3.3 were calculated by looking at the difference between the costs and savings estimates for an 8 service model with enhanced national delivery (police) and increased collaboration (fire and rescue) and those associated with a single service as appraised."

44. This comparison is shown explicitly in table 1c of the FM, which summarises the total costs and savings from the Bill across both police and fire, but distinguishes between the costs and savings arising from police and fire reform, the costs and savings adjusted for optimism and the costs and savings potentially arising due to structure. Table 1c is summarised in the table below produced by the FSU.

Table 1: Total projected costs and savings from the Bill, across police and fire (savings expressed as – £m)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs</td>
<td>5.27</td>
<td>19.5</td>
<td>51.9</td>
<td>58.3</td>
<td>20.7</td>
<td>-1.1</td>
<td>-5</td>
<td>0</td>
<td>150</td>
</tr>
<tr>
<td>Savings</td>
<td>-21.6</td>
<td>-28.1</td>
<td>-34.6</td>
<td>-96</td>
<td>-123</td>
<td>-126</td>
<td>-126</td>
<td>-126</td>
<td>-1,613</td>
</tr>
<tr>
<td>Net savings</td>
<td>-16.3</td>
<td>-8.6</td>
<td>17.4</td>
<td>-37.7</td>
<td>-103</td>
<td>-127</td>
<td>-131</td>
<td>-126</td>
<td>-1,463</td>
</tr>
<tr>
<td>Costs adjusted for optimism bias</td>
<td>5.6</td>
<td>23.8</td>
<td>65.5</td>
<td>72.1</td>
<td>24.9</td>
<td>0.5</td>
<td>-5</td>
<td>0</td>
<td>187</td>
</tr>
<tr>
<td>Savings adjusted for optimism bias</td>
<td>-15.1</td>
<td>-19.7</td>
<td>-15.1</td>
<td>-57.2</td>
<td>-76.3</td>
<td>-78.4</td>
<td>78.2</td>
<td>-78</td>
<td>-996</td>
</tr>
<tr>
<td>Net savings adjusted for optimism bias</td>
<td>-9.5</td>
<td>4</td>
<td>50.4</td>
<td>15</td>
<td>-51.4</td>
<td>-77.9</td>
<td>-83.2</td>
<td>-78</td>
<td>-808</td>
</tr>
<tr>
<td>Costs arising due to structure</td>
<td>0.5</td>
<td>3.1</td>
<td>10.2</td>
<td>24.6</td>
<td>8.3</td>
<td>-1.7</td>
<td>-5</td>
<td>0</td>
<td>40</td>
</tr>
<tr>
<td>Savings arising due to structure</td>
<td>-0.4</td>
<td>-1.3</td>
<td>4.5</td>
<td>-23.4</td>
<td>-31.7</td>
<td>-34.2</td>
<td>-34</td>
<td>-33.8</td>
<td>-428</td>
</tr>
<tr>
<td>Net savings arising due to structure</td>
<td>0.2</td>
<td>1.8</td>
<td>14.7</td>
<td>1.2</td>
<td>-23.4</td>
<td>-35.9</td>
<td>-39</td>
<td>-33.8</td>
<td>-388</td>
</tr>
</tbody>
</table>

Source: Adapted from FM, table 1c

Note: as in the FM, savings are presented in the table as negative numbers

45. This summary indicates that the net savings resulting from reform of the police and fire services is £1.46 billion over the 15-year period. However, it also shows that the net savings resulting from changes to the structure are only £388 million over the 15-year period.

46. It is unclear how the costs in tables 2.1 and 3.1 compare to those presented in tables 2.3 and 3.3 relating to structure and totalled in table 1c. An example of this is the VAT cost for the police, which in table 2.1 is circa £21m, while in table 2.3 is £7.4m. An explanation of the figure of £7.4m is provided in the police OBC which indicates that under the regional and eight-force models irrecoverable VAT at an estimated £14.1m per annum would, in any event, be incurred as a result of certain functions being transferred to the national policing and national support entities. In its evidence to the Committee the Bill team advised that—

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27 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 149.
“It is difficult to distinguish between savings that will result from the bill’s provisions and longer-term savings. Our assessment, and the reason why the Government decided that a single service is the best option, was that that single service structure would best enable us to deliver the maximum savings with least risk. However, on the bill and the distinction drawn between a single service and a regional or eight-force structure, the only difference in actual savings will be the reduction in chief officer posts and the reduction in the requirement for the relevant national organisations, ACPOS.”

47. The Bill team went on to state in relation to the reduction in officer numbers that “there is one figure for the savings that come directly from the change that the bill enacts, and a larger figure for savings that come from the creation of the new structure. The Government’s view is that you cannot unpick those two, as one flows from the other.”

48. Standing Orders require the FM to provide the best estimates of the costs to which the provisions of the Bill give rise. As noted above, a potential area of difficulty for the Committee has been in distinguishing with clarity those costs and savings attributable to the provisions of the Bill and those relating to the broader reform agenda, some aspects of which will be achieved by non-legislative means. The Committee notes the comments of the Bill team that it is difficult to unpick the savings that will result from the Bill’s provisions and longer term savings, but also notes that the FM distinguishes between savings arising due to structure and those arising from the reform of the two services.

49. It would also have been helpful to the Committee’s scrutiny if the FM had provided greater clarity on how the costs and savings directly attributable to the Bill as set out in tables 2.1 and 3.1 compare to figures arising from structure as set out in tables 2.3 and 3.3 and totalled in table 1c.

Reliance on the OBCs to provide “best estimates”

50. A key issue raised by a number of respondents in both their written and oral evidence was reliance on the OBCs to provide the best estimates for the costs and savings in the FM. Witnesses indicated their expectation that the figures in the OBCs would be independently verified and audited to inform a more detailed financial plan of costs and savings, a point that CIPFA had emphasised in its original submission to the Scottish Government’s consultation exercise on the Bill. It had stated that—

“It is essential that the savings projections made in the outline business cases are robust and independent verification of the business cases along with Parliamentary committee challenge is recommended. It is also essential that a clear and transparent financial plan which itemises where savings are to be made is set out.”

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30 CIPFA. Written submission
51. In its written submission Northern Joint Police Board and Highland and Islands Fire Board emphasised that “the costings contained within the Business Case should have been subject to independent audit and scrutiny.” 31 While APFOS asserted that “there is still a lack of detail to enable a proper and robust analysis” of the estimated costs and savings. 32

52. Likewise the FBU stated, with reference to the OBC, that—

“None of these assumptions have been tested against the reality of the single service as no model has been produced. It is difficult to understand where some of these figures have come from.” 33

53. COSLA also stated its belief that the “estimated costs and savings set out in the Financial Memorandum are not supported by robust evidence.” 34

54. For its part, Unison Scotland stated that although the FM contains more information on the savings “there is still a lack of detail, with too many assumptions made about the costs of restructure and the projected savings.” 35

55. While CFOAS stated that—

“Whilst we would not challenge the assumptions that savings can be made by removing duplication and we accept that financial challenges face all public sector bodies, we would argue that both the level of savings and the timeframe over which they are to be achieved, as outlined in the Financial Memorandum, are not based on robust evidence.” 36

56. In his oral evidence to the Committee Chief Constable Smith from ACPOS commented on the police OBC and summarised the position as follows—

“By its nature, that business case contains high-level assumptions and does not go into the detail of costs and savings to a degree that allows us to be confident that those cost and savings will be achieved. The purpose was to allow the Government to make a decision on which of the three options it thought best. It was always intended at that point that the Government’s preferred option would be subject to a detailed business case. That would involve going through due diligence on the reality of costs and savings and considering how we actually achieve the reform and how things will be done. For example, there would be consideration of whether we will be able to make the savings in relation to staff cuts that we have anticipated.” 37

57. One particular area of concern was the suggestion that over-estimating the projected savings might impact detrimentally on frontline services. For example, CFOAS indicated that estimates in the area of Prevention and Protection as set

31 Northern Joint Police Board and Highlands and Islands Fire Board. Written submission.
32 Association of Principal Fire Officers Scotland. Written submission.
33 Fire Brigades Union. Written submission.
34 COSLA. Written submission.
35 Unison Scotland. Written submission.
36 Chief Fire Officers Association of Scotland. Written submission
out in the FM were “over-generous, have no supporting evidence base and will not enable the Service to deliver risk reductions across Scotland.”\textsuperscript{38} It indicated that—

“They do not consider the emerging changes to risk and without a proper impact assessment may disproportionately affect vulnerable and at risk groups.”\textsuperscript{39}

58. COSLA highlighted estimated savings of £8m per annum in the fire OBC through “risk assessing and applying consistent crewing practice which could involve some redistribution”. COSLA suggested that “delivery of this saving should be considered as high risk both in terms of achievement of estimated savings and maintenance of service outcomes”.\textsuperscript{40}

59. A recurring theme from witnesses was that it was not possible to quantify the costs and savings until the structure of the new services had been decided. For example, APFOS pointed out that the structures were yet to be developed and it was therefore difficult to make any determination as to the accuracy of the projected costs and savings.\textsuperscript{41}

60. While CFOAS stated that “until the new Service’s structure and design is developed, it is difficult to accurately identify the final level of savings achievable.”\textsuperscript{42} Further, in her oral evidence to the Committee, Eileen Baird from CFOAS stated that—

“We have said that, until the new service’s structure is known and until the number of people who are needed to deliver safe incident command has been verified and validated, we cannot sign up to agreeing that the proposed savings are achievable. Just as the number of firefighters on fire engines who attend emergency incidents is a key factor in success, so is the level of incident response and incident command. Unfortunately, there have been many examples where that has been lacking, with tragic outcomes.”\textsuperscript{43}

61. The Bill team responded to these comments in its evidence to the Committee. It stated that—

“The projected savings for police were benchmarked against efficiencies that have been delivered by police forces in England and Wales and the projections were quality assured by KPMG and Deloitte. A similar process was adopted for the fire service, including workshops with fire and rescue stakeholders to identify areas for costs savings. Detailed assessments of

\textsuperscript{38} Chief Fire Officers Association of Scotland. Written submission.
\textsuperscript{39} Chief Fire Officers Association of Scotland. Written submission.
\textsuperscript{40} COSLA. Written submission.
\textsuperscript{41} Association of Principal Fire Officer Scotland. Written submission.
\textsuperscript{42} Chief Fire Officers Association of Scotland. Written submission.
potential savings were then developed with support and quality assurance from Deloitte.”

62. However, the Bill team went on to state that “For us, the outline business case was sufficient to justify introducing the Bill. The next stage of the process is being led by the two services. That is when we expect the outline business case to be turned into a full business case.”

63. The Bill team indicated that it had a team of officers working out how to implement the consequences of restructuring and that “the journey from outline business case to full business case is under way.”

64. The Committee notes the comments from the Bill team and paragraph 143 of the FM which states that—

“It does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets. As such, the actual costs and savings achieved may differ in detail as transition progresses, and indeed as decisions are taken by the new services.”

65. The Committee would welcome clarification on the nature of the quality assurance exercise that was undertaken by Deloitte on behalf of the Scottish Government and whether this exercise involved the independent verification of the figures that had emerged from the OBCs.

66. The Committee welcomes the assurance from the Bill team that a full business case is now being developed which should provide greater accuracy of the costs and savings which will result from reform of the police and fire services. It notes, however, that there is disagreement as to whether the FM provides the best estimates of costs and savings arising from the provisions of the Bill.

67. The Committee would welcome clarification on how the results of the full business case will impact on future budget planning and whether there is flexibility in the overall savings that must be achieved by reform. In this regard, it notes the comments of the Bill team below which suggest that while there is flexibility across categories of costs and savings, the overall budget has been set and therefore savings of nine per cent must be achieved. The Bill team stated that—

“If they find that some savings are easier to achieve than others and they adopt a different mix of savings that means that they incur some costs that they did not expect to incur but do not incur other costs that we projected that they would incur, that is fine.”

68. The Committee invites the lead committee to pursue this issue with the Cabinet Secretary for Justice.

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Best estimates of the timescales

69. An issue closely related to the identification of the best estimates of the costs and savings arising from a Bill is the estimated timescale over which the costs and savings are likely to be achieved. The FM states that “Many of the costs have been identified as falling within an initial five-year period. However, as the efficiency savings will continue to recur for some time, they have been profiled over a 15-year period.”

70. Paragraph 150 of the FM explains that the costs and savings of reform arise over different timeframes for the police and fire and rescue services. In the main, the total costs and savings have been assessed in both cases over a 15-year period. However, the FM notes that for fire and rescue service reform there are some minimal costs prior to the start of the 15-year period which have also been included. For police, year 1 is 2011-12 and the total costs and savings are calculated to 31 March 2026. For the fire and rescue services year 1 is 2012-13 and the total costs and savings (including those in year 0) are calculated to March 2028.

71. As noted above, a number of organisations, including Dumfries and Galloway Police and Fire and Rescue Service Authority, raised concerns regarding the timescales within which savings are required to be achieved. In particular, the SPF pointed out that it was difficult “to envisage any circumstance in which a 15 year estimate could confidently be claimed to be accurate.”

72. In his oral evidence to the Committee, Chief Constable Smith reaffirmed ACPOS’s belief that savings could be achieved, but emphasised that “much more thought has to be given to timing. At the moment, the timing is about making savings and not about reform.”

73. Referring to the start date for the new service on 1 April 2013, Chief Constable Smith indicated that this would “be the first point at which meaningful consultation can take place with the unions about what the structure will look like; thereafter, we can start to look at redundancies.” He indicated that “savings cannot start until April 2013.”

74. However, the Committee notes that in his evidence John Duffy from the FBU took a different view, indicating that—

“It was interesting to hear Kevin Smith say that ACPOS will not start negotiating until 1 April. However, with our management colleagues, we are taking a partnership approach to the process whereby we are trying to get as much agreement as we can now in order to speed up the process. If we do not do that, every pound that we have to save will have to come out of

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48 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 136.
49 Dumfries and Galloway Police and Fire and Rescue Service Authority. Written submission.
50 Scottish Police Federation. Written submission.
the front line; that is a frightening prospect given that we are already at the bare bones.”

75. In its evidence to the Committee the Bill team commented on the timeframe for implementation of the Bill. It stated that—

“We have been advised by the leadership of both services that they would like the new services to start on 1 April next year, if that is possible, because the sooner the unified service is there, the sooner the benefits of reform can be achieved.”

76. It went on to state that—

“Both services are planning for implementation on that date and are putting in place what they think will be necessary to operate a single service by then. I am not worried about a difference in approach.”

77. The Committee notes the comments of the Bill team. However, it understands the predominant concerns of stakeholders to relate not to the proposed start date of 1 April 2013 but the timescale within which the estimated savings must be achieved as set out in the FM. For example, in his evidence to the Committee, John Connarty from the City of Edinburgh Council stated that—

“There is nervousness just now because for 2013-14 there is a £40 million savings target sitting against the police budget line, and savings are also anticipated in fire. Timing is an issue, and the transition has to be managed carefully.”

78. The Committee considers that until a full business case has been developed and the costs and savings identified with greater accuracy it will be difficult to assert that the timeframe as set in the FM is achievable.

79. The Committee recommends that the lead committee seeks clarification from the Cabinet Secretary for Justice on the extent to which there is flexibility in the timeframe as set out in the FM within which savings should be achieved.

Redundancy costs

80. The uncertainty around figures in the FM and whether the estimated savings are achievable within the timetable provided is illustrated by consideration of the estimated savings resulting from workforce rationalisation, an issue which drew significant comment from stakeholders.

81. The FM confirms that regarding the police reform proposals, “it is likely that rationalisation will be required in support functions with resultant voluntary redundancy costs”. The FM calculates voluntary redundancy costs for the police at £80.8m over the first 5 years. This calculation is based on actual costs incurred through recent police and SPSA voluntary redundancy programmes and an

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assumed natural attrition rate of 3%.\textsuperscript{58} No indication of numbers and the balance between police and civilian staff is provided. However, the guarantee that police officer numbers will be maintained at 17,234 suggests that these costs relate to police civilian staff.

82. In terms of the fire and rescue reforms, the FM states that “some rationalisation may be required and result in redundancy costs”, with redundancy costs estimated at £4m spread over years 1-4. These calculations are based on reductions in uniform members being managed through staff turnover and retirements (with no redundancy costs required) and between a third and half of non-uniform headcount reductions coming from “some sort of voluntary redundancy package”.\textsuperscript{59}

83. The Scottish Government’s pay policy is for no compulsory redundancies up to 2012-13. It is also committed to keeping police officer numbers at 17,234.\textsuperscript{60} While these commitments were welcomed by police stakeholders, ACPOS, in particular, emphasised the constraints that this would put on its ability to achieve savings, noting that protection of police officer numbers would effectively close off 75% of the spend to making financial savings.\textsuperscript{61}

84. In its evidence to the Committee, ACPOS noted that, based on the figures included in the FM, the estimated savings equated to a reduction in circa 2000 full time equivalents (fte) (or approximately 33% of all police staff posts) leaving the organisation by April 2015 and that this had to be achieved by voluntary redundancy.\textsuperscript{62}

85. ACPOS pointed out that police forces and the SPSA had already reduced police staff levels by c1000 fte in the last two to three years, much of it by voluntary redundancy and stated that—

“There is, therefore, a diminishing pool of people likely to be attracted to voluntary severance, particularly when there is a clear statement that there will be no compulsory redundancy.”\textsuperscript{63}

86. As a result ACPOS considered that it was highly unlikely that voluntary redundancy schemes would attract such numbers, particularly within the current economic climate and a less than buoyant jobs market. By way of example, it pointed to a Voluntary Redundancy Scheme within Strathclyde Police over the last eighteen months which released only c200 members of staff and was on more favourable terms than those assumed within the FM. The Scheme attracted c500 notes of interest, many of whom were in areas of business that were not in scope for change.\textsuperscript{64}

\textsuperscript{58} Police and Fire Reform (Scotland) Bill. Financial Memorandum. Paragraph 196.
\textsuperscript{59} Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 259.
\textsuperscript{61} Association of Chief Police Officers in Scotland. Written submission.
\textsuperscript{62} Association of Chief Police Officers in Scotland. Written submission.
\textsuperscript{63} Association of Chief Police Officers in Scotland. Written submission.
\textsuperscript{64} Association of Chief Police Officers in Scotland. Written submission.
87. ACPOS also expressed concern that funding set aside for voluntary redundancies would be lost if it was not used within a specific timeframe. Chief Constable Smith said—

“We have been told that if, as a consequence of the redundancy process next year, we cannot use all the money that will be set aside for voluntary redundancy, that money will be lost to us.”\(^{65}\)

88. ACPOS also pointed out voluntary redundancy was a “relatively crude measure; it is not strategic in any sense—it depends on who puts up their hand and whether the organisation can afford for that person to go.”\(^{66}\) This view was shared by the SPSA, which expressed concern regarding the expectation that the reduction in staff numbers would be achieved through natural attrition and voluntary redundancy, stating—

“While this may be achievable in theory, these are blunt instruments and unlikely to result in the optimum skill, experience and grade profile.

Current policy around voluntary rather than targeted redundancy also constrains the ability to reduce expensive, senior staffing levels where excess capacity is most likely, and as a result may increase the potential impact of job losses among staff on average pay or below.”\(^{67}\)

89. Finally, ACPOS also expressed concern that the scale and phasing of police staff voluntary redundancies carried a risk that police officers would be drawn into non police roles.\(^{68}\) This was a view shared by UNISON, which commented in its submission to the Committee on the implications of the FM for non police staff—

“This means that 2000 police staff posts could be made redundant followed by substitution by police officers.

Police staffs includes properly qualified civilian personnel delivering a wide range of routine, complex, and specialised functions that are central to modern day police forces, while allowing uniformed officers to concentrate on operational policing duties. Taking trained operation police officers off the streets to perform administrative tasks – at greater costs, is economic madness.”\(^{69}\)

90. Calum Steele from the SPF considered that, in any event, it was unhelpful to make a distinction between uniformed and non uniformed jobs stating that—

“It is not useful to get into a debate that pits police officers against police staff. I very much agree with Chief Constable Smith that we should examine


\(^{67}\) Scottish Police Services Authority. Written submission.

\(^{68}\) Association of Chief Police Officers in Scotland. Written submission.

\(^{69}\) Unison Scotland. Written submission.
whether a role needs to be performed and not necessarily who will perform it.”\textsuperscript{70}

91. Fire service stakeholders also expressed concern regarding the estimated costs and savings relating to workforce rationalisation. APFOS stated that it was particularly concerned with the assumptions and commentary in relation to the voluntary redundancy payments.\textsuperscript{71} While CFOAS indicated that assumptions with regard to both uniformed and non uniformed staff appeared to be “significantly flawed”. It noted that—

“Redundancy costs of £4m have been assumed on the basis that any reduction in uniform numbers could be managed through staff turnover and retirements.”\textsuperscript{72}

92. However, it indicated that “Even if uniformed staff reach minimum retirement age, there is no certainty they would elect to do so.”\textsuperscript{73}

93. While the FBU stated that—

“There is an assumption that members will retire as soon as they can, but that needs to be looked at in much more detail. At the moment, there is a great deal of uncertainty around a number of aspects of our pensions, but the one thing that I would not assume is that firefighters will retire as soon as they can, at 55 or after 30 years.”\textsuperscript{74}

94. In relation to non uniformed staff, CFOAS reported that projects of turnover levels based on the age profile of current employees was 1.47\% per annum over the next five years.\textsuperscript{75} In her oral evidence to the Committee, Eileen Baird from CFOAS expanded on this stating that—

“Our human resources people have looked at the age profile of our non-uniformed colleagues. We have 1,100 support staff; if a third of those jobs go over time, that will amount to between 380 and 400 staff. If a ballpark figure for redundancy pay that might seem reasonable is approximately £30,000 a head, the overall figure will be closer to £9 million than £4 million.”\textsuperscript{76}

95. In its evidence to the Committee the Bill team explained its methodology in identifying the costs associated with redundancies in the fire service and indicated that its focus had been on identifying duplication. The Bill team reported that—

“We looked at the opportunities to make reductions for that duplication and the implications that would have for the number of staff currently employed

\textsuperscript{71} Association of Principal Fire Officers Scotland. Written submission.
\textsuperscript{72} Chief Fire Officers Association of Scotland. Written submission.
\textsuperscript{73} Chief Fire Officers Association of Scotland. Written submission.
\textsuperscript{75} Chief Fire Officers Association of Scotland. Written submission
in support roles. On the basis of that, we came to an assessment that around 200 posts would need to go over a four to five year period.”\(^{77}\)

96. The Bill team explained that it thought that of those it projected that around 100 would leave of their own accord. It therefore had calculated that 100 support staff may need to be offered voluntary redundancy at an average cost of £40,000 per person, making a total figure of £4 million.\(^ {78}\)

97. In responding to the concern that police officers might end up undertaking non police staff roles, the Bill team advised that—

“there is no assumption that police officers would replace the civilian staff posts. The savings will come from a reduction in the duplication that is inherent in the existing structure.”\(^ {79}\)

98. The Committee has some sympathy with the views of stakeholders (and those who will ultimately be involved in delivering the savings) that until the structure of the single services has been designed it will not be possible to identify the detail of duplication that might allow for a reduction in staff posts.

99. The Committee is also concerned by suggestions that funding set aside for redundancies in 2013 will be lost if not achieved. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on this point.

100. As noted above, in the Committee’s consideration of the FM there is a significant disparity between the confidence of the Scottish Government in realising the savings as set out in the FM and the views of stakeholder groups. Therefore the Committee welcomes the assurance from the Bill team that a full business case is now being developed, which should provide greater detail on the costs and savings that will result from the creation of the single services and specifically identify where there is currently duplication.

101. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on—

- Who is leading on the development of the full business case (FBC);
- Whether industry practice will be followed;
- How the development of the FBC is engaging with stakeholders;
- When the FBC will be completed;
- How the information within the FBC will be used; and
- Whether, in principle, the annual budgets for police and fire services will be adjusted as a result of the FBC.

Margins of uncertainty

102. As required by Standing Orders, the FM provides a range of cost figures where there is a margin of uncertainty in the best estimates. Optimism bias ranges from 0-100% depending on the margins of uncertainty around a particular area. The FM states that “the likely level of optimism bias was assessed individually for each element of cost, informed by evidence of the costs of other UK public sector reforms and advice from government analysts and members of the current police forces.”

103. The FM goes on to state that for most elements of cost an upward adjustment of 53% was adopted. The exceptions to this include police programme/project management costs which were increased by 10% and police information and communication technology (ICT) costs, which were increased by 100%. However, the ICT costs for the fire service were only adjusted by 53%. A number of submissions commented on the margins of uncertainty applied to the costs and savings as set out in FM. In particular, several respondents raised concerns regarding the optimism bias applied to ICT costs. For example, the SPSA stated that—

“We believe that significant ICT spend is likely to be required to support changes to business process and resourcing. ICT is a key enabler of Reform. As such SPSA believes that, even with the 100% optimism bias provided for ICT costs within the Financial Memorandum, the cost of change relating to ICT within the OBC and reflected within the Financial Memorandum may be under-stated.”

104. While HMCIS stated that “where optimism bias is applied at the rate of 100% instead of the relevant guidance of 200%, we would not share the apparent confidence in the positive prognosis for, or current condition of, police ICT infrastructure.”

105. CFOAS also commented on the 53% optimism bias that had been applied to fire service ICT, pointing out that this level of bias “differs from that considered appropriate and in line with Treasury Green Book for Police. The figure used there is 100% and given the early point in the process of assessing ICT assets, this would appear to be more realistic.” As Eileen Baird from CFOAS emphasised in her oral evidence to the Committee the ICT investment would “take resources, but it will also take time.”

106. As a result, CFOAS suggested that the Scottish Government should consider “allocating a Contingency Fund in order to meet any potential shortfalls.”

107. In its evidence the Bill team stated that—

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80 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 145.
81 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 145.
82 Scottish Police Services Authority. Written submission.
83 HM Inspectorate for Constabulary Scotland. Written submission.
84 Chief Fire Officers Association of Scotland. Written submission.
86 Chief Fire Officers Association of Scotland. Written submission.
“if in working through reform the service thinks that one line in the savings is overcooking it and another is unrealistic, adjustments can be made. That is part of the journey from outline business case to full business case. That does not weaken our confidence that overall projected level of savings is realistic.”

108. The Committee is aware that the Scottish Government has established a Public Sector Reform Board responsible for public sector ICT and digital public services and a McClelland National Oversight Board sitting above oversight boards for each of the public sectors. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on what consideration these boards will give to ICT savings arising from police and fire reform.

**Implications for future spending plans**

109. Despite reassurance from the Bill team that figures can subsequently be adjusted if required, a number of stakeholders considered that the estimated costs and savings as set out in the FM were now reflected in budgets and future spending plans. For example ACPOS stated in its oral evidence—

   “Another aspect of optimism bias is that, although it has been included in the financial memorandum to indicate that costs might be greater and savings less, our budget has not been affected and remains at the same level. For ACPOS, it is a practical issue of the optimism bias being theoretical at this point, but we still have to move towards the savings that have been set. The danger is that we focus on savings rather than reform.”

110. The issue of figures subject to optimism bias being reflected in future spending plans was also raised by HMICS in its written submission. It commented on the similarities in estimated costs and savings projections and the subsequent budget settlement for policing “as set out in the Comprehensive Spending Review (CSR).” Noting that the projected savings figure per annum is £108m, HMICS went on to state that—

   “The CSR settlement for policing appears to be profiled to achieve a recurring reduction in police budget of £106m per annum. Not only are these two figures surprisingly similar (£108m per annum - £106m per annum)……the OBC figure (£108m) is founded on the TOM [Target Operating Model] and POA [Police Objective Analysis], both of which contain margins of uncertainty.”

111. The Committee recommends that the lead committee seeks clarification from the Cabinet Secretary for Justice on the extent to which the estimated costs and savings as set out in the FM, particularly those subject to optimism bias, have been reflected in the Scottish Government’s future budgets and spending plans.

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89 HM Inspectorate for Constabulary Scotland
VAT recovery

112. The FM states that if the new bodies are subject to VAT, the cost of that payment would be a recurring annual cost of £21.5m for the single police service and £4m for the single fire service. These costs have been factored in to the FM. Should the new single services be able to recover VAT then this would lead to lower costs and higher savings.

113. A key issue raised by stakeholders was the ability of future single services to recover VAT. At present, the police forces and fire services are able, under section 33 of the Value Added Tax Act 1994 (“the 1994 Act”), to recover any VAT costs incurred. The FM states that the proposed move to a single police and fire service may alter this.

114. The VAT exemption issue relates to the status of the new police and fire services. Police authorities and the Receiver for the Metropolitan Police District, as well as local authorities are currently classed as public bodies where VAT is recoverable. Non-departmental public bodies (NDPBs) cannot recover VAT on their expenditure on goods and services. The Bill proposes that the new police and fire services will be classed as ‘Other significant National Bodies’, along similar lines to HMICS and Audit Scotland. The FM states, however, that there is still uncertainty regarding whether the new police and fire services will, as ‘Other Significant Public Bodies’ be able to reclaim VAT.

115. HM Revenue & Customs notice 749 states that HM Treasury has the power to add bodies to the list of VAT exempt bodies by order and that it will consider applications from bodies that meet both the following criteria. The body must—

- undertake a function ordinarily carried on by local government; and
- have the power to draw its funding directly from local taxation.

116. In their evidence to the Committee, a number of bodies referred to the difficulties that had arisen in relation to the creation of the SPSA and its subsequent liability for VAT payments. For example, CIPFA stated that—

“The Scottish Police Services Authority (SPSA) was introduced in 2007, it was later established that the body was not in fact registered as a VAT exempt body. It is understood that this was an oversight of legislative drafting and that there was subsequent financial and administrative consequences to the Scottish Government, the SPSA and to HMRC.”

117. While CFOAS noted in its evidence that efforts by the Scottish Government to resolve the VAT issue when the SPSA was created were unsuccessful and emphasised that, in relation to the new police and fire services, “Resolution of this matter will be essential to sustain performance and protect services to...”

90 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 178.
91 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 242.
94 CIPFA. Written submission.
ACPOS estimated that a recurring VAT liability of £22m per annum would be “equivalent to over 800 police staff or 630 police officer posts.”

In its written submission CFOAS claimed that the cost of VAT payments for the fire and rescue service was a significant concern and could equate to £10m per annum, more than double the £4m claimed in the FM. In her oral evidence to the Committee, Eileen Bard from CFOAS explained how this figure had been reached, stating that—

“We incur costs of around £50 million a year for goods and services, and 20 per cent VAT on that would be around £10 million. That figure was verified by the actual level of VAT that is reclaimed by Strathclyde, which we grossed up to give us that figure. I understand that there might be some debate about which elements of VAT can and cannot be reclaimed. Therefore, the figure may not be as high as £10 million, but it would still be significantly higher than £4 million.”

Witnesses stressed the importance of resolving the VAT liability issue. For example, John Connarty stated that—

“If I were to highlight one issue, it would be VAT liability, which is critical. Anything that the committee can do to seek a resolution to that would be of great assistance.”

While Calum Steele emphasised that—

“I would be amazed—I suppose that that is a strong word—and horrified if no VAT exemption were afforded to the police service. I hope that every influence is being exerted at Westminster to ensure that that happens.”

However, Chief Constable Smith stressed that—

“I am in no doubt that Government is turning itself upside down trying to resolve the issue but the answer lies with the UK Government, HMRC and the Treasury.”

In its evidence to the Committee, the Bill team indicated that it was currently awaiting a response from HM Treasury, having been advised by HMRC that the matter would be referred to HM Treasury.

The Bill team stated that—
“Our first pitch is to establish that the service would be exempt from VAT under existing law. We are waiting to hear from the Treasury on that. If the Treasury’s view is that they would not be exempt, we propose that the existing law be amended so that they would be. Only if that were not possible would we enter the realms of negotiation about compensation, financing and so on.”

124. To assist in its scrutiny of the FM, the Committee wrote to both HM Treasury and HMRC to seek clarification on the section 33 status of the new bodies. It was also advised by HMRC that the matter was a decision for HM Treasury.

125. HM Treasury responded to the Committee on 29 February and a copy of its response is attached at Annexe A. The response sets out the criteria for section 33 exemption status.

126. The Committee sought the comments of the Scottish Government on the HM Treasury response and an update on its further discussions including which alternative options were being considered with HM Treasury and HMRC. For example, the Committee is aware that the single Police Service of Northern Ireland is able to recover VAT under section 99 of the 1994 Act. The Scottish Government’s response is also attached at Annexe A.

127. Given the significant financial implications raised by potential VAT liability for the new police and fire services, the Committee invites the lead committee to pursue the issue of VAT liability with the Cabinet Secretary for Justice and seek information and an update on all steps that the Scottish Government is taking to try to resolve this issue.

**Costs on local authorities**

*Local accountability arrangements*

128. Standing Orders require the FM to identify separately those costs falling on local authorities. The FM states that the Bill provides for the police and fire services to engage with local authorities, and in particular, to work with local authorities when setting priorities and objectives. Local authorities will also have a role in monitoring the exercise of functions in their areas and in providing relevant feedback.\(^{103}\)

129. In relation to the new police service, section 45 of the Bill requires the Chief Constable to ensure that there are adequate arrangements in place for the policing of each local authority area. The Chief Constable must designate a police officer of unspecified rank as Local Commander for each local authority area but that officer may cover more than one such area. Section 47 places the Local Commander under a statutory duty to participate in community planning, replacing a similar duty of the Chief Constable under section 16 of the Local Government in Scotland Act 2003.\(^{104}\)

\(^{103}\) Police and Fire Reform (Scotland) Bill. Written submission, paragraph 183.

\(^{104}\) SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
130. With regard to the fire and rescue service, section 113 of the Bill requires the SFRS to ensure that there are adequate arrangements in place for the carrying out of its functions in each local authority area. The SFRS must also designate a Local Senior Officer for each local authority area, however, this person may be designated to more than one such area. Similar to the structure proposed for policing, section 113 also places a statutory duty on the Local Senior Officer to participate in community planning partnerships for the local area.105

131. The FM states that “following the enactment of the Bill, the police service/SFRS will receive all its funding – both revenue and capital – from the Scottish Consolidated Fund through the annual Budget Bill rather than via the local government settlement....”106 However, paragraph 161 of the FM states that individual local authorities will still be able to provide additional funding to supplement policing in their area.

132. Paragraphs 184 and 248 of the FM provide an estimate of the costs likely to be incurred by local authorities for engaging with the new police service and the SFRS. According to COSLA, costs are likely to be in the region of £3m-£4m, based on costs for elected members, policy support, research and analysis and administrative support.

133. A number of bodies commented on the costs to local authorities in providing local accountability arrangements. For example, CIPFA pointed out that—

“The requirement (or opportunity) for local authorities to consider whether there should be a police and/or fire committee (or to introduce other arrangements) means that some costs of uniformed services will continue to be borne by local authorities. Those costs will be in the form of staffing and other central costs required to govern committees.”107

134. CIPFA notes, however, that after reform, such costs will continue to be borne by local authorities without associated funding.108 Likewise, HMICS state that “one area where we consider there may be increased and uncosted impact, is in the servicing of 32 local police committees.” In his oral evidence to the Committee John Connarty emphasised that—

“There is a lot of uncertainty about what the costs might be, given that we could move from having responsibility across eight boards to having responsibility across 32 councils. That implies a potential risk of increasing costs.”109

135. CIPFA suggested that, in the absence of an appropriate funding stream, there was a risk that local authorities elect not to maintain committees.110

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106 Police and Fire Reform (Scotland) Bill. Written submission, paragraphs 160, paragraphs 229.
107 CIPFA. Written submission.
108 CIPFA. Written submission.
110 CIPFA. Written submission.
136. Unison Scotland expressed concern that local authorities “may end up with additional budgetary pressures paying for the scrutiny of complaints, training for members, or even the administration of local police board and local fire and rescue board”, when this funding should come from the central police and fire service resources.\textsuperscript{111}

137. In view of the above, ASPS stated that while it was supportive of simplified funding arrangements it was “in favour of continuing with additional local funding in pursuit of local policing arrangements as currently exists, where they add value at the very local level.”\textsuperscript{112}

138. The Committee invites the lead committee to seek assurances from the Cabinet Secretary for Justice that local authorities will be adequately resourced in order to effectively carry out their police and fire and rescue monitoring and scrutiny functions under the Bill.

Transfer of assets/resources

139. The Bill is not explicit on how assets and reserves from existing police and fire authorities will be allocated under the proposed structure. For example, the current Joint Police Boards’ have built up reserves, and the Bill is not clear on whether these will be distributed to local authorities, based on their funding shares, or transferred to the newly created SPA and SFRS.\textsuperscript{113} The submission from ACPOS states that it is its understanding that in terms of the police reserves, the Scottish Government and COSLA have agreed that these funds will be recovered from police authorities and returned to the Scottish Government and COSLA on the basis of a 51%/49% split, in line with current funding arrangements.\textsuperscript{114}

140. Among others, Dumfries and Galloway Police and Fire and Rescue Authority\textsuperscript{115} sought clarity on how assets and liabilities would be transferred as part of the new arrangements.

141. Eileen Baird from CFOAS pointed to the sale of assets, indicating that the disposal and transfer of assets might not be as straightforward as anticipated. She said—

“First, as has been rightly said, the current climate is such that not many people are looking for that type of asset. The second operational problem is that many of what we call non-operational assets—that is, they are not fire stations—are either attached to fire stations or are within the fire station’s curtilage.”\textsuperscript{116}

142. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on its plans for the transfer of assets and resources and how the funding will be re-distributed.

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\textsuperscript{111} Unison Scotland. Written submission.
\textsuperscript{112} Association of Scottish Police Superintendents. Written submission.
\textsuperscript{113} SPICe Briefing 12-15 Police and Fire Reform (Scotland) Bill: Financial Memorandum.
\textsuperscript{114} Association of Chief Police Officers in Scotland. Written submission.
\textsuperscript{115} Dumfries and Galloway Police and Fire and Rescue Authority
Additional financial issues

143. A number of additional financial issues were raised during the course of the Committee’s scrutiny and these are considered below.

Transition period

144. A number of organisations commented on financial provision for the transition or “shadow” period. In its response to the Scottish Government’s consultation, CIPFA noted that “funding and financial management of police and fire bodies have been inextricably linked to local government finance. It is essential that the scale of the task that will be required to extract police and fire from the current arrangements is not underestimated.”

145. It therefore suggested that—

“A shadow period of operation would allow the new authorities to operate in parallel with the existing bodies while new governance arrangements are embedded and while resources are transferred and acquired.”

146. For its part, COSLA wished to ensure that there was “as smooth a transition process in transferring to single Police and Fire authority as possible.” It highlighted a number of issues that should form the basis of discussions between the Scottish Government and key stakeholders and emphasised the need for—

“Clear accountability for control of costs and delivery of savings during transition to the National arrangements. Given the April 2013 provisional start date and the likely timescale for appointments to SFRS, SPA and Chief Officer posts, it will be extremely challenging to establish clear accountability for financial management for the financial year 2013-14.”

147. The FM states that Scottish Government estimate that the cost of “shadow leadership” of the new police authority will be between £1.72m to £2.63m and for the SFRS, between £500 and £765k for, “...a period of six months of additional planning and preparation”. This suggests that a six month transition period is anticipated.

148. However, in his evidence to the Committee, Chief Constable Smith on behalf of ACPOS indicated that—

“The reality is that the Government has decided at the policy level that there will be no shadow period.”

149. While Andrew Laing the HM Inspector for Constabulary in Scotland stated that—

117 CIPFA. Written submission.
118 CIPFA. Written submission.
119 COSLA. Written submission.
120 COSLA. Written submission.
121 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 187.
122 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 252.
123 Police and Fire Reform (Scotland) Bill. Financial Memorandum, paragraph 187.
“The notion of a six-month or a year-long shadow board is quite interesting, but the reality is that the spending review has set targets for savings and they have to be achieved.

Until the proposed legislation is enacted and the existing legislation is repealed, we work under the current legislation. It is as simple as that. To that extent, anything that has been agreed nationally, or any of the work that Mr Smith will try to do will have to be done through collective agreement and good will. There is no legislative lever to pull to say that someone must do something.”

150. The Committee invites the lead committee to seek clarity from the Cabinet Secretary for Justice on the transition period and what steps the Scottish Government is taking to ensure that, financially, there is as smooth a transition period as possible.

**Holding of reserves**

151. The Police and Fire Services (Finance) (Scotland) Act 2001 currently allows police authorities, joint police boards and joint fire boards to carry forward unspent balances from one financial year to the next. In this way, reserves of up to 5% of revenue budgets can be held. However the 2001 Act would be repealed by Schedule 7 of the Bill, and as a consequence, the SPA (and SFRS) will be unable to accrue financial reserves.

152. COSLA expressed concern that the proposed governance structure would not allow the new single services to be able to hold reserves. It noted that—

> “The holding of reserves is regarded as good financial management practice as they provide a contingency to cushion against the impact of unexpected events or emergencies.”

153. In response to questions from the Committee the Bill team pointed out that the majority of public services in Scotland are managed without reserves. It went on to state that—

> “We do not think that the loss of capacity to hold reserves will impact adversely on either service. Both will have substantial budgets. The policing budget will be £1.3 billion a year or thereabouts and the fire and rescue budget will be over £300 million a year. There ought to be enough scope for effective financial management within those budgets to manage without building up reserves.”

154. The Committee notes the response from the Bill team. It also notes, however, that the use of the £1.3 billion budget and £300 million budget for the police and fire services respectively will be dependent on the new services achieving significant savings.

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126 SPIe Briefing 12-14 Police and Fire Reform (Scotland) Bill.
127 COSLA. Written submission.
Fire service pensions

155. The FBU was keen to highlight to the Committee additional budgetary pressures that might result in changes to the fire pension scheme. In his evidence to the Committee John Duffy said that—

“A number of changes are being proposed by the Westminster Government and if they go ahead, firefighters might leave the pension scheme, which would have huge implications for the budget of the new fire and rescue service.”

156. The Bill team stated in response that—

“at the moment, the employer contributions to firefighter pensions are picked up by the Scottish Government, as it any shortfall. And we expect that situation to continue. Although there might be a budget pressure, it will fall on the Scottish Government, not on the service.”

157. In subsequent correspondence to the Committee, the FBU indicated that the issue was that “any drop-out from scheme membership would not be temporary but rather create a permanent reduction in the pension income from members’ contributions.”

158. The Committee welcomes the commitment from the Scottish Government that should the position in relation to firefighter pensions change, then any resulting financial implications will fall on the Government and not on the new fire service. It invites the Scottish Government to confirm that this would be the case where there is a permanent reduction in pension income.

CONCLUSION

159. Ultimately, stakeholders emphasised that the focus should be on reform rather than on achieving savings. As Chief Constable Smith asserted—

“We must ensure that the public, politicians and the police are focused on reforming the service in a strategic and logical way rather than focused simply on cuts. That is not to say that we are not fully cognisant of the current financial constraints. We will make savings, but there needs to be some reflection on the phasing of the ones that are anticipated.”

160. While John Duffy from the FBU stated that—

“the emphasis must be on delivering the service, not on finding the savings. Savings will be made from redesigning the service, but we are focusing on delivering the fire and rescue service to the communities of Scotland under a single umbrella. Only once the detailed work that comes out of that is in

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131 Correspondence from the Fire Brigades Union to the Convener of the Finance Committee.
place will we start to see what the savings will be. However, we are also seeing that that is where some costs will be incurred.\textsuperscript{133}

161. In its submission to the Scottish Government’s consultation on the Bill CIPFA suggested that—

“There is a clear role for both the Scottish Parliament and the Auditor General to both validate and to track the realisation of both financial and non-financial benefits claimed by the proposed reform.”\textsuperscript{134}

162. The Committee agrees and recommends that the Scottish Parliament undertake to monitor the non-financial and financial benefits arising from the provisions of the Bill should it become law and asks that the Scottish Government ensures that the appropriate data is collated over the 15-year period to facilitate this exercise.

163. To assist with this exercise, the Committee invites the lead committee to seek clarification from the Scottish Government on—

- What data will be collected and by whom;
- How it will be analysed; and
- How it will be reported and to whom.

164. The lead committee is invited to consider the specific comments made by the Committee in this report in its scrutiny of the FM, which are summarised below.

\textit{Best estimates of costs and savings}

165. The Committee would welcome clarification on the nature of the quality assurance exercise that was undertaken by Deloitte on behalf of the Scottish Government and whether this exercise involved the independent verification of the figures that had emerged from the OBCs.

166. The Committee welcomes the assurance from the Bill team that a full business case is now being developed which should provide greater accuracy of the costs and savings which will result from reform of the police and fire services. It notes, however, that there is disagreement as to whether the FM provides the best estimates of costs and savings arising from the provisions of the Bill.

167. The Committee would welcome clarification on how the results of the full business case will impact on future budget planning and whether there is flexibility in the overall savings that must be achieved by reform. In this regard, it notes the comments of the Bill team below which suggest that while there is flexibility across categories of costs and savings, the overall budget has been set and therefore savings of nine per cent must be achieved. The Bill team stated that—

“If they find that some savings are easier to achieve than others and they adopt a different mix of savings that means that they incur some costs that

\textsuperscript{134} CIPFA. Written submission.
they did not expect to incur but do not incur other costs that we projected that they would incur, that is fine.*135

168. The Committee invites the lead committee to pursue this issue with the Cabinet Secretary for Justice.

*Best estimates of the timescales*

169. The Committee recommends that the lead committee seek clarification from the Cabinet Secretary on the extent to which there is flexibility in the timeframe as set out in the FM within which savings should be achieved.

*Redundancy costs*

170. The Committee is also concerned by suggestions that funding set aside for redundancies in 2013 will be lost if not achieved. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on this point.

171. As noted above, in the Committee’s consideration of the FM there is a significant disparity between the confidence of the Scottish Government in realising the savings as set out in the FM and the views of stakeholder groups. Therefore the Committee welcomes the assurance from the Bill team that a full business case is now being developed, which should provide greater detail on the costs and savings that will result from the creation of the single services and specifically identify where there is currently duplication.

172. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on—

- Who is leading on the development of the full business case (FBC);
- Whether industry practice will be followed;
- How the development of the FBC is engaging with stakeholders;
- When the FBC will be completed;
- How the information within the FBC will be used; and
- Whether, in principle, the annual budgets for police and fire services will be adjusted as a result of the FBC.

*Margins of uncertainty – ICT costs*

173. The Committee is aware that the Scottish Government has established a Public Sector Reform Board responsible for public sector ICT and digital public services and a McClelland National Oversight Board sitting above oversight boards for each of the public sectors. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on what consideration these boards will give to ICT savings arising from police and fire reform.

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Implications for future spending plans
174. The Committee recommends that the lead committee seeks clarification from the Cabinet Secretary for Justice on the extent to which the estimated costs and savings as set out in the FM, particularly those subject to optimism bias, have been reflected in the Scottish Government’s future budgets and spending plans.

VAT liability
175. Given the significant financial implications raised by potential VAT liability for the new police and fire services, the Committee invites the lead Committee to pursue the issue of VAT liability with the Cabinet Secretary for Justice and seek information and an update on all steps that the Scottish Government is taking to try to resolve this issue.

Local accountability arrangements
176. The Committee invites the lead committee to seek assurances from the Cabinet Secretary for Justice that local authorities will be adequately resourced in order to effectively carry out their police and fire and rescue monitoring and scrutiny functions under the Bill.

Transfers of assets/resources
177. The Committee invites the lead committee to seek clarification from the Cabinet Secretary for Justice on its plans for the transfer of assets and resources and how the funding will be re-distributed.

Transition period
178. The Committee invites the lead committee to seek clarity from the Cabinet Secretary on the transition period and what steps the Scottish Government is taking to ensure that, financially, there is as smooth a transition period as possible.

Fire service pensions
179. The Committee welcomes the commitment from the Scottish Government that should the position in relation to firefighter pensions change, then any resulting financial implications will fall on the Government and not on the new fire service. It invites the Scottish Government to confirm that this would be the case where there is a permanent reduction in pension income.

Future monitoring
180. In its submission to the Scottish Government’s consultation on the Bill CIPFA suggested that—

“There is a clear role for both the Scottish Parliament and the Auditor General to both validate and to track the realisation of both financial and non-financial benefits claimed by the proposed reform.”\(^{136}\)

181. The Committee agrees and recommends that the Scottish Parliament undertake to monitor the non-financial and financial benefits arising from the provisions of the Bill should it become law and asks that the Scottish Government ensures that the appropriate data is collated over the 15-year period to facilitate this exercise.

\(^{136}\) CIPFA. Written submission.
182. To assist with this exercise, the Committee invites the lead committee to seek clarification from the Scottish Government on—

- What data will be collected and by whom;
- How it will be analysed; and
- How it will be reported and to whom.
ANNEXE A: CORRESPONDENCE ON VAT LIABILITY

Letter to HM Treasury from the Convener of the Finance Committee dated 31 January 2012

The Scottish Parliament’s Finance Committee is currently considering the Financial Memorandum produced to accompany the Police and Fire Reform (Scotland) Bill.

As you may be aware, the main objectives of the Bill are to create a single police service and a single fire and rescue service. Paragraphs 178 and 242 of the FM consider the impact that the Bill might have on the ability of the new single police and fire services to recover VAT costs incurred under section 33 of the Value Added Tax Act 1994. The FM indicates that it has been assumed that each single service may be liable for irrecoverable VAT on all goods.

The Committee would welcome your views on whether the new single services will be able to recover VAT under section 33 the 1994 Act. It would be helpful to the Committee’s scrutiny if it could receive your response by 17 February.

A copy of the Bill and Financial Memorandum are attached.

Letter to the Convener of the Finance Committee from HM Treasury dated 29 February 2012

Thank you for your letter of 31 January, which has been passed to me as the Minister responsible for VAT. I’m sorry that we were unable to reply to you by the requested deadline.

Based on the information currently available it seems that the Scottish Government’s planned reforms to the police and fire and rescue services will mean that they are no longer be eligible for VAT refunds under Section 33 of the VAT Act 1994.

The Section 33 refund scheme was introduced together with VAT in 1973, following a commitment that VAT would not become a burden on local taxation. Since then, successive Governments have maintained its original policy objective by only granting access to bodies which both carry out local authority functions and have a power to draw upon local taxation.

All police forces in England, Wales and Scotland currently receive a significant proportion of their finding from the council tax precept for police and do are eligible for Section 33. However, the reform Bill, currently before your Parliament, looks set to remove the power to precept from for the new single services and they will instead by funded by the Scottish Government.

The eligibility criteria for Section 33 are set out in HMRC’s published guidance. Although the UK Government did not have sight of any draft of the Bill, HMRC referred the Scottish Government to these conditions of entry in August last year.
In response, they acknowledged that the direct link to local taxation would be lost following their reforms. The UK Government has since remained clear and consistent in explaining its position on Section 33 to the Scottish Government.

There can be no doubt that the Scottish Government was fully aware of the consequences of deciding to remove the link to local taxation. This is clearly evidenced by the Scottish Government’s Explanatory Notes and Financial Memorandum (in particular Paragraph 178 on page 43) which accompany the bill and which assume that Section 33 will be lost.

Access to Section 33 is highly sought after as it can provide full VAT refunds to bodies that are otherwise unable to reclaim VAT. It is therefore vital that the Government can continue to apply a robust policy for determining access to the scheme. Where bodies are no longer be funded by local taxation, in this case the council tax precept for police, the rationale for providing Section 33 (to prevent VAT from becoming a burden on local taxation) falls away.

It is also important to bear in mind that the basic principle for funding most public services is that VAT costs are covered within upfront funding allocations. For example, Government Departments and the NHS only receive partial VAT refunds. For the NHS, this means that on average it is only refunded 20% of its VAT costs. There are also many public bodies, such as non-departmental public bodies or further education colleges, which receive no VAT refunds at all.

The Government’s decision to continue applying the long-standing eligibility criteria for Section 33 is necessary to maintain coherent and effective public spending controls in this area. If, for example, the police forces in England and Wales were to be reformed in such a way that they lost their power to draw on local funding they would also become in ineligible for Section 33. The Scottish Government has made the decision to go ahead with these reforms fully sighted on the likelihood that the VAT refunds would be lost.

I hope that this provides some clarity for your consideration of the Bill’s Financial Memorandum

Note from the Scottish Government to the Finance Committee dated 13 March 2012

Police and Fire Reform - VAT Status of New Bodies
Update at 13 March 2012

Discussions with HM Treasury and HMRC on the VAT status of the proposed Scottish Police Authority and Scottish Fire and Rescue Authority got underway in August of 2011. Most recently Scottish Government Finance officials undertook a series of discussions with HM Treasury VAT officials on 6 March and 9 March 2012.

The purpose of these latest discussions was to explore the background to the most recent formal view from the Treasury received on 2nd March (which is similar to that sent to the Finance Committee), to clarify the reasons behind the view that
the new bodies may not continue to enjoy the current exemption from VAT, make clear that the current reform proposals represent the best way to protect frontline services and deliver them more efficiently, and, identify opportunities and press a robust case for the current exemption status to transfer to the new bodies.

HM Treasury are now considering evidence put forward by Scottish Government officials related to a range of bodies that currently enjoy Section 33 exemption status and have similar characteristics to the new Police and Fire services. It is not possible to speculate whether those discussions are likely to lead to a positive outcome at this stage since HM Treasury have yet to formally respond.

A further update will therefore be provided to the Committee when the results of these deliberations are clear.
FINANCE COMMITTEE

EXTRACT FROM THE MINUTES

6th Meeting, 2012 (Session 4)

Wednesday 22 February 2012

Present:

Gavin Brown     Kenneth Gibson (Convener)
John Mason (Deputy Convener)     Mark McDonald
Michael McMahon     Elaine Murray
Paul Wheelhouse

Police and Fire Reform (Scotland) Bill The Committee took evidence on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill from—

Andrew Laing, Her Majesty's Inspector of Constabulary for Scotland;

Chief Constable Kevin Smith, President, Association of Chief Police Officers in Scotland;

Calum Steele, General Secretary, Scottish Police Federation;

Eileen Baird, Deputy Chief Officer Strathclyde Fire and Rescue and lead officer for Chief Fire Officers Association of Scotland Finance;

John Duffy, Scottish Secretary, Fire Brigades Union;

John Connarty, Business Support Manager, City of Edinburgh Council and member of COSLA's Police and Fire Reform Task Group;

Nick Bland, Head of Police Reform Unit, Lorna Gibbs, Head of Fire and Rescue Reform Unit, and Christie Smith, Head of Police and Fire Reform Division, Scottish Government.
09:30

The Convener: Item 2 is evidence on the financial memorandum that accompanies the Police and Fire Reform (Scotland) Bill. We have three panels of witnesses. I welcome our first panel: Andrew Laing, Her Majesty’s inspector of constabulary for Scotland; Chief Constable Kevin Smith, president of the Association of Chief Police Officers in Scotland; and Calum Steele, general secretary of the Scottish Police Federation.

As we have a packed meeting, we will not have opening statements but will go straight to questions. I will start with a question for Mr Smith, although other panel members should feel free to jump in.

Mr Smith’s organisation, ACPOS, said in its written submission:

"the Financial Memorandum and the budget has been set on the basis of an Outline Business Case … not a fully developed Business Case. Within the OBC, there are some high level projections and assumptions that have not been subject to a process of due diligence that would more accurately assess delivery, costs and savings."

Given that the committee’s interest is in the financial aspects of the bill rather than other aspects, will you elaborate a bit on your concerns with regard to that process?

Chief Constable Kevin Smith (Association of Chief Police Officers in Scotland): I am more than happy to comment on what is a fairly straightforward statement. Work was done last year to develop an outline business case, to which the service made a significant contribution. By its nature, that business case contains high-level assumptions and does not go into the detail of costs and savings to a degree that allows us to be confident that those costs and savings will be achieved. The purpose was to allow the Government to make a decision on which of the three options it thought best. It was always intended at that point that the Government’s preferred option would be subject to a detailed business case. That would involve going through due diligence on the reality of costs and savings and considering how we actually achieve the reform and how things will be done. For example, there would be consideration of whether we will be able to make the savings in relation to staff cuts that we have anticipated.

We all know that major change comes with significant risks: that costs could be greater than anticipated, that savings could be less than
anticipated and that the benefits of reform might not be achieved. There are many examples of that. The work that we have done in the past five to six months has been about articulating more accurately the costs and savings. The Government’s financial memorandum recognises that the information on the true costs—or savings—of reform will come through detailed work.

Our concern is that the outline business case is exactly that—an outline that makes high-level assumptions. For example, it assumes that we could save somewhere in the region of £13 million from the rationalisation of police control rooms. That was based on a projection that used the Strathclyde model and simply applied it across Scotland. That is good for an outline business case and a higher-level assumption, but it does not get into the details of what the change actually means and how it can be achieved. The difficulty with that approach is that we will still have to run business as usual. We cannot simply stop what we are doing with control rooms to get the new system in. That is a reasonable example of where due diligence needs to be done. We know what we are trying to achieve, but we need to consider how we actually do it.

I want to be absolutely clear with the committee that there is no doubt that there is a great prize for Scotland in a reformed police service, and we are absolutely committed to delivering it. We are a can-do organisation and every sinew is now being directed towards achieving that aim, but we must articulate the challenges, one of which is whether the outline business case is matched by the reality of a full and articulated business case.

The Convener: Although I put the question specifically to Mr Smith, Mr Laing and Mr Steele should feel free to comment. I will ask each witness a specific question, but the other witnesses can also comment. My colleagues’ questions will be for whichever member of the panel wants to answer. Do you wish to comment, Mr Laing?

Andrew Laing (Her Majesty’s Inspector of Constabulary for Scotland): I echo many of Mr Smith’s comments. The challenge in leading the reform is the fact that the target operating model that informed the outline business case was illustrative. It was used, for comparison purposes, across the potential for a regionalised force, a localised force or a national force, and it has established some really sound principles. As Mr Smith said, the devil will be in the detail. We now need to know how the model can be operationalised and made to work properly within policing. Much of that work is being done and we hope that a clear articulation of it will come out within the next month or two.

A process of due diligence has to be followed, and an important part of what Mr Smith identified in his response centres on timescales. The outline business case was slightly closer but the target operating model did not put time constraints on when the savings would be delivered. It simply indicated how policing could be done.

I am confident that that work will take us to a good solution, and I support Mr Smith’s comment that there is a prize to be won at the end of the reforms. From our perspective, the clarity of the detail around how the reforms will be delivered is yet to be unveiled.

The Convener: Mr Laing, your submission talks about uncertainty. For example, you use the term “optimism bias” and say

"where optimism bias is applied to a factor such as ‘process improvement’ it is important to be clear exactly how an individual process is going to be improved before going on to allocate levels of certainty about the scale of savings that will be derived. It is this level of clarity that we find lacking."

Andrew Laing: There are two elements to optimism bias. The first relates to what I would describe as economies of scale or scope. As a crude example, there are eight human resources departments but we might not need eight in a single service, so economies will be gained that are tangible and easy to identify. On the other hand, where the outline business case or target operating model suggests that, by refining a process, we will save significant amounts of time and/or money, I need to see the detail of how the process will be refined to be confident that it will deliver those savings.

For example, at yesterday’s Local Government and Regeneration Committee meeting, we talked about how we bring local accountability to fruition. One notion is that we end up with 32 policing committees. That process change would add in a significant level of bureaucracy. Until we see the detail of the process, we cannot tell which elements will deliver significant savings and which might incorporate additional burdens.

Chief Constable Smith: Another aspect of optimism bias is that, although it has been included in the financial memorandum to indicate that costs might be greater and savings less, our budget has not been affected and remains at the same level. For ACPOS, it is a practical issue of the optimism bias being theoretical at this point, but we still have to move towards the savings that have been set. The danger is that we focus on savings rather than reform. The issue for us is that there is a clash, particularly in relation to time, between the savings that have been set for us and the constraints that have been set in relation to police numbers, no compulsory redundancies, a dispersal model and so on—all of which are strong.
and laudable aims that show strong support for policing.

The danger now is that we will be so focused on making cuts in financial budgets for next year and the following one that we do not get into what the exercise should be about, which is developing the best model of policing for the benefit of the people of Scotland. There is a bit of the theory of optimism bias, but it is not coming through in the reality of budgets.

The Convener: Mr Steele, the Scottish Police Federation’s written submission states:

“It is instinctive and logical that the removal of needless duplication, the replacing of 8 headquarters (and all the associated costs) with 1 will in itself deliver longer term savings and provide the service”

with

“additional financial capacity to meet these challenges when presented.”

However, it also states:

“It is difficult to envisage any circumstance in which a 15 year estimate could confidently be claimed to be accurate.”

I therefore take it that the federation has concerns about the long-term financial projections in relation to the bill.

Calum Steele (Scottish Police Federation): At the risk of restating what is before you in the submission, I note that it is enormously difficult to find an economist, or anyone who works with figures, who will say that estimates in relation to something that takes place over such a length of time as 15 years can be seen to be accurate. I suppose that that fits with Mr Laing’s comments about the lack of a timescale in the target operating model for theoretically deriving savings. It is important to remind ourselves that the decision to move to a single police service featured heavily in the manifestos of the parties that the majority of members of the Scottish Parliament belong to and that there is a strong political impetus behind making the reform work.

Picking up on the concerns that Chief Constable Smith perfectly well illustrated, I would hate to think that we would end up focusing on the cash and not the service—I do not think that the communities of Scotland would forgive any elected member for that. The short answer, therefore, is that I very much doubt that anyone could know whether the service would be cheaper or, indeed, more expensive in the future. It is just finger in the air stuff.

The Convener: It is the nuts and bolts that we are trying to resolve. As you are aware, the whole point is to achieve a number of things: to maintain police numbers at 17,234; to have no compulsory redundancies; to retain the same terms and conditions for staff; and, more importantly, to be able to deliver a more effective and efficient police service.

I will open out the discussion to members of the committee.

Elaine Murray (Dumfriesshire) (Lab): As Mr Steele said, there is strong political support for the measure. Whether or not that was predicated on the single police force releasing sufficient funding for front-line policing, that is nonetheless probably why all of us who have signed up to it believed that we were to get a more efficient police force. I am a little concerned about some of the statements on the scale of police staff job cuts. It is argued that possibly 2,054 staff will be lost by 2015-16, and that it could be as many as 2,400 if the projected saving of £10 million in terms and conditions is not achieved. That would be something like 33 per cent of all police staff posts. The ACPOS submission states that there is “a risk that police officers will be drawn into non police roles.”

To an extent, that goes against the purpose of the reform, which is to release funding for police to be out on the front line, doing the activities that we want to see them doing. I ask for comments on the danger that police will end up behind desks rather than out on the streets.

Chief Constable Smith: I think that that is a risk. My starting point is that having 17,234 police officers is very good for Scotland—of that there should be no doubt. That support staff perform an equally critical role in modern policing and that there will be no compulsory redundancies are equally positive things, but in some respects they restrict where savings can be made. The Government’s outline business case does not quantify job cuts. However, it does quantify the anticipated savings and the investment in voluntary redundancy, which together equate to that figure of circa 2,000 job cuts. If we are to make the savings that have been set out in our budget for the next three years—and into the next spending review, in fact—the main focus will be on police staff.

09:45

It is critical to state that there is no doubt that savings will be made. As Mr Steele said, that will be done by reducing headquarters and some functions, and by rationalisation throughout Scotland. The question is whether the numbers that are needed if we are to achieve the budget savings can be reached through voluntary redundancy.

In my paper, I refer to the work that was done last summer that led to the outline business case, which drew on comparisons with other forces. Colleagues in Strathclyde managed to secure 200
volunteers for redundancy from 500 expressions of interest. If we use that as a rough measure of what we might achieve throughout Scotland, it does not add up to savings of £50 million. There is concern about how we will achieve the savings.

The risk is that police officers will be brought back inside. Voluntary redundancy is a relatively crude measure; it is not strategic in any sense—it depends on who puts up their hand and whether the organisation can afford for that person to go.

The starting point will be not so much whether a police officer will be put into a job, but whether that job is necessary. Although there will not be an automatic assumption that we will have to put in a police officer, if we are to get to the numbers on which the savings are based, it is a distinct possibility that that will happen. That will not be a good thing professionally or politically, and I do not think that the public will think it a good thing, either. It is a real risk. I suppose that the issue for us is how we manage that risk and how we reduce it—in every sense.

The key issue in police staffing is that we are already into savings. In the next few weeks and into the next financial year, there is an expectation in the current arrangements of savings for reform. Further work is required to prepare for savings in the following year.

Yesterday, it was announced that the new service will start on 1 April 2013. That will be the first point at which meaningful consultation can take place with the unions about what the structure will look like; thereafter, we can start to look at redundancies. It is not that I am particularly smart financially, but if we cannot start the consultation on the practical process of making the thing work until 1 April 2013, it will be much later in the financial year before people leave, and we will not make all our savings.

This goes back to an issue that was mentioned earlier. The Government has made it clear that savings have to be made. Strong and powerful political commitments to policing have been made and, in terms of meeting them, we come back to timing. We believe that this can all be achieved, but much more thought has to be given to timing. At the moment, the timing is about making savings and not about reform. I am sorry for labouring the issue, but it is a critical one.

Another aspect is that we have been advised by the Scottish Government that the investment to make the reform work is available only in that year. We have been told that if, as a consequence of the redundancy process next year, we cannot use all the money that will be set aside for voluntary redundancy, that money will be lost to us. In our view, that is not the most strategic way of doing things. There needs to be not just a year-
not the case. Many of the support roles have evolved because they were nice to have, rather than essential.

It is a great message to the men and women of the police service, in which I include police staff, that no attack is being made on terms and conditions. Expecting the people who work in the service to fund its delivery by having their terms and working conditions eroded would be perverse in the extreme. That would be a particularly unusual approach to financing any public sector activity.

The commitments that have been given are a welcome development. We recognise that the Government’s language in talking about the police service in Scotland is poles apart from the language that is used when political masters talk about the police service in England and Wales.

The cross-party support in Scotland buoyed the police service and raises the manner in which police services are delivered. If negative language was directed at us and our terms and conditions were being eroded, heads would go down and the quality of the service to the public would be diminished. We will never countenance the expectation that, under the thin veil of modernisation, the terms and conditions of police officers and police staff should be reduced to fund savings in the service.

The Convener: I remember the negative impact on the morale of the force south of the border when, a few years ago, the previous Government did not allow pay recommendations to be implemented.

John Mason (Glasgow Shettleston) (SNP): I will follow up on the question of timing and of a changeover period. One or two submissions have suggested having the future board in place for a shadow period of six months or a year. The Chartered Institute of Public Finance and Accountancy said that the risk periods were before the reformation of the service, during the changeover period, and afterwards. Is there a cost risk during those periods? Perhaps the costs will be too high before the joining up or during the changeover period.

Chief Constable Smith: The reality is that the Government has decided at the policy level that there will be no shadow period. I think that there was a shadow period of a year with the disaggregation of the regional councils in the mid to late 1990s, but it has been decided that that will not happen for the police or fire service. We will have the current governance arrangements, with me as the president of ACPOS and my eight chief constable colleagues still running the force, and the chief executive of the Scottish Police Services Authority and the director general of the agency running their bits of the organisation. The new team will take over on 1 April 2013, if that turns out to be day one. There is no plan for a shadow period.

There is general agreement among all the stakeholders that the earliest appointment of the chief constable and his or her command team is critical to day one. Everyone agrees that that would be sensible to get the service ready for day one, but also that we should look beyond day one as we start to take forward reforms.

The answer to the question is that there is no shadow period, so I suppose that there may still be some of the risks that CIPFA highlighted. However, I hope that there will be a smooth transition from the current arrangements into the new era. That would best be facilitated by the early appointment of the new chief constable and his or her command team. There are many issues attached to that, and the Government is wrestling with some of the related constitutional and legal issues because it has to do so at some point in the parliamentary process before it can start to think about that. However, I think that everyone agrees that the early appointment of the chief constable is fundamental to reform. If day one is beyond April 2013, which is when some of the significant cuts will start, the challenge of making the savings will be accentuated, as the savings cannot start until April 2013.

John Mason: I asked that question because it has been suggested that one or two decisions might be delayed. For example, Strathclyde Police would like to move out of Pitt Street and immediately make savings, but that is not being allowed until we get the new force, so savings are being delayed. Is that happening nationwide? It has also been suggested that some police forces are promoting people before the national police force is established to enhance their pensions, for example. There is potential for good decisions to be delayed and bad decisions to be made.

Chief Constable Smith: You are right. There is always potential for good decisions to be delayed and bad decisions to be made, but that does not apply only to policing; it applies to the whole governance arrangement. As members know, police wards in police authorities will remain in place and they will look to make the best possible decisions for their policing area with perhaps one eye, but perhaps not two eyes, on the future. That articulates the extent of our challenge in trying to deliver reform within the existing governance arrangements.

I do not know all the details of the Strathclyde issue, but I understand that that will be a decision for the new authority once it is able to look across and manage the whole of Scotland’s police estate. People could have come out of Pitt Street, but...
... and unsteady. There is no legislative lever to pull to say that someone must do something.

There is a reform process suggests that we should be looking towards the national good. There is a responsibility on chief constables and police authorities to focus on their local area, but the reform process suggests that we should be looking towards the national good. There is a conflict and challenge there.

Until the proposed legislation is enacted and the existing legislation is repealed, we work under the current legislation. It is as simple as that. To that extent, anything that has been agreed nationally, or any of the work that Mr Smith will try to do will have to be done through collective agreement and good will. There is no legislative lever to pull to say that someone must do something.

That aside, there are areas that will cause difficulty in making immediate cost savings because there is a focus on the local rather than the national. Mr Smith is right to say that some decisions could be delayed and that that will defer some of the savings that are necessary to meet the spending review targets. As we move forward, there is an important role to be played by the authorities and agencies that are responsible for scrutiny and inspection. During the transition period, the HMIC, Audit Scotland and others who have a locus have an important role to play in looking at those transitional arrangements.

Notions about the management and handling of reserves, the transfer of assets and liabilities, and the local-national conflict will all stay at the forefront of the inspection programme for the year ahead. The complexity in that is that we are going into local government elections and we are likely to see a change or some transition in local governance arrangements. So we are going into a complex and difficult period and there is a significant risk to the process, which will need to be scrutinised and monitored as we go forward.

Mark McDonald (North East Scotland) (SNP): I agree with Mr Smith and Mr Steele that the main driver for the reform should be the service that is delivered to the public. Obviously, the Finance Committee has to examine the financial data that lie behind that but I agree that the first consideration should be whether the reforms will deliver a better service to the people of Scotland.

A couple of questions have arisen as a result of some of what I have been reading. Where do the chief officers sit in the pie chart that ACPOS submitted? Are they classified as police officers although they do not perform front-line duties any more?

Chief Constable Smith: Chief constables, deputy chief constables and assistant chief constables are classified in the blue chunk of the pie chart. Other equivalent chief officers, such as directors of finance, HR directors and corporate service directors, or civilian members, are classified in the yellow chunk.

Mark McDonald: Obviously those figures will be reduced in the move to a single force.

Chief Constable Smith: Yes. The paragraph below the pie chart shows what will come from that. Some of the £5.4 million savings shown in bullet point 3 of paragraph 3.3 will mean fewer of me, and fewer of the deputies and assistants. Part of the assumption has been that there is potential for a reduction in some supervisory roles and that will be about police officers at the senior level.

Mark McDonald: Okay. You spoke about potentially achieving 2,000 voluntary redundancies. I come from a local authority background and we have achieved similar numbers of voluntary redundancies. How many voluntary redundancies have been achieved within the police force up to today? Do you have that kind of detail?

Chief Constable Smith: We have reduced our numbers by about 1,000 over the past two to three years, so the number of police staff has gone down. As Mr Steele said, there was a growth in numbers, but the figure is now on a downward trajectory. I do not have the exact figure, but I hope it will be handed to me by the time I finish this sentence. A reasonably significant proportion...
of the 1,000 will have been achieved through voluntary redundancy.

The best example to use as a benchmark is in paragraph 4.5 of our submission, which outlines what our colleagues in Strathclyde, which accounts for half of Scotland, achieved over 18 months. My point in that and other relevant paragraphs is that, while the numbers in the forces in the SPSA are following a downward trajectory—some of them through voluntary redundancy—there is no compulsion on the horizon for redundancy, and that, in our experience, people are less likely to take up the offer of voluntary redundancy when the picture of the wider jobs market is not particularly positive. Unless there is an incentive for people, we do not believe that we will attract the numbers required to make the savings.

Mark McDonald: I am aware that a large amount of work is done at present on joint procurement, but I presume that individualised force branding and individualised systems in different forces will affect the amount of savings that can be made through a joint procurement strategy. Has much work been done on what a joint procurement strategy could achieve if it were based on a single-branded, single-force system?

Chief Constable Smith: A single service certainly would provide opportunities for savings, one of which would be in procurement. It is important to highlight that we have already done a significant amount of work. I will not go through it all, but I am willing to provide the information to the committee. It outlines a number of joint procurement operations, such as the Scottish police collaborative agreement, the UK police collaborative framework, the National Policing Improvement Agency, the procurement Scotland initiative and Scotland Excel.

We are heavily involved in as many procurement opportunities as possible, but a single service would provide even more opportunities. It will be a big organisation and one would hope that it would be able to bring its power to bear. A lot has been done and there are more opportunities.

One of our questions about the outline business case was whether we could see the detail of the projection that the proposal would make another £15 million, but that has not been forthcoming. We will do everything that we can to squeeze every penny out of things such as procurement and non-staff costs before we start to consider people.

Mark McDonald: One of the potential start-up costs will be the rebranding of vehicles, uniforms and so on, and the redesign and change of information technology and payroll systems. Are you confident that forces will not press ahead with any significant procurement of branded items or with changing their IT or payroll systems in the period prior to the implementation of the provision? That could lead to a double cost.

Chief Constable Smith: The simple answer is yes, I am. We took decisions a few weeks and months ago to have more generic badges, whether they be for Fife, Central or Strathclyde, to enable a much smoother transition. We are also working on livery for vehicles and so on, and that will progress in the time leading up to day one. Branding, however, is probably at the lower end of the overall cost, so we do not anticipate that it will lead to significant costs.

The point about information and communications technology is important. Although it would be wrong to say that our ICT programme has not been without difficulties—every organisation, from the Government to the private sector, has issues with ICT—we sometimes overlook the benefits of a single ICT strategy.

Colleagues south of the border enviously look towards a single intelligence system and single command control and HR systems. As part of the reform strategy we have a moratorium on new projects and a tightening-up even of the day-to-day stuff that forces require, to ensure that we are not doing something that has to be unpicked on day one. The reports I anticipate coming in the next few weeks from our executive leads throughout the country are about what the day one deliverables will be, and they will include ICT.

Our overall strategy is not to try to change the world on day one. There will be a soft landing, ensuring that our current high standard of policing is not overly re-engineered for day one. The re-engineering and the big savings have to come beyond that. Many people talk about a single pay system on day one and my response is that what we want on day one is to ensure that people get paid. Whether they are getting their pay line from Highland Council, Glasgow City Council, Strathclyde Police or elsewhere, what matters is that they get paid. We can then have the longer thought-out process about what the new HR or finance process will be, and build and deliver IT to suit that. I anticipate that on day one the ICT change will be at the lower end of the scale.

Mark McDonald: Would Mr Laing or Mr Steele like to comment on that discussion?

Andrew Laing: My only comment is on ICT. The history of ICT in joint projects in Scotland has been varied. Going back to the late 1980s and the 1990s, I note that the Scottish police information system, which was set up to try to get single systems in Scotland, had limited success. The SPSA has come into being and has had much
more success, but it has not been without difficulty.

The single comment in our response centres on optimism bias, in particular regarding ICT. The Green Book guidance suggests that there should be a 200 per cent bias because of the difficulty and nature of ICT projects, but the allowance is 100 per cent. That is simply an observation, but it is a significant one because of the variance there would be in ICT costs between a 100 per cent and a 200 per cent optimism bias.

Calum Steele: I want to expand on the problems with ICT—and largely with its governance. If, because of how the legislation is structured, police forces or unitary authorities make decisions for their geographic confines rather than speaking to each other, that hinders the process, or it certainly has done in the past. I would like to think that one of the many benefits of the new single service is that it will introduce an element of professional scrutiny at the Scottish police authority level, to help to ensure that the services and systems that are being developed for the future of the service are fit not just for busy Aberdeen, Glasgow or Edinburgh city centres but for the far-flung reaches of our many remote and diverse communities. Sometimes geography can have an impact on technology.

Paul Wheelhouse (South Scotland) (SNP): Welcome to the committee. I have been interested in your evidence so far. I start by addressing an important point about VAT that is raised in the ACPOS submission. Reference is made to the fact that, as significant changes will be made in the constitution, Scotland’s police will potentially fall liable to an additional £22 million per annum in VAT. There have been on-going discussions between the Scottish Government and Her Majesty’s Revenue and Customs, but you do not appear to be confident there will be a happy outcome, based on previous experience.

Can you expand on the figures you have cited? For the benefit of those in the public gallery, I will quote from the report:

“Our planning assumption, therefore, is the new Police Service of Scotland, will have a recurring VAT liability of £22m per annum, which is the equivalent of 800 police staff jobs or 630 police officer posts, on top of what has already been assumed. Over the period covered by the Financial Memorandum this amounts to a liability of £280m.”

How confident are you that that will be resolved? What would you like us to do, if anything, in support of your case?

10:15

Chief Constable Smith: All stakeholders have a similar view on this issue and the Cabinet Secretary for Justice and I have spoken to each other about it on a number of occasions. No one in Scotland wants this; it will be bad for policing and bad for the country. I am not privy to any details—no doubt officials will tell you about them—but I am absolutely confident that Government is doing everything it possibly can to resolve the matter.

I simply express the concern that there has been the same effort and impetus to resolve the issue of the VAT liability that accrued from the introduction of the SPSA in 2007 and that has still not happened. In this day and age of financial constraints, granting that exemption will be a big move for Her Majesty’s Revenue and Customs; however, I suppose that the Scottish Government will be able to provide a more informed position.

In paragraph 6.3, I am trying to bring to life the fact that this is not simply about VAT or about our not wanting to pay this tax. It is about people and policing, and the numbers of staff jobs and police officer posts that I mention are simply what £22 million equates to. The impact will be on staff jobs or officer posts because we are already looking at every aspect of non-staff costs, but there is only so much that we can get out of those. Our operating costs are actually very lean—they account for only 12 per cent of our overall budget—and, as you will no doubt know, many of them are simply unavoidable. We have to pay our rent, our rates, our fuel, our heating and so on. We will have cut out as much as we can from the non-staff element and if the VAT liability kicks in, the impact will be on people. For the avoidance of doubt, I stress that I am in no doubt that Government is turning itself upside down trying to resolve the issue but the answer lies with the UK Government, HMRC and the Treasury.

Paul Wheelhouse: Did you wish to comment, Mr Laing?

Andrew Laing: My understanding is that the Police Service of Northern Ireland is VAT-exempt.

Paul Wheelhouse: I do not want to go over the same ground that my colleague Elaine Murray covered in her question about support staff, but can you clarify your baseline in that respect? From what point are you calculating savings in support staff jobs? I know that, in my area of the Borders, G division of Lothian and Borders Police has already made substantial savings of more than 25 per cent of support staff costs through voluntary redundancy and natural wastage. However, what is the baseline? Will those savings be taken into account in the overall savings that have to be made or will the savings have to be made from now onwards?

Chief Constable Smith: All the savings being made into the forthcoming financial year, the following two years of the spending review and the first year of the next spending review are set
against our current position in 2011-12. The issue is important. Although we have been making lots of savings, some—indeed, many of them—cannot be counted.

Paul Wheelhouse: The issue is certainly important. When David Strang met me and other MSPs, he made it very clear that the force had been doing everything that it could to make efficiencies. It is helpful to us to understand that these savings might have to be made on top of those that are already being made.

My final question is on the resource allocation models that might be implemented with a single police force. I am a strong supporter of the overall reform but are there any safeguards within it to maintain police numbers in some of Scotland’s rural areas and to prevent officers from being shifted from rural to urban divisions under some national resource allocation model?

Chief Constable Smith: The concern that the new service will draw officers into urban areas is echoed throughout the country. Indeed, the language used has sometimes been even more emotive; some are concerned that officers will be drawn into not just urban areas but the central belt. I spent 31 years in Strathclyde Police, which has big urban areas and rural areas—it goes into Argyll and South Ayrshire, for example. Lothian and Borders Police has a big urban area and your area. Steve House and David Strang do not neglect the rural areas; they ensure that they are policed.

It is not only the policing professionals who are concerned about resources. When I was in Strathclyde Police—it is a few years ago now—whenever the idea of a single service was articulated, people in the urban areas, including the elected members, were often concerned that they would lose out because the resource that they had, including some of the specialist capacity, would be spread far more thinly.

The concerns that rural police officers, elected members and members of the public have are shared with those in the urban areas. We must ensure that we have a robust resource allocation model that takes account of that concern, of crime, risk, sparsity and density and of a community-based style of policing to ensure that, as far as possible, the system is open and transparent and allows people to know why we resource particular areas in the way that we do.

I will add a note of caution: as Andrew Laing and Calum Steele will no doubt agree, there is no such thing as a perfect resource allocation model. I have seen more fights over resource allocation models than anything else in policing, because there is always a perception that there are winners and losers.

In the new structure, the chief constable will be responsible for ensuring that suitable arrangements are in place for local policing. The role of the local policing committees and the role of the authority in ensuring that the chief constable is held to account for delivery throughout the country should ensure balance. I imagine that members of the Scottish Parliament will, for the first time, be able to hold the chief constable and the authority to account in a really meaningful way through scrutiny on some fairly significant issues. Resource allocation might be one of them. I imagine that, within that structure, one of the Government priorities would be ensuring that we continue to deliver local policing.

I reassure you that community policing is not carried out in rural areas alone; it is done wherever we are. It is within our DNA. Police officers, whether chief constables or constables, value it as the building block for all aspects of our policing. I have no concerns that there will be a wholesale transfer of people overnight.

That said, to make the savings, the chief constable will need a degree of flexibility to rationalise the service throughout Scotland. I would not want to mislead the committee because, as the years go on, some reconfiguration will be necessary in the new service.

We also need to ensure that community policing is not simply thought of as the local, well-known community cop or the local inspector but the broad range of policing. No doubt you will have had the major inquiry teams, the public protection unit or the counterterrorism officers operating in the Borders. We must think of policing in the locality as far more than simply local policing.

Paul Wheelhouse: That is helpful. I will reiterate the point that you made. I am aware that, in Lothian and Borders Police, there is a sensitive allocation of resources to reflect the rurality of the region that David Strang oversees. I am comforted by what you say. I hope that that sensitivity and that reflection of the diversity of the region and the nation continue.

Gavin Brown (Lothian) (Con): The point was made earlier that a full business case is generally preferable to an outline business case and a number of concerns were raised about some of the assumptions that were made in the business case. All the witnesses also raised some concerns about savings or costs that are mentioned in the financial memorandum. Apart from those, do they wish to draw to the committee's attention any savings or likely costs mentioned in the financial memorandum that seem optimistic? Are there any obvious ones on which we ought to focus?

Chief Constable Smith: The main one is the leadership of the service. The Government has a
right to assume that we should get our hands on those big figures and wrestle with them.

I will try not to get into too much detail. However, one area that has already been highlighted is information and communications technology for the new single service. Mr Laing touched on that, and no doubt you will have a response from the SPSS ICT people, in whose view the ICT costs will be greater than planned. Without getting into the small beer, I think that that is one of the most significant areas.

There is an assumption in the business case of just over £30 million of savings from non-staff costs. That is about 25 per cent of our operating costs. That would be a significant saving for any business, organisation or service. However, it is not one that we are quibbling about. We articulated our views in our response to the Government on the outline business case and financial memorandum. For us, it is about getting into the detail and trying to eke out as much as we can. We want to do that before we start to look at people. In fact, that is not just what we want to do; we have to do that before we go to our unions to say, "We have no other places to go."

Gavin Brown: Do Mr Laing and Mr Steele have anything to add?

Andrew Laing: I have a concern about ICT, and VAT is a significant issue. If we can resolve the issue in the way in which the Police Service of Northern Ireland has done, it will benefit everybody in the community at large.

The other aspect centres on the flexibility of what is being proposed, in terms of timings, the constraints and the ability of the service to deliver this in a reasoned fashion. The reality is that, until an operational model has been fully developed, we will not know it will look like.

Calum Steele: I agree with Mr Laing and Mr Smith that the key issues are VAT and IT. On VAT, surely there is the political will to make the proposal work. It would be a terrible message to send to the Scottish Parliament if no VAT exemption was afforded to the police service in Scotland, especially as, with only a few exceptions, which I imagine could be counted on two hands, MSPs represent parties that went to Westminster to ensure that that happens.

I can provide some further comfort to Mr Wheelhouse on the movement or drawing to the centre of police officers. Picking a police officer up from place A and taking him or her to place B does not happen with no cost. Moving people is expensive. There are a load of costs associated with the transfer of police officers—and indeed support staff—from one area to another and, against a background of shrinking budgets, there will be no desire unnecessarily to transfer police officers from one place to another.

There is probably further comfort in the bill’s provisions on the mobility of police officers and their retention within the confines of their current forces. They will, at least in the short term, provide some comfort that that is going to be the case, although we recognise the absolute requirement for the chief constable to be able to move resources as he or she deems fit. We have to recognise that the rationalisation of the police estate is taking place now. It is a requirement and, irrespective of whether there is to be a single service, it will continue to take place, because of the reality of the financial environment in which the country finds itself.

Elaine Murray: Paul Wheelhouse’s question reminded me of a question that I was asked by a police officer in Dumfries and Galloway, where officers are expected to work throughout the constabulary’s area. Under a single police force, will police officers be required to work throughout the nation? What would be the resource implications? There would be a significant personal cost to a police officer if they were transferred somewhere else, but there would also be on-costs related to relocation if officers are expected to work throughout Scotland.

10:30

Chief Constable Smith: The simple answer to your question is absolutely not. The bill would not allow for that. Mr Steele will be able to give you greater detail, but I think that there will be a requirement to ensure that officers do not have to move home to get to their place of work.

The last thing that the leadership of the service want is for people to be moved. Not only would that be expensive, it would be counter to good morale. I remember my early days in Strathclyde, when some officers were going from Glasgow to Ayr and others were going from Ayr to Glasgow. They passed each other on the road although they performed the same function. To take that on to a Scotland-wide basis would not be sensible. It would be costly and bad for morale and it is not an idea that we should entertain.

The situation is different for more senior officers, as there should be a degree of flexibility. There should, rightly, be an expectation that chief officers such as me cover the whole country, but these things come with a cost.
Mr Steele will be more in tune with the detail of moving people across.

Calum Steele: I can draw on my experience with Northern Constabulary. Just before I left, the cost of dealing with transfers in Northern Constabulary alone was approaching £1 million a year.

If you multiply a force of 800 by 10 and take into account the mobility that would be associated with that, you see that moving police officers is not cheap. Thankfully, we have a newer breed of more enlightened chief officer, so the attitude that, “It was good enough for me, sonny, so it is good enough for you,” does not prevail to the same extent. I would like to say that it does not exist, but it can manifest itself on occasion.

Although finance is not the key issue, it is an enormous consideration. If you can avoid the cost of moving a police officer from one place to another to, as Mr Smith highlighted, perform the same function, why on earth would you do it? Arguably, that is one issue on which some of the boards and authorities have failed, or have certainly not stepped up to the requirements on best value. Although the decision to move police officers can be an operational one, it cannot be at any cost.

Chief Constable Smith: The other side of the coin is that the creation of a single service provides opportunities for those who want to move to have greater career development opportunities. That is an advantage of a single service. There is a lack of career opportunities in my force, Central Scotland Police. A single service will open up opportunities for officers on a voluntary basis.

The Convener: Mr Smith was beaming during some of Mr Steele’s comments. I thought that Mr Smith was going to give him a big hug when he praised the enlightened approach of chief constables these days.

I point out to Mr Steele that I think that the opponents of the bill can be counted on one hand as opposed to two.

There is an issue with fuel duty and other fuel costs, which I know that we are looking at.

The witnesses’ excellent responses today have certainly given people a lot of food for thought, in particular the bill team who will give evidence later.

Before we wind up the evidence session, do you have any further comments?

Chief Constable Smith: From an ACPOS perspective, this has been a difficult journey. You will know that various views were expressed, as there were politically and by the public. For the avoidance of doubt, the service is now behind the proposal for a single service. We see that there is a huge prize. Parliament is in the process of making up its mind, but it would take a fairly significant about-turn for the move to a single service not to happen, so the service is at one in putting it together.

Some of our best and most senior people the length and breadth of the country are starting to pull things together. A central team based at the Scottish Police College is ensuring that the work is properly co-ordinated. There is a huge prize. We must ensure that we maintain high-quality local policing and do it within a much tighter financial envelope while also ensuring that the specialisms that, unfortunately, are required in modern-day policing are available throughout Scotland. We must do that on the basis of community-based policing engaged with local partners.

There is an absolute commitment to the single service. We are a can-do organisation and we will make it happen, but timing is an issue. We must ensure that the public, politicians and the police are focused on reforming the service in a strategic and logical way rather than focused simply on cuts. That is not to say that we are not fully cognisant of the current financial constraints. We will make savings, but there needs to be some reflection on the phasing of the ones that are anticipated.

Andrew Laing: I shall pick up on the notion of reflection, and give a flavour of the HMICS’s role. The inspectorate’s role under the bill is fairly consistent, and it is suggested that I have a responsibility for reporting to Parliament on the effectiveness and efficiency of policing, year on year. This is a complex programme of change, and there are three strands to the challenge facing the inspectorate. First, there is business as usual. Scottish policing starts from a position of huge strength, with 35-year crime lows, record detection rates and increased public satisfaction, so business as usual must be monitored over the period ahead. I have talked about the transitional arrangements, and we are mindful of the fact that they are complex, with legislation driving a localist approach and the reform programme a national one.

On resource allocation, we ultimately have a responsibility for continuing to assure the effectiveness and efficiency of policing, so we need to benchmark now to provide comparative data for the future. We are developing a level of performance reporting based on 32 building blocks—the local authority areas—and focusing on local policing and the impact at the corporate centre to drive significant efficiencies, single outcome agreements and a better dispersal of specialist services, which are among the aims of the bill. The rationale behind that articulation is to assure the committee that we are focused on all
those aspects and will continue to report from an independent and professional perspective.

The Convener: Mr Steele, I give the last word to the Scottish Police Federation.

Calum Steele: In the Local Government and Regeneration Committee yesterday, I think it came across strongly that there is a desire to include in the bill minute details of the mechanisms by which the consultation and the holding to account will take place, and I strongly caution against that. Many of the current systems and mechanisms have evolved, and they exist not in spite of legislation but because they work. I would hate the bill to become too prescriptive, tying the hands of the police service and not benefiting either it or the citizens of Scotland. The bill can lay down a broad framework and it does not need to go much further than that.

The Convener: I thank you all for your contributions.

10:37
Meeting suspended.

10:45
On resuming—

The Convener: Good morning, everyone. It has gone time so I reconvene the meeting. I welcome our second panel of witnesses. Eileen Baird is deputy chief officer of Strathclyde Fire and Rescue and the lead officer on finance for the Chief Fire Officers Association of Scotland; John Duffy is the Scottish secretary of the Fire Brigades Union; John Connarty is the business support manager for the City of Edinburgh Council and a member of the Convention of Scottish Local Authorities police and fire reform task group.

There are no statements so we will proceed straight to questions. I will ask the first series of questions before opening questions out to members.

The FBU’s submission talks about assumptions around crewing and asks how such assumptions can be made when the stated position is “to protect frontline outcomes over the transition period”.

You add that “A number of the figures stated are not quantified and are aspirations and do not fit with the Governments desired outcomes.”

Will you expand on your concerns?

John Duffy (Fire Brigades Union): The basis of that is the outline business case, which the previous panel discussed, and some of the figures that were reported in it. Paragraph 274 of the financial memorandum says that “Savings for response are estimated to be £13.5m” and goes on to highlight some other areas such as “operational guidance and procedures” and “reduction in duplication”. We can see that some savings could be made there.

However, the financial memorandum goes on to mention “reviewing crewing and emergency cover practices”.

One of the three pillars that we keep being told the reform is about is protecting outcomes. The fire service has come a long way in the past few years in reducing the number of fires, but we still respond too frequently to tragedies. We are keen to protect our ability to protect the community, which involves firefighters on fire engines up and down the country, and their ability to get those fire engines out on the road and to the scene where they are required. The balance is that, although fire engines are not always involved in putting out fires, the crews are taking the preventative message to the community; the vast majority of community fire-safety activity in Scotland is done by fire crews on fire engines from fire stations. If we take money from the response side of the budget in the amounts that are being talked about, we will reduce both our ability to respond to incidents and our ability to prevent those incidents. If we do that, we will see the decline in incidents stop and the level will climb again.

Overall we agree that there are savings to be made within the service. We have never hidden from that, but have suggested a number of areas in which savings could be made, although we suggest that taking from the front line—the very part that the Government says it wants to protect—is an extremely dangerous option.

The Convener: I will raise similar points from the submissions from other panel members. The Chief Fire Officers Association of Scotland said:
“the level of savings and the timeframe over which they are to be achieved, as outlined in the Financial Memorandum, are not based on robust evidence.”

Will you comment on that, Ms Baird?

Eileen Baird (Chief Fire Officers Association of Scotland): I was present when Chief Constable Smith gave evidence. I echo what he said about the outline business case and its purpose, which was to evaluate three options for change in service delivery. It did not examine in detail where savings could be made or whether they could be achieved in the proposed timeframes.

Like the FBU, CFOA is certain that savings can be made by removing duplication. Our business case suggests that moving to a regional model would save £23 million. It is undoubted that savings can be made, and we support that fully. The questions are about the speed with which savings will be achieved and the up-front investment that will be required to deliver them.

As for protecting front-line outcomes, I will make a point that we have raised when going through the business case process and since meeting Scottish Government officials. A number of savings are suggested across many parts of the service, including learning and development, response and prevention. They all involve reducing the number of senior officers, because of duplication. I understand why people think that such savings can be made, because prevention policies and learning and development policies do not need to be developed eight times.

However, our point was that to look at each of those areas in isolation does not take into account those senior officers’ other duties in the service, which relate to incident command and emergency response. We have said that, until the new service’s structure is known and until the number of people who are needed to deliver safe incident command has been verified and validated, we cannot sign up to agreeing that the proposed savings are achievable. Just as the number of firefighters on fire engines who attend emergency incidents is a key factor in success, so is the level of incident response and incident command. Unfortunately, there have been many examples where that has been lacking, with tragic outcomes.

In looking at the evidence and the business case, we have expressed the concern that, although savings can be made, we are not convinced that they can be made in the proposed areas. We reserve our position until we have seen the detail of what the service will look like.

The Convener: I know that Mr Connarty is not a direct employee of the Convention of Scottish Local Authorities, but I will put to him a quote from COSLA’s submission, which states:

“The Fire and Rescue Outline Business Case includes estimated savings of £8m pa through “risk assessing and applying consistent crewing practice which could involve some redistribution. This includes reviewing risk-based thresholds for crewing appliances.” The timing and level of savings assumed in this area is not supported by evidence.”

COSLA says almost exactly the same thing as its colleagues. Will you comment further on that issue?

John Connarty (City of Edinburgh Council): What you say is right—in general, we are all saying that, as the business case is in outline, it does not have a great deal of information that would allow us to analyse the figures and to scrutinise them in great detail.

The difference with the fire and rescue business case is that all areas are open to consideration—for example, there have not been commitments about officer numbers, as with the police—and, as a result, it highlights response areas and prevention as places where significant savings can be made. In that respect, COSLA has highlighted crewing as an example.

In summary, the fire and rescue business case looks different to the police business case because it goes into front-line areas that are perhaps a wee bit more sensitive and which come with some risks. With Lothian and Borders police board and Lothian and Borders fire and rescue board, we have experience of reviewing crewing arrangements through a service improvement plan, although in that process resources were not reduced but redistributed on the basis of a risk assessment. The process was difficult, involved a lot of consultation and gave rise to a lot of challenges.

All I am highlighting is the fact that the fire and rescue business case comes closer to front-line operational areas, and that crewing seems to be the most appropriate example to illustrate the difference between the business cases.

The Convener: The Chief Fire Officers Association Scotland has expressed concern about optimism bias. Although the Treasury recommends that it should be up to 100 per cent, the optimism bias under the bill is about 53 per cent. What is your view of that?

Eileen Baird: Optimism bias of 53 per cent has been fairly consistently applied; however, as my police colleagues pointed out earlier, the bias also applies to ICT investment. At the moment, the estimated costs are £9 million with an optimism bias of 53 per cent but, if the Treasury rules on 200 per cent optimism bias were to be applied, the shortfall could be £20-plus million.

The outline business case suggests that reducing the total of eight command and control
centres could save £3.7 million. I cannot say for certain whether the total will be reduced to three—or even two—but it certainly will not stay at eight. Such a move will mean investing in ICT systems and, as an example of how not to go about this, I should highlight what happened south of the border when the 53 fire authorities tried to design nine regional control centres. The Government spent close to half a billion pounds on the project and then simply abandoned it. If we want a safe and effective command and control system, we will need to spend money—and the job will not be simple and quick.

I simply flag up that I do not know where the evidence suggests that 53 per cent is the right optimism bias and we certainly question the figure with regard to ICT.

**The Convener:** Indeed. After all, the optimism bias for police ICT is 100 per cent. The figure of 53 per cent seems to be rather odd and precise: we will certainly question the bill team about that.

I seek questions from members.

**Elaine Murray:** I have a couple of questions, the first of which relates to the £4 million for redundancy costs. It has been argued that the figure is based on the idea that turnover will come mostly from people either retiring or leaving anyway, which will lower the cost, and that half to two thirds of the non-uniformed staff will leave without any redundancy pay at all. The figure is certainly a lot less than the £80 million that is being provided to the police for redundancies. Can you give us a more realistic figure for the cost of redundancies?

**Eileen Baird:** Can I answer that question?

**The Convener:** You can all answer it.

**Eileen Baird:** Our human resources people have looked at the age profile of our non-uniformed colleagues. We have 1,100 support staff; if a third of those jobs go over time, that will amount to between 380 and 400 staff. If a ballpark figure for redundancy pay that might seem reasonable is approximately £30,000 a head, the overall figure will be closer to £9 million than £4 million.

Unfortunately, I should mention the other side of the business. As I said earlier, we have 200-plus command and control staff. If we move from eight to two or three centres, a third of those staff will have to go; however, the business case contains no detail on those numbers. Of the 211 staff members who are in post today, three are expected to retire because of age in the next five years. What is a reasonable figure? If the police redundancies budget is sitting at £80 million, given our size and the relative number of people who may have to leave the service, a figure of around £12 million to £15 million would be much more realistic than the £4 million that is shown.

11:00

**John Duffy:** There is at present absolutely no facility within the firefighters pension scheme or the new firefighters pension scheme for early retirement among uniformed staff. There is an assumption that members will retire as soon as they can, but that needs to be looked at in much more detail. At the moment, there is a great deal of uncertainty around a number of aspects of our pensions, but the one thing that I would not assume is that firefighters will retire as soon as they can, at 55 or after 30 years. Previously, there was a clause within the pension scheme that required a member to keep contributing to it up to the point at which they could retire, but there is now no compulsory retirement age and we cannot factor in how many people will retire voluntarily. At the moment, there is no facility within the pension scheme to give any enhancement—there is no early retirement facility. There is such a facility within the local government pension scheme that covers our control room members, but there is none for our firefighters. Our membership ranges from new firefighters right through to senior managers.

Two balances are needed. There seems to be an expectation that we will lose all the duplicated senior managers. However, as my colleagues have spelled out, those senior managers are not just sitting behind desks; they also have command and control duties to perform at incidents, so a number of them must be maintained, although some posts will probably be surplus to requirements. As a trade union, we keep making the point—it will not be a surprise to members—that the posts must be separated from the people and we must look after the people. Those individuals have no facility for early retirement, so the question is what is going to be done about that. In effect, there are too many people in the wrong place in the organisation. They must either be put in roles to which they are not particularly suited further down in the organisation or be allowed to leave the organisation with dignity.

We sometimes hear discussion about the uniformed head count coming down. I argue that the uniformed head count is low and that we need some posts to be redeployed to the front line, which would allow us more to perform the specialist role that the fire service is evolving into. Our role used to be just putting out fires; now, the fire service provides a range of rescues and that is an evolving process. We are starting to develop that, but it takes time, effort and a great deal of training and commitment. In order to provide that
service to the level at which we want to provide it, we need to resource it with bodies on the ground.

Although we see that there may be surplus posts at the top, we also see a need at the bottom, but how can we start to facilitate the move from one place to the other if we do not have the tools to allow people to move?

**John Connarty:** I think that—

**Elaine Murray:** I have a slightly different question for you.

**John Connarty:** I am sorry—I want to follow up on the redundancy question.

One of the points that COSLA raised in its evidence is the difference between the fire service estimate of £4 million and the police service estimate of £80 million. The differential is probably largely driven by the fact that the fire service business case looks across all areas of the service, but the police business case is driven towards staff costs. I would not disagree with Eileen Baird's estimate of £10 million for the fire service, but I think that the police figure is questionable and looks far too high. My experience with Lothian and Borders Police is that we had a significant cut of 2.6 per cent in the police budget, which led to about 120 voluntary redundancies in that year that cost about £2.5 million. That was a significant change in the level of saving.

Lothian and Borders Police has been through the consequences of that cut. We heard the chief constable say earlier that the service has reduced over the past two to three years and now has 1,000 fewer people. We are now at the point at which it is difficult to accept applications for voluntary redundancy, because the concern is that redundancies will have an operational impact. The fire service figures therefore look a bit on the low side and the police figures look high. The question is whether it is possible to deliver that level of saving without having an impact on service through the police staff.

**Elaine Murray:** I want to ask John Connarty about a particular issue. The bill's explanatory notes state:

“Savings of £7.21m per annum (from the fifth year) arise from opportunities to transfer responsibility for functions to other bodies (such as traffic wardens).”

Is there a concern that savings will be made at the expense of, for example, the local authorities to which the particular functions will be transferred? Do you feel that the financial memorandum adequately covers the costs to local authorities?

**John Connarty:** I picked up on the example of traffic wardens that you cite only when I read the papers that are in front of us, so we will have to take that back for consideration. It has probably not been transparent to the appropriate degree in the discussions in which I have been involved through COSLA; it has not been on the table. Most of the discussions on cost implications for local government have been around the local scrutiny arrangements. There is a lot of uncertainty about what the costs might be, given that we could move from having responsibility across eight boards to having responsibility across 32 councils. That implies a potential risk of increasing costs. We will also go through a period of reform, and experience suggests that that will involve heightened scrutiny and change.

The design and shape of the proposed local committees is being taken forward through pathfinder arrangements within each council area. We are concerned about the implications, which will need to be assessed properly going forward. We will need to look carefully at the issue of traffic wardens to assess the implications.

**Michael McMahon (Uddingston and Bellshill) (Lab):** I apologise for being late. I have explained to the convener and I thank him for his understanding.

On the financial assumptions in the financial memorandum, the submission from the Association of Principal Fire Officers Scotland states that

“there was insufficient detail provided to enable a proper testing of those assumptions”.

However, you have made fairly specific points in that regard. I concur with the convener’s view that you have provided precise figures in your assessment. Is there not enough detail in the financial memorandum to allow you to test the assumptions, or do you concur with the APFOS view and feel that the detail did not allow you to test the assumptions as much as you would want to?

**Eileen Baird:** Obviously, the business case that was presented and the financial memorandum have some pretty high-level assumptions built in, but they are not always evident in the financial memorandum. For example, why is there only a 53 per cent optimism bias? Why was the redundancy figure £4 million and not something else? From that point of view, I agree with the APFOS submission that we simply do not have sufficient detail to reflect on whether the figures are right. Until we see the shape of the service, we will not be in a position to cost anything accurately.

I will explain that further. At the moment, the suggestion is that perhaps a third of support staff might leave the service over time because the service could still be provided with significantly fewer people. We do not disagree with the principle that, if we reduce eight services to one,
we will achieve economies of scale and be able to release staff. However, we cannot accurately cost how much that will save because we do not know the new structure. We are also unable to give accurate costs for redundancy, because those clearly depend on the age profile and salaries of the people who—as Kevin Smith said earlier—put up their hands.

We are in almost the same position as APFOS. We can say that, if the bill is enacted, it will certainly make savings, but we cannot say whether those savings will be £15.5 million because we simply do not know the detail that would be required to determine that. We can say that we do not think that the financial memorandum is right and why we do not think that it is right, but we cannot give you the pounds, shillings and pence of what the savings will be. Further work needs to be done to develop that.

Michael McMahon: Do you agree, Mr Duffy?

John Duffy: I do. The outline business case developed what it termed a “target operating model” to lead to a decision being made on whether to go with the status quo, a regional model or the single service. However, the assumptions that were made in that model were undetailed; there was no detail at all—it was just principles about things that could be done once, three times or a number of times.

The service has now been given the task of designing a single fire and rescue service. That work is under way and we are working closely with our management colleagues to try to get the process moving as quickly as possible because of the timescales. The detailed structure will come out of that work.

I return to the point that some of my police colleagues made: the emphasis must be on delivering the service, not on finding the savings. Savings will be made from redesigning the service, but we are focusing on delivering the fire and rescue service to the communities of Scotland under a single umbrella. Only once the detailed work that comes out of that is in place will we start to see what the savings will be. However, we are also seeing that that is where some costs will be incurred.

Michael McMahon: In response to the committee’s question, “Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates”, APFOS highlighted a concern that different methodologies had been used to test that uncertainty for the police and the fire service. Were you aware that the methodology that was used for the police was different from that for the fire service? Would you expect different methodologies to be used, given that the services are different?

Eileen Baird: The services are different but, in respect of moving from eight services to one, there are huge similarities. APFOS was reflecting the fact that, prior to the start of—I think—the previous financial year, police colleagues spent considerable time in the Scottish Government examining detailed costings and their work was done at a different pace from ours. That is reflected somewhere in the bill documents, which talk about the work that was led by the deputy chief constable of Strathclyde Police.

There was not that type of arrangement for the fire service, so the outline business case in the financial memorandum was developed in a different way through the use of workshops with key stakeholders and was driven much more by people in the Scottish Government than it was by people in the Scottish Government in conjunction with the service. That is probably what was alluded to in respect of how the process was worked through.

11:15

Mark McDonald: I thank the witnesses for coming to give evidence.

I state at the outset that, prior to being elected, I was vice-convener of the Grampian joint fire and rescue board, and a family member is a retained firefighter.

The fire service is obviously somewhat different from the police in having a significant retained element in its staff make-up. How do Mr Duffy and Ms Baird see the retained element fitting into a single service? Is there a role for expansion of the retained element? I know, for example, that some European countries that operate a single fire service have a much more expanded retained element.

John Duffy: A huge tract of our country is covered by retained duty personnel and it is right to acknowledge the work that they do. Basically, away from the central belt, the cities and the larger towns, areas are covered by people who have other work but who carry a pager for 24 hours a day, seven days a week. I acknowledge their commitment. The retained duty personnel in Scotland are Fire Brigades Union members, and we advocate on their behalf.

We have difficulties in recruiting and maintaining crews in some parts of the country. That is not necessarily a reflection on the fire service; rather, it is almost a societal change. The retained duty system was developed in the days prior to commuter belts, when towns and villages were much more self-sufficient. Now, a person who
goes into one of our command-and-control rooms in the morning will see all the lights going off, as appliances will no longer be available. That is a significant problem across Scotland.

There is a job to be done. The issue is going into the joint work streams that we are working through, and such issues are being considered in the Scottish Government reform programme. We need to look at how the current appliances are staffed, as we are not getting them on the run as frequently as we could.

The argument has been made that we could expand the retained element, but we look for people who live and work within a radius of the fire station when there are volunteers to join the retained duty system. In rural areas, that pool of people is becoming smaller; in towns and cities, it is effectively non-existent. If a person wants to go from their house to the supermarket and the supermarket is more than five minutes away from the fire station, the person will no longer be available. Most parts of the system are now done by phone. If a person presses button A, they are available; if they press button B, they are not. Such a system works. If a person is out of their turnout area, they are not available and the appliance is off the run.

The retained duty system is vital to Scotland, and our nation relies heavily on RDS personnel. However, it is not the answer to the fire service’s problems.

Eileen Baird: I echo what Mr Duffy said about valuing the work that our RDS colleagues across the country do. He also highlighted the challenges we face, for economic and societal reasons, in attracting people who comply with the requirements to be RDS personnel. As a service in Scotland, we probably have to think about that model and whether it will remain sustainable in the 21st century.

We have to give cognisance to the fact that if someone attends an operational incident, whether they are an RDS firefighter or a whole-time firefighter, the member of the public whom they go to save will not be in the least bit interested in what type of firefighter they are. Their expectations of what will be done for them are exactly the same. That places a significant burden, both on the firefighters and on the service, to ensure that adequate training is given so that RDS firefighters are safe and undertake their work in the required way.

I echo the sentiment that we value the work of the RDS, but there are challenges and we need to start to think, as a country, about how to address them. That probably means investing financially in that element of the service.

Mark McDonald: Ms Baird, you spoke about incident command and control. How do you see firelink fitting into the equation? The system allows for an element of remote incident command, which was previously unavailable, and I understand that it is now used nationally. Has the introduction of firelink put the fire service a step ahead in the move towards a single service?

Eileen Baird: You are correct—firelink is a national system, not just in Scotland but in the United Kingdom. It is used by all three emergency services, so they can communicate at any operational incident, which is a huge benefit. I am not sure whether what Mark McDonald meant by his question was whether firelink replaces the need for the presence of a person, but it does not. It enhances communication and allows for much better communication between the emergency services. From that point of view, it is a good thing.

Mark McDonald: What is the lowest rank of officer currently trained or equipped to command an incident? Where does that responsibility sit in the fire service at present?

Eileen Baird: The standards throughout Scotland are probably different, but I will talk about my service in Strathclyde. The incident commander would be dependent on the size and complexity of the incident. The lowest-ranking commander of an incident would probably be a crew commander, but we would always try to have a watch commander for a routine house fire, rubbish fire or similar. On top of that, if there were a number of fire appliances we would need to have in place the appropriate incident command structure, because we do not want people to be unclear about their role on the incident ground.

Mark McDonald: Are you saying that the gravity of the incident increases the seniority of the incident commander required?

Eileen Baird: Yes.

Mark McDonald: Are you also saying that, in a national service, that would create not a potential issue, but something that would need to be resolved?

Eileen Baird: We are saying that it is important that the appropriate person with the right skills attends an incident at some speed. That requires a suitable number of incident commanders to be located throughout the country, so that someone is able to attend an incident. Whether that person is at the rank of a station commander, a group commander or an area commander, what is important is that they have the appropriate skills, training and experience to do the job that is required of them. However, they have to be able to get to the incident within a reasonable period of time, because the fire service is a dynamic, immediate service.
Mark McDonald: I turn to Mr Connarty and local scrutiny. I seek to correct one comment that you made. You spoke about the number of boards going from eight to 32. There are obviously 14 boards, because we have six fire boards, six police boards and two unitary authorities. I admit that it is still a jump from 14 up to 32.

We have unitary authorities in Fife and in Dumfries and Galloway. Did COSLA look at them as a model for how a potential blue light committee might function at local authority level?

John Connarty: I have not been involved directly in that. Pathfinder arrangements are being trialled across the country and that process will include looking at the existing practices in Dumfries and Galloway and in Fife. The intention is to take the lessons from those pathfinders and come up with the most appropriate model.

Mark McDonald: COSLA’s submission refers to potential costs around “informed independent professional advice”. Thinking back to my days on the fire and rescue board, I recall that we had clerking from the local authority side and that the chief fire officer provided professional advice, but I do not recall independent professional advice, as such, being provided. What does that comment refer to?

John Connarty: I think that the reference is to a policy officer-type role. The issue is whether that would be appropriate and whether the board or the local committee would require such support in scrutinising the service’s local plans. A policy officer would play such a role alongside a committee clerk. As I said, such issues will be considered through the pathfinder arrangements.

Mark McDonald: The financial memorandum estimates that the cost of the proposals for local authorities will be between £3 million and £4 million. That works out at roughly £100,000 to £150,000 for each local authority if it were to be applied equally across them all. Has COSLA done any work on the cost of delivering a committee where there are unitary authorities?

John Connarty: I think that COSLA has asked for information from all the authorities, so it has gathered information on existing practices. That informs the figure of £3 million to £4 million, but that sum is a bit like the figures in the outline business case, as it is indicative and illustrative. The actual cost of the arrangements will be informed by the way in which they are designed. That is where we are now.

Paul Wheelhouse: I have two questions. I will start off with the one that might take a bit more thought and give people time to respond to it, and then come on to a more detailed question.

First, as our briefing paper states, the potential savings—notwithstanding the discussion about the actual costs being at variance with these figures—are nearly £22 million per year for the regional service option and just over £25 million a year for the single service option. The briefing paper also states:

“Like the police OBC only marginal benefits were assessed as coming from the eight brigade structure while the regional structure had the potential to produce more significant non-monetary benefits and the single national structure, the highest level of non-monetary benefits.”

We have not talked about the non-monetary benefits. We had some debate about what the actual costs would be in comparison with the proposed costs. Could you take some time to think about what you see as the main non-monetary benefits and give a response? There is a relatively small difference between the regional and single-force options in financial terms, but it is implied that there would be significant non-monetary benefits.

The more detailed and immediate point follows on from the point that I raised with police colleagues about VAT. If we can perhaps park the issue that we are waiting for HMRC and the Treasury to come back on their decision, can you provide comments on two fronts? First, why do you think that the figure of £4 million is an underestimate and that the figure is more likely to be £10 million? Secondly, what impact will that have on the operations of a single fire service, if it comes into being?

11:30

Eileen Baird: I think that the figure is closer to £10 million than £4 million on the basis of the spend that we incur as a service. We incur costs of around £50 million a year for goods and services, and 20 per cent VAT on that would be around £10 million. That figure was verified by the actual level of VAT that is reclaimed by Strathclyde, which we grossed up to give us that figure. I understand that there might be some debate about which elements of VAT can and cannot be reclaimed. Therefore, the figure may not be as high as £10 million, but it would still be significantly higher than £4 million.

The fact of the matter is that, whether the figure is £4 million, £8 million or £10 million, that money would otherwise be used to deliver firefighting and services to the public, not sent down to HM Treasury. Like the police, we hope that Scottish Government officials, in their deliberations with HM Treasury, are successful in overturning the proposal to have the VAT included. How many firefighters would £10 million pay for? We are talking about 350 to 400 firefighters, given that the
average cost of a firefighter is around £30,000 for the sake of calculation.

Paul Wheelhouse: So, it would likely have an impact on the front line whereas, for the police, there might be an issue for support staff. As Mr Connarty said earlier, there is not the same constraint on the fire service, so any savings that have to be made might impact on both support functions and front-line services.

Eileen Baird: Yes, there is the potential for that to happen.

John Duffy: We would highlight the reductions that have already been made within the fire service. We estimate that, over the past few years, we have lost about 800 firefighters. When the proposal first came up and the different options were on the table, one was to maintain the status quo and make the cuts from within the existing structures. The conveners forum submitted a paper that suggested that, by year 4, we would be looking to merge the bits that were left. In the process that we have now started, we are trying to make those savings without having to reduce the front line.

The whole concept of the single service is predicated on protecting the front line, but some things appear to be outwith our control. One of those things is VAT and another is inflation. Some figures on the fuel costs for the police and fire services were released yesterday. Those are significant costs that, in a shrinking budget, can have an impact on one of only two things—the structure or the front line. We are all collectively making a great deal of effort to speed up the structural change process. It was interesting to hear Kevin Smith say that ACPOS will not start negotiating until 1 April. However, with our management colleagues, we are taking a partnership approach to the process whereby we are trying to get as much agreement as we can now in order to speed up the process. If we do not do that, every pound that we have to save will have to come out of the front line; that is a frightening prospect given that we are already at the bare bones.

You asked about the non-financial advantages of a single service. They are so intertwined that it is difficult to pull them out; however, we talk about a consistent approach to operational incidents and interoperability. The service has come under pressure recently over, for example, the fact that acetylene cylinders are handled differently in different services. Through the work streams, we are well on the way to standardising that and, again, ahead of 1 April, we will all be operating to the same or similar procedures.

On access to training, the smaller services—not geographically, but in terms of their structure—have the same training requirements as the larger ones. We made a similar point earlier in relation to our retained firefighter colleagues. Taking away the boundaries and the lines on the map will make it much easier to transfer training resources from one service to another. Strathclyde is building what will be the finest training establishment in Europe, if not the world. It will be second to none. It must be accessible to all firefighters in Scotland.

Paul Wheelhouse: That is helpful. Thank you.

John Connarty: The VAT issue is one of the key issues in COSLA’s submission. Finding a resolution to that is critical if we are to protect service outcomes. For the police, £22 million represents 800 police staff posts. Whether the figure is £4 million or £10 million, there will be a significant front-line impact on the crewing element of the business case. COSLA would certainly welcome direct communication between the committee and HMRC and the Treasury, and we urge the committee to do all that it can to seek a resolution to the issue.

On the wider outcomes, I direct members to the section of the outline business case from page 54 onwards. Perhaps the clerk could share that with members. It shows the assessment that has been undertaken with regard to improved service outcomes and the protection of front-line services. It looks at criteria across a number of areas, so members might want to look at that.

John Mason: I will ask you a question that I asked the police earlier. How optimistic are you that the transition arrangements will go smoothly? You suggested that you are more joined up than the police, who seemed to suggest that nothing can be decided before the big bang on 1 April 2013. I would be interested to know whether we are being overoptimistic in thinking that the transition can be smooth. I note that the CIPFA paper states that, in Fife and Dumfries and Galloway, either the whole administration or the financial operation is integrated with the council.

Eileen Baird: Whether there is to be a soft landing, as Kevin Smith outlined, or something else will depend on the resources that the service is given in 2013 in order to function. John Duffy is right. A lot of work is going on, and it has been for some time, through CFOA and stakeholders to prepare the service for 1 April. Clearly, decisions will have to be taken after 1 April, or at least after the new chief officer and the new board are elected. Where investment is required in some of the ICT systems, it would be better to do that properly rather than simply to do it quickly. If the service has the resources to deliver, we will be approaching the matter in the right way and we will end up with the service that we all want, but if—
John Mason: On that point, is it purely a question of resources or is it also a time thing? We can throw money at some things, but they still take time.

Eileen Baird: The ICT investment will take resources, but it will also take time. If we are to spend that amount of money, and given that we have to go through the European procurement rules, we simply will not have the systems in place on day one. Things will take time.

Like the police, we would welcome a commitment that, on day one, all staff in the existing services will transfer to the new service with the same terms and conditions, and there will be no compulsory redundancies. On day one you have the same number of people as on day minus one, and it will take time and money to match them into the new design of the service. It is about delivering this over a sensible period, to get it right.

John Duffy: I would argue that the fire service has never stopped modernising and probably never will, but we can consider the process as a timeline. Clearly there is a lot of work to be done, but if we were to take a snapshot on 1 April 2013 it would have to look and feel like we had moved into a single service. I do not think that the work will be complete, or that it needs to be, but certain elements must be in place and others can continue to develop over the coming years.

As part of some joint working with our management colleagues, we took a fairly simplistic look at this. We looked at items that we felt were the day one priorities, and at others that we felt we would be working towards. We then prioritised the former, and that gives us confidence that on 1 April the bits that we need will be in place, but the work will not stop then. We are not ignoring the other bits, but the priorities are clearly what will be required on 1 April.

The one thing that we would encourage is the stability of knowing who the new chief officer will be. We are aware of the timeline attached to that, but we think that the earlier the announcement of who it will be, the better. We have time to do this only once, so we cannot have someone coming into post halfway through the year and all of a sudden saying, “No, I’ve got a different vision and we’re going in a different direction.” At the moment there is almost a holding pattern. We are doing some of the work on the priorities, but the sooner we know who the new chief officer will be and start putting the team together, the sooner we can start to put the day one priorities in place.

John Mason: Earlier, you mentioned the training and the new facility that will be in Strathclyde, which looks tremendous. Are the other fire authorities gearing up to fit in with that or are they doing their own thing right up to the end? Will there be integration?

John Duffy: Integration is starting. We are probably talking about a national facility. That does not take away the need for local facilities for firefighters to train more regularly, but this might be a facility that provides access to specialist courses. So, there will be a combination. It would not be right to stop training facilities being developed elsewhere, but if someone is doing that, they should have one eye on what they are doing and one eye on what is happening nationally. I think that that is what is happening at the moment.

John Connarty: I think that CIPFA is right to highlight the extent of the challenge of the transition, and its paper goes into detail about the importance of not underestimating the change required. The point about resources generally is correct. There is nervousness just now because for 2013-14 there is a £40 million savings target sitting against the police budget line, and savings are also anticipated in fire. Timing is an issue, and the transition has to be managed carefully.

CIPFA drew out lessons in its paper from the previous local government reorganisation, about the building blocks that need to be in place to ensure that stability is maintained throughout the transition. However, there is a bit of a conflict at the moment, because of that £40 million savings target. It is about balancing a smooth transition against that requirement, and it comes back to the point about the timing, in particular of the financial savings.

11:45

Paul Wheelhouse: The CIPFA submission states that the creation of another agency or non-departmental public body could lead to the police boards losing access to borrowing to support capital expenditure. Do you think that CIPFA is correct and do you have any views on the implications for capital investment?

John Connarty: My understanding is that the bill provides for borrowing, but with the consent of ministers. There should be a power for borrowing.

The area that is of greater concern — this was touched on earlier — is the absence of a reserves power: the bill makes no provision for the police authority, police service or fire service to hold reserves. COSLA has certainly raised concerns about that, as have the Association of Chief Police Officers in Scotland and CFOAS. It is seen as being a particularly important mechanism to allow a service to plan over the medium term, and to encourage strong financial management throughout the organisation. It is an issue. Reserves would allow the services to manage the
availability, within a specific period, of funds that have been set aside for the programme of change, and to do so more effectively over time. We would support the inclusion of a reserves power.

Paul Wheelhouse: Although the reserves issue is a live one that we have to look at, are you satisfied that you still have access to enough capital to invest, at least within the current financial constraints?

John Connarty: The financial memorandum indicates that there is a borrowing power, but only with the consent of ministers.

The Convener: I want to ask about assets and liabilities, which we have not discussed yet. How confident are you that assumptions about them are realistic? The potential exists for buildings to be let go, but that may not be realisable in the current property market. Will you comment on that?

John Connarty: There are some assumptions in the outline business case, but I cannot really comment on that. It is one of those areas in which there is probably not enough detail. Eileen Baird may be able to help with that.

Eileen Baird: Our submission noted that although there may be an opportunity to sell some assets, the estimate on the sale of assets is, for two reasons, optimistic. First, as has been rightly said, the current climate is such that not many people are looking for that type of asset. The second operational problem is that many of what we call non-operational assets—that is, they are not fire stations—are either attached to fire stations or are within the fire station’s curtilage.

John Duffy: I agree. The only example that springs to mind is that Grampian fire and rescue recently built a new fire station next to an existing one that now serves as a kind of headquarters. There is an opportunity there, but most headquarters facilities are part of existing fire stations, so although the management function can be taken away from that building, the building cannot be taken away from the fire station. We see a number of such properties as being not sellable.

The Convener: Could we end up with mothballed buildings?

John Duffy: Yes.

The Convener: Time is marching on, so I want to ask a final question which will be similar to that which I asked the previous panel. Do any of the witnesses want to bring any other points to our attention?

John Duffy: I would like to raise a key point on financial risk that has not been appreciated in any of this work—namely, firefighters’ pensions. They are unfunded schemes, so what comes in goes out to pay pensioners. A number of changes are being proposed by the Westminster Government and if they go ahead, firefighters might leave the pension scheme, which would have huge implications for the budget of the new fire and rescue service.

We would all hate to have worked hard with the best will in the world to deliver the three strands of improved outcomes, better accountability and financial savings—we have made some savings—only for the financial basis of the service to be compromised by external factors. There is a huge threat that, if firefighters leave the current pension scheme in anything like the numbers that we suggest, there will be a huge hole in the budget for the new service. That needs to be appreciated and some action must be taken to try to protect the budget.

The Convener: Thank you for bringing that to our attention.

Eileen Baird: Much like my police colleagues who gave evidence earlier, I highlight the fact that CFOAS accepts that a national service is the way forward. We will work with all stakeholders to deliver that national service.

We believe that savings can be made. However, over the past couple of years, the service has already made savings of around £10 million, and we would like that to be reflected in some way in our future targets because it is not possible to make the same savings twice. Although savings can be made, the speed at which they are requested and the level of up-front investment need to be matched so that we achieve our vision of delivering a world-class service, rather than a second-class service.

John Connarty: COSLA is committed to working with the Scottish Government, the fire service and the police service to ensure as smooth a transition to the new arrangements as possible. If I were to highlight one issue, it would be VAT liability, which is critical. Anything that the committee can do to seek a resolution to that would be of great assistance.

The Convener: We are in correspondence with the Treasury.

I thank the witnesses for their evidence. I suspend the meeting until noon to allow members to have a natural break and the witnesses to leave.
11:52

Meeting suspended.

11:59

On resuming—

The Convener: Our final panel of witnesses are from the Scottish Government’s bill team. I welcome Nick Bland, who is head of the police reform unit; Lorna Gibbs, who is head of the fire and rescue reform unit; and Christie Smith, who is head of the police and fire reform division. I understand that Mr Smith will make a short opening statement.

Christie Smith (Scottish Government): I offer many thanks for the opportunity to give evidence on the Police and Fire Reform (Scotland) Bill.

Police and fire reform is, first and foremost, about keeping our communities safer and stronger. The Government’s view is that creating single police and fire services for Scotland will protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and by not cutting the front line. The reform will create more equal access to specialist support and national capacity and will strengthen the connections between police and fire services and their local communities. The restructuring of the two services will enable some savings to be made at a stroke, but it will also put in place an effective structure for realising further savings without impacting on front-line services.

The financial rationale for single services has been developing for some time. Work that was done by ACPOS for the Scottish policing board in June 2010 demonstrated that efficiencies alone would not be sufficient to meet the projected funding gap between the cost of policing and expected budgets in future years. In December 2010, the interim report of the sustainable policing project suggested that the range of possible savings that are achievable through reform is between £81 million and £197 million a year. In March 2011, the phase 2 report of the sustainable policing project found potential for £154 million a year in efficiency savings by organising policing on a national basis. For fire and rescue services, a similar process was followed under the direction of the ministerial advisory group on fire and rescue.

The outline business case for police reform that was published in September 2011 found that £106 million of annual cash savings could be made. The outline business case for the fire service, which was also published in September, identified recurring savings of £25 million a year. The financial memorandum that we have submitted with the bill shows the best estimates that we can make of the costs of and savings from setting up and operating the single police and fire and rescue services. The estimates have been shown separately as the costs that will arise from the bill, the broader costs that might arise as a consequence of the bill and the associated process of reform, and the estimated savings.

The costs and savings figures have been shown for each year up to the year when the efficiency savings recur annually, which is 2017-18 for police reform and 2018-19 for fire reform. As the efficiency savings will continue to recur for some time, the costs and efficiency savings for each service have been totalled over a 15-year period. Overall, the net savings will be substantial. Once a steady state is reached, we estimate annually recurring savings of £126 million, which is comprised of £101 million from police and £25 million from fire and rescue.

The estimated costs and savings are based on information on current cost levels, information from stakeholders and the outline business cases for the police and fire and rescue services that were published in September. We believe that the figures are robust for a number of reasons. For police, the reform savings figures have been built up from assessments—that were made by professional leads from across the police forces—of what improvements can be delivered in key policing functions. The projected savings for police were benchmarked against efficiencies that have been delivered by police forces in England and Wales and the projections were quality assured by KPMG and Deloitte. A similar process was adopted for the fire service, including workshops with fire and rescue stakeholders to identify areas for cost savings. Detailed assessments of potential savings were then developed with support and quality assurance from Deloitte.

The assessments of costs and savings have always erred on the side of caution and are likely to be pessimistic. A number of potential sources of savings have not been counted. Most obviously, in policing, no savings from estate rationalisation or property disposal have been assumed. Moreover, we have deliberately taken a pessimistic view of the costs of reform and we have made generous assumptions about the cost of voluntary redundancy for police support staff. We think that we have a good case for saying that the new services should be exempt from VAT, but we have assumed in the financial memorandum that they will pay VAT. On top of that, and to counter what is known as optimism bias, we considered the effect of increasing some costs by as much as 100 per cent and reducing the expected savings by 30 per cent. The results of that exercise show that there would still be significant savings from our proposed reforms.
Overall, the projected savings for police and fire amount to just 9 per cent of the combined budgets of the two services over five years—less than 2 per cent a year. We are fairly confident that that level of savings is achievable.

The Convener: Thank you for that—that is very helpful. Given earlier evidence, I could probably ask myriad questions. I do not want to steal colleagues’ thunder, so I will start with only a couple then open it out to colleagues, who will probably wish to probe further and deeper.

You talked about “pessimistic” assessments. The amount of money that is being considered for police voluntary redundancies is about £81 million, which works out at about £40,000 a head, but in the fire service it is £4 million, which works out at about a third of that per head. There seems to be an anomaly there, which was picked up by all the witnesses on the previous panel. Will you explain that?

Christie Smith: The cost of voluntary redundancies has been worked out according to the savings projections for each service. In fire and rescue, it is projected that about 100 support staff may need to be offered voluntary redundancy at an average cost of £40,000 per person—that is where we get the £4 million.

In policing, we have made a very conservative assumption that any reductions in support staff would have to be funded through voluntary redundancy, so that has also been estimated at £40,000 per person. The basis of the calculations is the same. Support staff roles are expected to reduce less in fire and rescue than in policing, and we have made a more conservative assessment of the scope for natural leaving to impact on the cost of voluntary redundancy in policing.

The Convener: The fire service said that it expected voluntary redundancies to be about 1.47 per cent, compared with 3 per cent in your assessment. Your assessment is therefore more optimistic.

Christie Smith: I ask Lorna Gibbs to address that.

Lorna Gibbs (Scottish Government): It might help if I explain how we came by the figures that we have for the number of voluntary redundancies for support staff in fire and rescue services. We looked at the work that was done—when the outline business case was being created—around duplication of services, particularly around support services, for example in HR, finance and procurement. We looked at the opportunities to make reductions for that duplication and the implications that that would have for the number of staff currently employed in support roles. On the basis of that, we came to an assessment that around 200 posts would need to go over a four to five-year period.

On existing turnover of staff in other organisations, the average turnover in some of the English services is about 7 per cent at the moment. Clearly, that may change with changes to the economic environment, but we are looking at around 200 posts needing to go. We think that of those, around half would go through people leaving of their own accord, which would be a ratio of just under 2 per cent leaving naturally over three to four years, which would leave about 100 people who would need some degree of voluntary severance.

The reductions that we are looking at are smaller than the reductions that Ms Baird mentioned in her evidence, which is one of the reasons why we are looking at different amounts for the amount of money that we think will be required for voluntary redundancy.

The Convener: You touched on VAT in your opening statement and it has been mentioned frequently this morning. The impact of VAT, if it is charged, would be £21.5 million for the police and £4 million for the fire service, which is suggested equates to the loss of 800 police staff. When the Scottish Police Services Authority was introduced in 2007, it was not registered for VAT, which has obviously had a financial impact there. You have said that you have taken that into account in your figures, but where are you in your discussions with the Treasury? We have had correspondence with Her Majesty’s Revenue and Customs, which says that the matter is being dealt directly by the Treasury. We want to know where your deliberations are because this is clearly a cause for concern for everyone involved.

Christie Smith: We are very concerned. There is a strong case for exempting both services from VAT: as we are reorganising them to live within the Westminster budget settlement it would be perverse if some of the benefits of that then had to be paid back in taxation.

I am afraid, convener, that we are in exactly the same position as you are in relation to HMRC and the Treasury. We have had correspondence with HMRC, and it has told us that it has referred the matter to the Treasury. We are now discussing the matter with the Treasury, and are awaiting a response. We asked it to respond before today’s meeting, and will continue to press for an answer.

The Convener: You say that you have taken the matter into account, but it will have a significant adverse impact.

Christie Smith: It will reduce the savings, but it is not true to say—as you suggested earlier—that it will lead to more job losses. The projections of savings from reductions in the number of posts are
based on what we think needs to be done and on what can be done. We have reduced the potential cash savings by £25 million or £26 million to take account of VAT, so the impact of a VAT exemption would be that in the Scottish Government's budget we would have about £26 million in cash savings from the restructuring.

The Convener: The figures that I cited come from the Scottish Parliament information centre, incidentally.

I will open this out to colleagues, because I want them to have an opportunity to ask questions.

Gavin Brown: I will start with a narrow question on VAT and the police. In the financial memorandum, the VAT prediction for after the first couple of years is £21.5 million, both in your main table and in the one in which you make adjustments for optimism bias. However, on page 55, in your third table on the costs and savings arising from structure, the VAT figure is put at £7.4 million per annum. If only £7.4 million of the £21.5 million VAT bill relates to the change in structure, what happens to the other £14 million?

Nick Bland (Scottish Government): That figure comes from looking at the differences in the VAT bills for a single structure, a regional structure and an eight-force structure. In the outline business case, we compared the ability of the different structures to deliver savings and efficiency gains through the target operating model that was developed by the sustainable policing team. All the structures would require national capacity to deliver some things, but that capacity would vary across the three options, with the national eight-force structure requiring the least, the regional one more, and the single force the most. So, the application of VAT to the national single capacity would vary. The figure that you cited is the difference between those capacities.

Gavin Brown: If I have understood the narrative correctly, the VAT liability potentially applies—discussions are on-going—because you have moved from an eight-force structure to a national one. Would not, therefore, all the VAT depend on the fact that you have gone to a national structure?

Nick Bland: It is the functions and services in that national structure that will attract VAT. In the three options, the functions and services that were considered at national level vary, hence the level of VAT that would be attracted also varies.

Gavin Brown: Can you provide detail about that to the committee? For the fire services, the figure is consistent across all three options.

Nick Bland: The different VAT liabilities are set out in the outline business case, but of course we can point them out to you.

Gavin Brown: I want to return to the financial memorandum and ask another question about the police.

What will the annual savings be as a result of the bill? I presume that it will be enacted regardless of what happens, but it appears that some of the savings that are quoted will not be reliant on that, while others clearly will be. What will the police savings be as a result of the bill? The first table on page 52 of the financial memorandum states that the net saving will be £1.135 billion, but the table on structure notes that the saving will be £155 million. How much of the £1.135 billion represents savings that will flow from the bill, as opposed to savings that may be in train already or that may happen anyway?

12:15

Nick Bland: It is difficult to distinguish between savings that will result from the bill’s provisions and longer-term savings. Our assessment, and the reason why the Government decided that a single service is the best option, was that that service structure would best enable us to deliver the maximum savings with least risk. However, on the bill and the distinction drawn between a single service and a regional or eight-force structure, the only difference in actual savings will be the reduction in chief officer posts and the reduction in the requirement for the relevant national organisation, ACPOS.

In the move from one structure to another, specific things will have to be removed or rationalised. The outline business case made an assessment that the large majority of those savings would, theoretically, be achievable in each of the structures. It is more difficult and risky in a regional or eight-force structure, but the ability to deliver the target operating model, which is the root logic of this, was assessed without reference to the structure. The target operating model is a way of delivering the best and most efficient policing, irrespective of the number of forces or the structure.

Gavin Brown: As the Finance Committee, our report to the lead committee on the savings that will result from the bill has to be based on the memorandum’s assessment. How much of the £1.135 billion savings noted in the first table will result directly from the bill? Is it the £155 million in the third table, or is it more than that? You may not have a perfect answer, but you must have some idea.

Nick Bland: In those tables we have made a distinction between the total savings that would be achievable through the facilitation of the bill and the specific savings as a result of, for example, moving from an eight-force structure with eight...
executive teams to a single-force structure with a single executive team—which will, naturally, be smaller. The ability to deliver all the savings from reform is facilitated by that single-service structure. The Government would argue that, ultimately, the bill and the changes it will make are necessary to deliver all those savings. The delivery of the savings cannot be guaranteed without the bill. If the Government did not need to introduce the bill in order to achieve those savings, it would not have done so.

Gavin Brown: Not necessarily, because there are also policy and, presumably, operational arguments. I am focusing specifically on finance.

You think that you will save £337 million in reduced costs for officers, but in your narrative you point out that a lot of the negotiation and discussions about officers has already happened—the contract has, in effect, been signed—so surely you are able to tell which of those savings will result from the bill and which ones are already signed and sealed.

Nick Bland: Yes. The savings from officers are being made in two ways. Savings are coming from the changes to terms and conditions that have removed bonuses and particular allowances, which we negotiated with all three staff associations last year as part of the reform process. Forces have already started to manage more closely the use of overtime, which was a significant additional cost, and there will be greater opportunities as we move forward to continue to work on that.

There is also an opportunity to make savings in the cost of police officers in the move to a single service structure. As I said earlier, we will have a smaller total executive team—chief constable, deputy chief constable and assistant chief constables—for a single service than we currently have. As Kevin Smith pointed out earlier, there are opportunities to de-layer at certain management levels. There are different ratios of supervision across the forces at present, and we would expect a move to a common supervision ratio—for example, between a sergeant and the constables under that sergeant—which would allow for more savings. There is a provision for savings in VAT, too.

Gavin Brown: Is it fair to say that, on the savings that come specifically from officers, the more accurate figure flowing from the bill would be £2.79 million a year, as opposed to the figure of £23 million a year that appears in the first table?

Nick Bland: As I said before, there is one figure for the savings that come directly from the change that the bill enacts, and a larger figure for savings that come from the creation of the new structure. The Government’s view is that you cannot unpick those two, as one flows from the other. One is direct—as you say, you can point to the savings that come from removing eight forces and creating a single one—but the rest of the savings that flow on over the period of reform are a direct consequence of moving to a single service structure, which gives us the ability to drive through savings across the various functions.

Gavin Brown: I have one more question, although I do not want to hog the discussion. With regard to the table on page 55, the bill team’s view is that, on account of structure, you would save £15.6 million a year recurring, once you get to—

Nick Bland: Can you reference the table?

Gavin Brown: Sure. It is on page 55 of the financial memorandum—the part in the bottom right-hand corner.

Christie Smith: We do not have that page number. Does the table have a title?

Gavin Brown: It is table 2.3. In the bottom right-hand corner—or just to the left—it shows the net savings as £15.6 million a year on account of structure. Has that table been adjusted for optimism bias, or is it a best estimate?

Nick Bland: I do not think that that table has been adjusted for optimism bias. The savings that come purely from structural change are not to do with the cost of wider reform; they come simply sorry for repeating myself—from a move from eight executive teams and an SPSA to a single service structure. The creation of that structure naturally requires that change.

As I said before, the longer term is different. That is where optimism bias has been applied against all the specific costs of reform, which are largely to do with longer-term organisational reform as opposed to pure structural reform. We could create a single police service and do nothing else, but that would not produce a lot of savings. The single service gives us the ability to reduce duplication and rationalise functions, and that is where the longer-term savings come from.

John Mason: My first question is about VAT. Previously, the committee looked at the implications for the Treasury of measures that we might take on alcohol that would mean that the Treasury got less money. It was suggested that we might end up having to equalise that and refund the Treasury. Is there not a principle in the Scotland Act 1998 whereby, if the Treasury benefits or loses out through some act of ours, there has to be an equalisation?

Christie Smith: I do not think that it is a principle of the Scotland Act 1998, but there is a general principle about imposing burdens on other parts of government. There is some force in what you say.
Our first pitch is to establish that the services would be exempt from VAT under existing law. We are waiting to hear from the Treasury on that. If the Treasury’s view is that they would not be exempt, we will propose that the existing law be amended so that they would be. Only if that were not possible would we enter the realms of negotiation about compensation, financing and so on. You are right that VAT is an issue, but use of that principle would not be our first port of call.

**John Mason:** That is fair enough. I just wanted to check that it was on the table.

My main point is about the fact that a number of witnesses and submissions have mentioned that we have an outline business case rather than a more detailed business case. They seemed to suggest that, by this stage, we would normally expect to have a more detailed business case. On that basis, a lot of the figures are really quite rough figures.

**Christie Smith:** I might ask Nick Bland to say more about that in a minute but, essentially, we do not think that it should be for the Government to do the detailed design of the police and fire and rescue services. We have tried to satisfy ourselves that, through a different structure, a level of savings can be achieved at a level of cost. We have taken that as far as the outline business case.

We have teams of officers—under Kevin Smith, in the case of the police, and Jimmy Campbell, on the fire and rescue side—working out how to implement the consequences of the restructuring. That is when the detailed design comes in. It will happen under the existing leadership for only another year or so, when it will become a task for the new leadership of the single services. The journey from outline business case to full business case is under way.

As I think we have said in our discussions with the services, we are pretty satisfied with the quality of the analysis that has been used to produce the outline business case, and we are pretty satisfied that the projected level of savings is achievable and that the means by which we project that it will be achieved are realistic.

However, it will be for the services themselves to deliver the savings and to live within their budgets. If they find that some savings are easier to achieve than others and they adopt a different mix of savings that means that they incur some costs that they did not expect to incur but do not incur other costs that we projected that they would incur, that is fine. The Government’s hope is that, through those means, the services can become sustainable within the budgets that will be available. We have deliberately stopped short at the outline business case stage. For us, the outline business case was sufficient to justify introducing the bill. The next stage of the process is being led by the two services. That is when we expect the outline business case to be turned into a full business case.

**John Mason:** I get a slightly different impression of how the two services are moving forward with the proposals. It sounds as if the fire services are working together a bit more; the police suggested that there had to be a big bang on 1 April 2013, which concerns me slightly, given that they are meant to be working out the detail. Perhaps they will not do that. Are you happy that that is happening?

**Christie Smith:** Although the two services are different, they are essentially adopting the same approach to preparing for day one of the new service. They are both engaged, jointly with Government, in programme management arrangements to oversee that. There are more functions and more work streams in policing than there are in fire and rescue, and the organisation in the police service part is a bit more complicated than it is in the fire and rescue bit, so it is probably a wee bit more difficult to co-ordinate and bring together. However, the approach is essentially the same.

We have been advised by the leadership of both services that they would like the new services to start on 1 April next year, if that is possible, because the sooner the unified service is there, the sooner the benefits of reform can be achieved. There is no difference in approach. No big bang is being waited for. Both services are planning for implementation on that date and are putting in place what they think will be necessary to operate a single service by then. I am not worried about a difference in approach.

**Michael McMahon:** Before I come to my main point, I wonder whether you could clarify something. I might be paraphrasing, but Mr Smith said in his opening statement that the case for reform had been made over a long period—or words to that effect. However, in subsequent answers, both Mr Smith and Mr Bland talked about making changes in order to meet the requirements of Westminster budget reductions. Had reform’s time come, and had it been worked towards, or was it necessary to introduce cost-cutting measures because you had to find savings?

12:30

**Christie Smith:** I think that what I said in my opening statement was that the financial rationale for change had been developing for some time. That was largely as a consequence of projections for future Scottish Government budgets—taking the United Kingdom Government’s financial
strategy and considering what it might mean for our police, fire and rescue services. Since 2010, we have been developing a financial analysis to support change.

Other aims of reform have been a work in progress for many years. We have quite a track record in policing in providing specialist capacity all over Scotland, for example with the creation of the Scottish Crime and Drug Enforcement Agency. The present reform gives an opportunity to provide a greater amount of equal access to specialist capacity.

Other issues are the relationship with local government and the regional structure of the police, fire and rescue services. Since the creation of the Scottish Parliament, and with the development of community planning and single outcome agreements, there has been a move towards direct engagement with councils, rather than engagement through a regional structure. That is another reason for the reforms, which we believe will lead to a closer relationship between the services and local communities, through their councils.

Michael McMahon: That was helpful; thank you for clarifying that.

I want to consider responses that the committee has received on the financial memorandum. The Chief Fire Officers Association Scotland talks about paragraph 271, on learning and development, and goes on to say that

"the level of savings assumed and the pace at which they could be delivered is unrealistic."

Paragraph 273 is on prevention and protection, and CFOA believes that

"estimates of savings within this area are over-generous, have no supporting evidence base and will not enable the Service to deliver risk reductions."

Paragraph 274 is on response, and CFOA says that

"the speed and level of savings to be delivered in these vital areas cannot be supported without robust evidence."

We have "cannot be supported", "no supporting evidence base" and "unrealistic". That is not a good assessment of the financial memorandum, is it?

Christie Smith: I do not think that we agree with that assessment. I will invite Lorna Gibbs to pick up on those points.

Lorna Gibbs: In the outline business case, a huge amount of evidence supports the levels of savings. We have discussed those with CFOA on a number of occasions. In response to its concerns on duplication, we asked our analysis colleagues to go over the figures again, and they are confident that there is no duplication. We have looked separately at the learning and development elements, and we are not doing anything that would put the services in danger.

As you will understand, there is a huge amount of supporting evidence in the OBC, which is summarised in the financial memorandum. We are confident that the figures that we have worked up through the OBC, which are reflected in the financial referendum, give us a sound basis.

Christie Smith: The Chief Fire Officers Association produced a business case for a regional structure for fire and rescue, which gave annual savings that were very close to the annual savings that we are projecting in this outline business case, just about £2 million less—though still with the duplication involved in a regional, three or four-service structure. That is another thing that gives us confidence that we are in the right area with our total level of savings.

As I said before, if in working through the reform the service thinks that one line in the savings is overcooking it and another is unrealistic, adjustments can be made. That is part of the journey from outline business case to full business case. That does not weaken our confidence that our overall projected level of savings is realistic.

Michael McMahon: Your confidence is clear: you talk about best estimates, pessimistic estimates and generous assumptions. However, CFOA says:

"the costs and savings outlined within the Financial Memorandum do not accurately reflect the margins of uncertainty."

There is simply a huge disparity between what you say and what CFOA says. If you say that you agree with CFOA when you are close to its analysis but not when there is a huge disparity, there is a problem. On one matter, you say that the association can come up with accurate figures because its figures are close to yours but, on others, you will simply ignore its figures because you think that yours are right. That is despite the fact that, using the same people, analysis and expertise, CFOA has come up with a figure that, it concludes, would require a contingency fund to be created before it could have confidence in the reform because of the degree of disparity between your figures and its figures.

Christie Smith: I did not say that we would ignore CFOA’s figures. We have not ignored them through the process. Quite a long, carefully developed period of analysis, consultation, evidence gathering and quality assurance has gone into the figures, which take us to a total saving of £25 million a year. CFOA has come up with a business case that saves £23 million a year and still has duplication in it that is not in the
outline business case that we have published. That should reassure people.

The figures are projections and best estimates. If people have doubts, the proof of the pudding will be in the eating. We will see what savings can be achieved, but we are still confident that the total level of savings can be achieved.

Michael McMahon: In an earlier discussion, I pointed out that APFOS had raised the point that the methodology that was used for the analysis of the possible fire service savings was different from the one that was used for the analysis of the possible police service savings. You highlighted that fact; I think that you said that KPMG had done the police analysis and Deloitte had done the fire service analysis. Why were different organisations and different methodologies used? If you can explain that, it might help to alleviate the concern that there is a disparity.

Christie Smith: As far as we can, we use the same methodology for both outline business cases. We have used the Treasury green book methodology and have been advised on how to do that by economists in the Scottish Government who are experts in it. Although the basic structure of the two services is similar in one sense, it is different in others and the information from each service is structured differently, so it is inevitable that there are sometimes differences in the presentation of information for the two services.

Deloitte has advised on the police outline business case and the fire service outline business case. We made that change after the initial stages of the analysis. We saw that both reforms were going in the same direction, so we appointed a single consultancy to work on both. KPMG worked on an earlier stage of the police analysis, but we used the same advisers in Government and outside Government for the preparation of both outline business cases.

Elaine Murray: Like colleagues, I was interested by the savings that could be attributed to the restructuring—a total of £388 million, £235 million of which would be delivered by the fire and rescue service, with the national police force delivering only £135 million.

The police will probably lose a third of support staff posts and may have to redeploy police officers to take on civilian tasks because there will be fewer civilian support staff. In light of that, how would you answer the criticism from the Society of Local Authority Chief Executives and Senior Managers that the figures suggest that the case for the national service has not been made because of the possible disruption to the service?

Nick Bland: We do not accept that. The outline business case provided a consistent method of assessing the relative merits of the three options—a single service, a regional service and eight services with an enhanced national capacity—a consistent comparison of the opportunities to make improvements in service and a consistent comparison of the opportunities for savings. That was very clear and was part of the basis on which the Government decided that a single service is the best model.

In the analysis of savings on civilian staff in a single service—indeed, across all three options—there is no assumption that police officers would replace the civilian staff posts. The savings will come from a reduction in the duplication that is inherent in the existing structure. In an eight-force structure, each force has planning, performance, research, analysis, legal, HR and finance services and functions, all of which are there to provide a basis for those individual organisations, quite rightly. With a move to a single organisation, we will not need all those services and functions to continue to be reproduced eight times. We can rationalise them, deliver them a single time and deliver savings from that.

Elaine Murray: How did you come to the conclusion that a third of posts will be redundant? The fact that eight forces will go into one force does not mean that individual police officers will not require the same amount of support from civilian staff in intelligence gathering, administrative work and so on. That work will not go away, so how did you come to the conclusion that 33 per cent of staff posts will no longer be required?

Nick Bland: The analysis was built up. It began not with a structural analysis but with work on the target operating model, which looked at the optimum way of delivering policing—optimum in terms of best policing and best service delivery as well as in terms of savings and efficiencies.

The target operating model was developed from a function-by-function analysis. Professional leads from the service with expertise in those functions—roads policing, crime, specialist investigation, corporate support, HR and finance—assessed the best way in which each could be delivered. Their conclusions were largely that to have a single management structure and a single development of policy within those functions is the best way in which to deliver them, and that, from that, we will get improvements in service delivery and savings. As a result of that function-by-function analysis, there will be differential savings in staff and non-staff costs, and the resultant total is expressed in the outline business case and the financial memorandum.

Elaine Murray: Given that the savings will be, on average, £10 million a year for 15 years, would I be correct in saying that the argument for a
national police force is not about savings? It seems that it is actually about a better form of delivery, and the savings are not really the impetus.

Nick Bland: I think that we are going back to the discussion that we had with Mr Brown about the distinction between what is purely structure and what flows from that. The outline business case did not look at the matter in that purely structural way. It looked first at the ability to deliver savings and service improvements through the target operating model. Having identified that, the outline business case assessed the ability to deliver the target operating model within three different structures.

The target operating model could be delivered in any structure. The sustainable policing team was explicit about that—"structurally agnostic" was how it talked about it. The task in the outline business case was to make an assessment of which of the three structures is best able to deliver all the benefits of that optimum model, and the outline business case was clear that the best option is the single service model. It did not say that the other structures could not deliver benefits. They could, but they could not deliver the same level of benefits. There is a higher risk attached to the delivery of benefits in an eight-force structure or a regional structure, because the benefits would have to be delivered across organisational boundaries.

The conclusion of the outline business case was that a single-service structure is the best way in which to deliver all the benefits. The legislation is necessary to create that structure, and from it will flow all the long-term savings.

Elaine Murray: That is exactly what I am saying. The risk is actually a policy delivery risk, rather than a financial risk, because the impetus is policy and not savings. It is the risk of not being able to deliver across the eight forces. This is about providing a better service through a single force, rather than saying that you are going to save so much money. The original arguments tended to centre on savings in financial terms rather than on the delivery of a better service.

Nick Bland: The outline business case is clear that we will get the most savings from a single-service structure.

Elaine Murray: But the savings are £10 million a year over 15 years.

12:45

Nick Bland: The total savings from reform are articulated in the financial memorandum. As I said earlier to Mr Brown, it is difficult to talk purely about savings from structure. The majority of savings will not come directly from moving from eight services to one; it is a matter of facilitating and of having the structural framework within which a vast quantity of reform can be taken forward. The outline business case makes it clear that the level of savings, service improvements and wider benefits would not be delivered if we tried to implement that reform within an eight-force structure. It came to a conclusion on the preferred or best option, which is a single service.

The Convener: My understanding is that the policing saving is £1,135 million projected over 15 years.

Elaine Murray: That is not on the structure.

The Convener: That is over that whole time from the legislation, not on the structure itself.

Mark McDonald: Earlier, it was identified as a concern that, although services can currently carry a certain level of reserves, the national service will have no such facility to hold reserves under the bill. What rationale lies behind the decision to make that change? How do you see that affecting how the service operates?

Christie Smith: The majority of public services in Scotland are managed without reserves. The financial framework within which the Scottish Government operates does not provide for reserves, so it manages the £28 billion budget year to year without reserves, and all the public bodies that it has created, whose budgets range from £1 million to nearly £2 billion each year, operate without reserves. The Scottish Government’s view, which is in line the UK Government’s financial strategy, is that that is the best way of managing the financing of all the public services together.

Local authority services operate in a different financial framework. Reserves can be maintained and carried over. The simple consequence of creating the national services, which will be 100 per cent funded by the Government, is that they will come within the accounting framework for public services that the Scottish Government funds, so they will not maintain reserves from year to year. In general, that is considered to be the most efficient way of using the cash that is available to the public services each year. It enables the Government and public bodies to make the best use of emerging underspends, to move money between services to ensure that it is spent in each year, and to allocate money to best effect, as voted on by Parliament. We do not consider it efficient to allow individual services within the central Government body of public services to keep money in their bank accounts from year to year when there are other emerging pressures, cost overruns and things that need to be funded. Things are totalled up for central
Government at the end of each financial year and, by and large, we are achieving very low levels of underspend each year on £28 billion.

We do not think that the loss of the capacity to hold reserves will impact adversely on either service. Both will have substantial budgets. The policing budget will be £1.3 billion a year or thereabouts and the fire and rescue budget will be over £300 million a year. There ought to be enough scope for effective financial management within those budgets to manage without building up reserves.

Mark McDonald: Budgets can often become stretched in the event of a major incident or a number of major incidents. Such occurrences cannot really be accounted for. Previously, a service might have been able to use some of its reserves to fund required operations. How do you see things operating in the new context? Obviously, you cannot budget for the occurrence of terrorist incidents and the on-costs that they would create, for example.

Christie Smith: There is nothing at all to prevent the services from maintaining contingency funds in-year—in fact, that is good practice in most services and not just the police and fire services would do that. Similar issues arise for the health service, for example, such as winter flu and other contingencies that, although not entirely unforeseen, require additional funding. It is good practice for the managers of the two services to maintain those contingency funds in-year. The only thing that we will lose is the ability to carry those funds forward from year to year and, unless an incident were to happen at midnight on 31 March, the lack of ability to carry forward cash reserves from year to year would not have any effect. The services do not have to pay cash for most of the unexpected costs arising from such incidents.

Over the past few years, when police forces have faced unusual incidents, they have often—quite rightly—approached the Scottish Government to see whether any help is available. The biggest bulge of that kind that I have experienced in several years of dealing with the police was a figure of about £2.5 million, which was incurred by one force for an extensive investigation. To put that in context, an organisation with a budget of £1.3 billion a year ought to be capable of maintaining contingency funds to cope with eventualities of that nature. If it was beyond the service’s ability to cope with an incident, it would approach its funder, the Scottish Government. I do not think that it makes a difference either way whether the service can carry forward financial reserves from one year to another.

Paul Wheelhouse: I will keep my question brief, as I am conscious of the time. In discussion with Mark McDonald, you have touched on a couple of things that are relevant to what I want to talk about. The figures in the SPICe briefing paper suggest that, as at 2011-12, the combined budget for the police and fire and rescue services is £1.37 billion. Combined annual savings of £126 million are expected by 2017-18—£25 million to £26 million from the fire and rescue service and £101 million from the police. Broadly speaking, I think that that is a saving of about 9 per cent—I have not brought my calculator with me.

Christie Smith: It is about 9 per cent.

Paul Wheelhouse: We touched earlier on the impacts on the Scottish Government’s budget of cuts from Westminster. Savings are having to be found in policing across the UK, and I believe that 12,000 police officer posts are being lost in England as a result of the changes that are taking place there—England is not opting for a single police force. In this discussion, we have missed the point that there would probably have been substantial job losses either at the front line or in back-office functions if the reforms were not taking place. As Nick Bland said, going down the single police force route increases the probability that we will be able to deliver the savings that are required without the loss of front-line services.

Christie Smith: That is absolutely the financial rationale for the reforms. There is no thought that we will generate a whole bunch of savings, run off with them and do something else with them. Our projections are that budgets are going to go down, whether there is reform or not. Reform is a way of coping with those decreasing budgets more intelligently and protecting front-line services.

Some of the initial work that was done by the police suggested that, if budgets keep going down, although small forces will be impacted on more severely, even for a large force that needs to keep an organisation in being with a leadership, HR, finance, communications and so on, there is a level beyond which it cannot go before it starts cutting its front line. The consequence of reducing budgets without reform is potentially a weaker front line in some parts of Scotland than in others—fewer police officers, firefighters and so on. One of the major motivations for engaging in reform was the aim to maintain the front-line capacity in both police and fire services despite there being less money to spend on them.

Paul Wheelhouse: That is very helpful. My understanding, from the earlier discussion that you had with Gavin Brown and others about the structural change and the overall savings that will be delivered is that, frankly, we had no choice but to make these savings. Moving to the new structure will not only generate additional
efficiencies that otherwise would not be delivered—hence table 2.3 in the financial memorandum—but ensure that the savings that are delivered out of necessity, in order to meet the overall budget cut that has had to be passed on to the police, will be made in a way that is not as damaging to the service that the public expects from the police and fire and rescue services.

Christie Smith: Absolutely.

The Convener: Is it not the case that you will also be able to ensure that all of Scotland benefits from specialist police teams? Such teams are now based in one force, and negotiations and discussions are required before other forces can use them for specific non-emergency operations. Will there not be greater flexibility within the police force? Although the reform is financially driven—we all appreciate the financial priorities—it is also an opportunity to make the service more streamlined, efficient, effective and responsive at ground level.

Nick Bland: Absolutely. Some of the functional analysis that I talked about earlier identified that some forces do not have that specialist capacity and, when it is needed, are required to seek it from another force. Additionally, forces that have that capacity have made a different decision about the level of risk they feel that they can carry, even if that capacity is underutilised because its requirement within that force boundary is not that frequent. There is an opportunity not only for rationalisation of that specialist support but for the flexibility to deploy it wherever it is required across Scotland.

Christie Smith: The police forces co-operate and collaborate very well on that kind of issue, but it is inherently not organised as efficiently as it could be within a single-service structure.

The Convener: Clearly, if a unit that is based in Strathclyde Police and is required in Strathclyde is asked for by Central Scotland Police at the same time, Strathclyde Police will prioritise its own force, whereas an all-Scotland unit would be more independent.

We have exhausted our questions, but we have a couple of minutes left. Are there any other points that you want to make the committee aware of? I asked the earlier panel of witnesses the same question. Is there anything else that you want to bring to our attention at this point, or are you happy for us to conclude the session?

Christie Smith: I simply add that one or two questions have suggested that—perhaps because this is the Finance Committee—we overemphasised finance and did not discuss the other rationales for reform that we have latterly touched on. I apologise if we have been a bit one-eyed about that one aspect of it and concentrated mainly on the financial memorandum. We are more than happy to help you in any way that we can. I do not think that I have anything else to add.

Lorna Gibbs: I will make a final point. John Duffy talked about his concern over pensions. He was concerned that fluctuations around pensions would impact on the budget of the new service. However, at the moment, the employer contributions to firefighter pensions are picked up by the Scottish Government, as is any shortfall, and we expect that situation to continue. Although there might be a budget pressure, it will fall on the Scottish Government, not on the service.

The Convener: That is very helpful.

Christie Smith: The same is true of the police pensions.

The Convener: Of course. Thanks very much for your time.
Written submissions were received from—

- Association of Chief Police Officers in Scotland
- Association of Principal Fire Officers Scotland
- Association of Scottish Police Superintendents
- Board of Strathclyde Fire and Rescue
- Chief Fire Officers Association of Scotland
- Chartered Institute of Public Finance and Accountancy & The CIPFA Directors of Finance Section & The Scottish Local Authorities Chief Internal Auditors Group
- COSLA
- Crown Office and Procurator Fiscal Service
- Dumfries & Galloway Council (Police & Fire & Rescue Authority)
- Fife Fire and Rescue Service
- Fire Brigades Union
- Grampian Joint Fire and Rescue Board
- Highland Council
- Her Majesty's Inspectorate for Constabulary Scotland
- Northern Constabulary
- Northern Joint Police Board & Highland and Islands Fire Board
- Police Complaints Commissioner for Scotland
- Scottish Court Service
- Scottish Fire Conveners Forum
- Scottish Police Federation
- Scottish Police Services Authority
- Unison
1. **Commitment**

1.1 ACPOS is firmly committed to delivering Scottish Government’s three objectives of reform:

- Sustaining and improving local policing in a time of financial constraint
- Improving the availability of specialist operational support throughout Scotland.
- Improved arrangements for local engagement

1.2 Whilst recognising the current record levels of performance and significant contribution that the current structures of policing have made to the safety and well-being of the people of Scotland over the last 37 years, we are committed to delivering effective reform to position the service to continue that within a constrained public sector budget.

1.3 Our structured Programme Management arrangements, therefore, are designed to ensure that reform objectives are met, while identifying the true costs and savings of reform. We recognise any reform in the public sector carries the associated risk of failing to deliver objectives and benefits, with costs being greater and savings less than anticipated. We seek to avoid that.

1.4 Our commitment extends not just to the delivery of reform, but business as usual, including future threats within current financial constraints. Savings of £88m by 2014/15 have been set, increasing to £106m in the following spending review in 2015/16. In view of the nature and extent of public sector finance constraints, these savings of 8%, increasing to 10% over the next 3-4 years, are not unreasonable and our collective professional view as the senior leaders of the service is that, as a financial saving alone, this would be achievable.

1.5 There are, however, some challenges and constraints in meeting reform objectives while continuing to deliver our record levels of performance within the financial settlement. Parliament and the Committees will want to be fully sighted on that wider context and the detail of the challenges, which we outline below.

2. **The Outline Business Case**

2.1 There are issues relating directly to the Scottish Government's Police Reform Programme Outline Business Case, which in our view presents a number of challenges to meet the financial savings within the timescales set while conforming to the government's commitments on key issues.

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1 ACPOS Annual Performance Report 2010/11: The Scottish Police Performance Framework
2.2 The first point is that the Financial Memorandum and the budget has been set on the basis of an Outline Business Case (OBC), not a fully developed Business Case. Within the OBC, there are some high level projections and assumptions that have not been subject to a process of due diligence that would more accurately assess delivery, costs and savings. The OBC was the means by which Scottish Government planned to assess the three options for reform against each other and make its decision, following which, and in line with established practice, a full business case was to be developed, providing a more accurate and a more comprehensive projection of costs, savings, business benefits and so on.

2.3 It now falls, rightly, to the police service to shape our future, from which will flow substantial business cases that will more accurately predict costs, savings, time-lines and deliverables. If the OBC’s projections have been overly optimistic, then there is a clear risk that costs may have been underestimated and savings over-estimated. That said, if the OBC has been pessimistic the converse may apply.

2.4 The Scottish Government’s position is that the OBC is not a blueprint for the service and if savings cannot be accrued in particular areas of policing, as predicted within the OBC, they will be accrued in ‘others’. While we acknowledge this principle and will look to every area of policing to deliver the overall savings required to meet the budget, there is no guarantee that those ‘other’ areas have potential for savings.

2.5 All of that said, this does not diminish the ACPOS’ commitment and drive to deliver reform within the budget set. It merely highlights a significant risk that needs to be recognised, managed and mitigated. All of this is closely aligned to our second substantial issue, which is that, as a consequence of Scottish Government commitments, there have been significant limitations placed on the service in terms of where it can find savings within the entire budget. These are detailed below.

3. Constraints and Assumptions

3.1 There are a number of constraints and assumptions, based on commitments made by the Scottish Government. These are:

- Police Officer numbers will be maintained at 17234
- There will be no introduction of the Winsor Review Recommendations on police/police staff terms and conditions
- There will be no compulsory redundancies
- Police and police staff will transfer to the new service on their existing terms and conditions
- The service will develop a dispersed (rather than a centralised model of service delivery to minimise the impact of job cuts on any specific region of Scotland.
3.2 Each of these is laudable, and represents a significant contribution to policing but, when taken together, the consequence is that they restrict the opportunities for making the savings set within the budget. This can be seen more clearly when the budget profile for policing is examined.

![Pie chart showing savings categories]

**Figure 1**

3.3 The Financial Memorandum has set out, within the overall £88m of savings, three main heads of savings:

1. Police staff reduction costs of £50.3m
2. Non staff costs of £30.7m
3. Police Officer delayering of £5.4m

3.4 Whilst an initial element of savings is due FY2012/13, the substantial part kicks in during FY2013/14 and FY2014/15. The delivery of these savings is dependent on the new service starting on the earliest possible date of 1 April 2013, therefore any deferral beyond this date will add delay and cause slippage.

3.5 There are four specific issues worthy of highlighting from this:

- Police officer numbers being protected effectively closes off almost 75% of the spend to making financial savings
- Maintaining police officer and police staff terms and conditions on transfer to the new organisation will limit the opportunities for significant savings on staff costs in the first few years, particularly since any negotiated

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2 This figure also includes other non-specified costs of £1.6m
settlement will take time and is likely to include some degree of incremental protection

- With savings of over £30m already set within the non staff budget of £130m, the scope for significant further savings is limited when much of that budget is unavoidable (fuel, utilities, rates, etc)
- Achieving the scale of savings from police staff costs is dependent on significant numbers of police staff leaving the organisation on a voluntary basis.

This is more fully articulated in the following section.

4. The Scale of Police Staff Job Cuts

4.1 A key component of reform is to sustain and enhance community based operational policing by reducing duplication. It is an unavoidable consequence that to achieve the scale of savings there will be a significant reduction in police staff jobs. The scale of police staff cuts is recognised by Scottish Government, not simply in terms of the savings it has set within the budget but in the investment of £80m to fund voluntary redundancies.

4.2 Based on these figures, this equates to a reduction in circa 2000fte leaving the organisation by April 2015, in the following (cumulative) phasing:

<table>
<thead>
<tr>
<th>Year</th>
<th>Reduction</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012/13</td>
<td>240</td>
</tr>
<tr>
<td>2013/14</td>
<td>906</td>
</tr>
<tr>
<td>2014/15</td>
<td>1864</td>
</tr>
<tr>
<td>2015/16</td>
<td>2054</td>
</tr>
</tbody>
</table>

4.3 The above figure of 2054 will increase to circa 2400 if projected savings of £10 million in police staff terms and conditions is not achieved.

4.4 This equates to approximately 33% of all police staff posts and has to be achieved by Voluntary Redundancy. Police forces and the SPSA have already reduced police staff levels by c1000fte in the last 2 - 3 years, much of it by voluntary redundancy. There is, therefore, a diminishing pool of people likely to be attracted to voluntary severance, particularly when there is a clear statement that there will be no compulsory redundancy.

4.5 Our professional assessment based on that recent experience has shown that it is highly unlikely that voluntary redundancy schemes will attract such numbers, particularly within the current economic climate and a less than buoyant jobs market. By way of example, a Voluntary Redundancy Scheme within Strathclyde Police over the last eighteen months released only c200 members of staff and this was on more favourable terms than is assumed within the Financial Memorandum. The Scheme attracted c500 notes of
interest, many of whom were in areas of business that were not in scope for change (station assistants, custody, control rooms).

4.6 The scale and phasing of police staff voluntary redundancies, if it can be achieved, carries a risk that police officers will be drawn into non police roles. Our drive is to avoid this at all costs as we believe that it is not efficient, effective or the best way to design the new service. It does not represent Best Value. Police staff make a significant contribution to the overall policing effort and our professional view is that we require an appropriate workforce mix between police officers and police staff. Any notion that police staff simply perform a “back office” function is not an accurate description of the professional role they play.

5. Cost

5.1 ACPOS recognises the commitment of the Scottish Government to invest in Police Reform in order to achieve recurring savings of £106 million by 2016/17. It is widely recognised that reform of this magnitude cannot be achieved without significant investment. ACPOS also welcomes the inclusion of optimism bias within the Financial Memorandum to provide a measure of protection against the costs being greater and the savings less than predicted within the OBC, however, our professional view is that there will be a lag before the benefits of the investment in reform are accrued.

5.2 It should be noted, however, the savings of £88m relating to police reform are not the only savings the police service is required to make. The flat cash settlement is a cut in real terms, because of inflationary considerations and pay awards during the spending review, therefore additional focus over and above the £88m will be required in order to meet the savings necessary to stay within the budget settlement.

5.3 Having just received some detail from Scottish Government on the status of the new organisation, further work is ongoing to better understand the implications. There are other financial management issues associated with the service having to work within 'Scottish Government Rules' rather than 'Local Authority Rules' which are only now being fully understood, e.g. reduced procurement costs could result in increased administrative costs, an inability to hold reserves, and a significant VAT liability.

6. Value Added Tax – additional financial commitment

6.1 The new Police Service of Scotland, as a consequence of its status as a national organisation, which is a significant departure from how police forces and police authorities are currently constituted, will attract an annual liability of VAT of £22m. We recognise that the Scottish Government is in liaison with HMRC to consider an exemption from the requirement to pay VAT.

6.2 That said, we raised similar concerns on the VAT liability of the Scottish Police Services Authority (SPSA) when it was formed in 2007 and there has been no relaxation on the HMRC position.
6.3 Our planning assumption, therefore, is the new Police Service of Scotland, will have a recurring VAT liability of £22m per annum, which is the equivalent of 800 police staff jobs or 630 police officer posts, on top of what has already been assumed. Over the period covered by the Financial Memorandum this amounts to a liability of £280m.

7. **Reserves**

7.1 There is ongoing debate between Scottish Government and COSLA regarding the disposal of reserves currently held by Police Authorities on behalf of the existing forces. As we understand matters, Scottish Government and COSLA have agreed that these funds will be recovered from Police Authorities and returned to Scottish Government and COSLA on the 51/49% split. Scottish Government’s preference is for this to occur at the end of the current financial year, while COSLA’s position is that the reserves should be retained within the current structure of policing and returned only with the commencement of the new service.

7.2 The ACPOS view is that this money was allocated to police for policing purposes, was managed accordingly, and should be retained within the policing, providing the new service with a contingency to fund aspects of reform.

8. **Conclusion**

8.1 All of that said, our absolute commitment is to achieve the objectives of reform within the budget set by Scottish Government. In doing so, the challenges need to be clearly recognised, articulated and managed given the parliamentary and public interest in such a significant reform of an important public service.

**ACPOS RESPONSE TO THE SCOTTISH PARLIAMENT**

**FINANCE COMMITTEE QUESTIONNAIRE**

**Consultation**

1. **Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?**

ACPOS did take part in the consultation exercise which preceded the Bill and commented on the financial assumptions made within the Outline Business Case (OBC). ACPOS provided officers to assist Scottish Government in developing the work that led to the OBC.

We were advised by Scottish Government that the OBC was the means by which it would assess the three options for reform, with the preferred choice being subject to
a full business case, which would more accurately define savings and costs. Among the comments made on the OBC were:

- Concerns over the scale and pace of the projected efficiencies, particularly within the constraints and assumptions based on the commitments made by the Scottish Government

- Concerns over the limited time and resources available to produce the OBC and highlighting the need for more detailed analysis to be conducted

- Highlighting that the scale and speed of realisation of the efficiencies depends on the approach to prioritisation, availability of investment, management of risk and business continuity

- Concerns over the level of savings inherent within the OBC which were projected to come from Dealing with the Public, Local Policing and Procurement

- The ability to reduce Police Staff numbers by around 2,000 to 2,400 without compulsory redundancy, the impact on service delivery and overall effect on front line policing numbers

- The risk that the actual costs of Police Reform may turn out to be greater and the savings less than indicated with the OBC, as a consequence of not progressing to a full Business case

- Concerns over the status of the new Police Service of Scotland, the potential to incur significant additional VAT costs and inability to manage its finances in the most efficient and cost effective manner due to being unable to hold reserves

- Particular concerns that insufficient capital will be set aside to invest in ICT systems and equipment

2. **Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?**

Many of the concerns detailed above remain and the position will only become clearer once the ACPOS work on designing the future service has matured. ACPOS welcomes the inclusion of optimism bias within the Financial Memorandum, but considers that further work is required to more accurately identify savings and costs, without which there exists a risk that savings will be less, and costs more than estimated.

3. **Did you have sufficient time to contribute to the consultation exercise?**

While ACPOS has some concerns over the limited time and resources to prepare and develop the OBC it is content with the time given to contribute to the consultation exercise.

**Costs**
If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Police Service in Scotland has made and continues to make a significant contribution to Police Reform through deployment of Police Officers and Staff at all levels either on a full time or part time basis. This requires to be carefully managed to ensure there is no detrimental impact on the service provided to the public or that undue burden is placed on those delivering “business as usual”

ACPOS recognises in the current financial climate costs must be constrained; however it will be important that sufficient investment is made in the cost of preparing for and implementing Police Reform.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

As previously referred to ACPOS has some concerns over the estimated costs and the pace and scale of the savings projected within the OBC. Giving the limited time and resources allocated to preparing the OBC and the absence of a full business case it is inevitable there will be concerns over whether the estimated costs of Police Reform are reasonable and accurate.

The picture will become clearer once the ACPOS work on designing the future service is more mature. The inclusion of optimism bias within the Financial Memorandum is entirely appropriate and provides a measure of protection against the costs being greater and the savings less than reflected in the OBC, however, it would be prudent to extend the period between investment in Police Reform and realisation of the savings.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

It would be more relevant to address this question in terms of achieving net savings. The ability of the service to achieve the required net savings in the timescale outlined in the Financial Memorandum and within current constraints and assumptions, based on commitments made by the Scottish Government will be extremely challenging. It may be necessary to build in slippage in achieving the projected savings and/or re-assessing the compatibility of the current constraints with achieving the necessary savings.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Inclusion of the optimism bias provides a measure of protection over uncertainty associated with the estimates and timescales over achieving net savings. The work
being carried out by ACPOS is designed to ensure reform objectives are met, while identifying the true costs and savings of reform.

**Wider Issues**

*Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?*

The detailed work currently being undertaken by ACPOS will more accurately capture wider costs.

At this point, there may be additional costs for Local Authorities as the Financial Memorandum predicts savings will be accrued for policing by transferring responsibility for Traffic Wardens to the Local Authorities.

There is also a need for more detailed work around the costs associated with the establishment of the Police Investigations Review Commissioner and the new arrangements for the delivery of Forensic Science services under the auspices of the SPA, particularly as they relate to the Police Service of Scotland.

It should be noted the savings of £88m relating to police reform are not the only savings the police service is required to make. The flat cash settlement is it is a cut in real terms, because of inflationary considerations and pay awards during the spending review, therefore additional focus over and above the £88m will be required in order to meet the savings required to stay in the budget settlement.

*Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?*

We are not in a position yet to answer this question.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?  
The Association of Principal Fire Officers Scotland (APFOS) submitted a response to both consultations.

The Association was also represented at the stakeholder engagement events during the development of the Outline Business Case (OBC) and continues to contribute to ongoing discussions at the Ministerial Advisory Board and its sub-groups. APFOS has commented on financial aspects throughout, including making reference to the lack of any financial detail within the OBC on which the first consultation was based.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?  
A number of financial assumptions were set out in the OBC and have been carried forward during the development of the Bill. APFOS stated that there was insufficient detail provided to enable a proper testing of those assumptions and that remains to be the case.

3. Did you have sufficient time to contribute to the consultation exercise?  
APFOS found sufficient time was provided to enable a considered response to both consultations, however, the Association has made comment on a number of occasions that the development of the OBC was rushed and completed with unreasonable haste.

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?  
The assumed reduction in Principal Officers will impact on the revenue of the Association which is wholly reliant on membership subscriptions however, that is not a matter for inclusion within the Financial Memorandum.

2. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?  
APFOS appreciates that the projected costs and savings have now been developed and are provided for consideration. However, the Association would assert that there is still a lack of detail to enable a proper and robust analysis. The Association has also identified a number of differences in approach being
applied to the Police, for example, the programme and project management costs, technology/ICT costs, and training costs.

APFOS is particularly concerned with the assumptions and commentary in relation to voluntary redundancy payments. A figure of £4m has been attributed to Fire on the basis that reduction in uniform staff could be managed through staff turnover and retirement and therefore no redundancy costs would be incurred. The Association is of the opinion that this assumption is flawed and is wholly inconsistent with the £80m included for the Police.

3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
This question is not relevant to the Association.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
As highlighted in response to question 2 above, different methodologies (including margins of uncertainty) have been applied to Fire and Police without sufficient explanation.

APFOS would also comment that structures are yet to be developed, both in terms of delivering services and supporting infrastructure. It is therefore difficult to make any determination as to the accuracy of the projected costs and savings.

Wider issues

1. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?
Although the Financial Memorandum appears to address the more substantial issues, there will be numerous lesser matters which will need to be addressed, with associated costs. Matters such as rebranding will not be insignificant.

2. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?
It is not possible at this time to identify or estimate any future costs associated with the Bill.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

1 Introduction

1.1 The Association of Scottish Police Superintendents (ASPS) support a single Police Service of Scotland. We recognise the reality of the challenging economic environment which has led to a need to reduce the cost of policing whilst ensuring improved outcomes for communities. We believe this should be allied to wider public sector reform.

1.2 The change programme must be considered against a backdrop of current police performance which has provided the lowest recorded crime figures for thirty five years allied to improved detection rates which has led Scottish Government to describe policing in Scotland as “excellent”.

2 About ASPS

2.1 The Association of Scottish Police Superintendents is a long established body that represents constables that hold the ranks of Superintendent and Chief Superintendent in Scotland. ASPS represent the senior operational leaders of the service in Scotland.

3 Consultation Response

3.1 Please find below our response to your questions for consideration on 09/02/12. ASPS are willing to provide oral evidence on 22/02/12 if required.

Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

On 1st November 2011 ASPS responded to the Scottish Government consultation document “Keeping Scotland Safe and strong: A consultation on reforming Police and Fire and Rescue services in Scotland.” We provided comment in relation to question 7 (proposed new funding and financial accountability arrangements). ASPS did not specifically comment on the assumptions made.

ASPS is supportive of simplified funding arrangements but is in favour of continuing with additional local funding in pursuit of local policing arrangements as currently exists, where they add value at the very local level. Our concern remains over the status of the Scottish Police Authority - is it a Non Departmental Public Body ?. In particular we are concerned that the membership of the new Authority must consist

3 Policy Memorandum, paragraph 2, 56,
of experienced and qualified people with the leadership skills to run a £1.4 billion critical public service. Effective leadership is required in a period of significant organisational change and operational challenge. The new Authority Board must be capable of effectively scrutinising the organisational risks, financial management and performance of the new service in what will be a challenging period.

**DELIVERING THE SAVINGS OF REFORM**

Over the Spending Review period (2012-13 to 2014-15) the Police Central Government Level 3 profile for reform is as detailed below:

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<thead>
<tr>
<th>Figures in £m</th>
<th>Police Reform</th>
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<tr>
<td></td>
<td>2012-13</td>
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<tr>
<td>Assumed Savings</td>
<td>-6</td>
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<tr>
<td>Assumed Costs</td>
<td>18</td>
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<tr>
<td>PCG Level 3 (Net of costs &amp; savings)</td>
<td>12</td>
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The net annual recurring savings from reform of £106 million are expected to be achievable from 2016-17. This is a matter that ACPOS will lead on but will need a service response.

1. **Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?**

   N/A

2. **Did you have sufficient time to contribute to the consultation exercise?**

   Yes but we did not have sufficient resources or access to the detailed financial information. However, ASPS support the drive to introduce the new Police Service of Scotland with effect from 1 April 2013. The Police and Fire Reform Bill which will provide the legislative leverage for this to happen is now out for wide consultation. ASPS takes the view that the sooner we introduce the new service the sooner efficiency savings can be made and operational outcomes improved.

   ASPS accepts that financial savings need to be made across the public sector and as the senior operational police leaders in Scotland have always positively supported police reform and the introduction of a single service.

   The ASPS view has been that this is the best way to reduce bureaucracy and duplication of effort, and to preserve police officer numbers. ASPS have also made
it quite clear that there is a need for a balanced workforce within the police service with a sensible blend of police officers and police staff as part of the new model.

That said, ASPS will not support financial savings which damage the effectiveness of local policing. It is often easy to put a cost on policing but there is a need to link that to the value of the range of services provided and the outcomes that are achieved.

3. The new Police Service in Scotland will focus upon maintaining service delivery and high performance from Day 1. As we move towards implementing the new structures, we will continue to strive to deliver the very best service to local communities, and to provide the reassurance to the public which is needed at this important time, particularly given the savings that need to be made.

In these times of uncertainty ASPS, as senior managers within the service, will endeavour to maintain staff confidence and morale.

ASPS have always taken the view that restructuring and creating a single service is the best way to make savings and improve operational outcomes through more flexibility in the deployment of resources and staff. Policing in Scotland is about to undergo the most radical change for almost 40 years. The scale of the challenge facing the service cannot be overstated. But nor can it be allowed to divert attention away from the need to continue to provide the best possible support and services to communities across Scotland. ASPS are proud of what the service has achieved in Scotland, and we must not waste this opportunity to improve it further.

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

ASPS will, as a direct consequence of reform, need to reorganise to meet the needs of our members as a staff association. We are unable to estimate the financial impact until details of the design of the new Police Service of Scotland is known. However, with the reduction of Chief Officers and the fact that ACPOS is unlikely to exist in its current form there may be a need to transform ASPS from being a mainly staff oriented association to one that undertakes a significantly more strategic managerial remit within the Police Service of Scotland.

2. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

ASPS are not in a position to comment on whether these estimates are reasonable or accurate, as we were not involved in any of their detailed research and production.
3. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

ASPS currently have a full-time President, full time General Secretary and part-time Office Manager. The Chief Constables of Strathclyde and Lothian and Borders have provided the Association with a seconded superintendent and inspector to assist us with responding to and participating in the Reform Programme and ASPS assumes that the new Police Service of Scotland will bring considerable uncertainty for our members. For this reason it is extremely unlikely that we will have the resources to meet the increased demands likely to be placed on our Association. If there is an expectation that ASPS should continue to play this role, along with the increased role required due to the void left by the loss of most members of ACPOS, then additional resources will be necessary, although it is unlikely to require substantial resources.

4. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

ASPS were not involved with the production of this information and can offer no response to this question.

5. Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

It is our view that future costs may arise as a consequence of some areas that are difficult to specify at this time. There is a real possibility that differing interpretations and roles played by the newly formed Police Authority, PIRFEC, Forensics and the changed role of the HMCIC will bring with them significant costs that we are unable to identify. We would also refer to ACPOS’s response and concur with their views in relation to the recurring costs relating to the VAT liability to HM Treasury if the Scottish Government does not achieve an exemption.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

We are unable to provide a view on this question.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM THE BOARD OF STRATHCLYDE FIRE AND RESCUE

The Board of Strathclyde Fire and Rescue considered a report by the Chief Officer regarding the Police and Fire Reform (Scotland) Bill – Financial Memorandum.

The Board agreed to support the response to the Committee’s questionnaire prepared by CFOAS Finance Officers, a copy of which is attached. In addition, the Board expressed its concern on the financial impact, to be incurred in 2012/2013, of the significant level of costs associated with the staff appointments to form the new executive team for the single service (reference paragraph 251 Shadow Leadership).
### POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

#### SUBMISSION FROM THE CHIEF FIRE OFFICERS ASSOCIATION OF SCOTLAND

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<tr>
<th>Questions</th>
<th>CFOAS Response</th>
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<tbody>
<tr>
<td><strong>Consultation</strong></td>
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<tr>
<td>1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?</td>
<td>CFOAS submitted a response to both consultation exercises undertaken by Scottish Government. In addition, CFOAS was invited to participate in both stakeholder events and meetings with Scottish Government officials prior to this legislation being drafted. In all cases CFOAS commented on the financial assumptions being made, both orally and in writing.</td>
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| 2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum? | It is disappointing to note that many of CFOAS comments on the financial assumptions made have not been accurately reflected in the Financial Memorandum. In particular, issues in relation to VAT, the holding of Reserves, savings already made within the Service since the Business Case was prepared, unrealistically low cost estimates and the need to retain sufficient uniformed staff to deliver safe and effective Incident Command management are examples of areas of concern. These are explained in detail below. |

| 3. Did you have sufficient time to contribute to the consultation exercise? | Whilst CFOAS had time to contribute to the consultation exercise, until the new Service’s structure and design is developed, it is difficult to accurately identify the final level of savings achievable. Whilst we would not challenge the assumption that savings can be made by removing duplication and we accept that financial challenges face all public sector bodies, we would argue that both the level of savings and the timeframe over which they are to be achieved, as outlined in the Financial Memorandum, are not based on robust evidence. |

| 1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? | As CFOAS represents Chief and Assistant Chief Fire Officers within the current 8 Fire and Rescue Services, the financial implications are totally relevant to our organisations. The accuracy of these implications is challenged in detail below. |
### Questions

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<th>Questions</th>
<th>CFOAS Response</th>
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<tr>
<td>1. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?</td>
<td>CFOAS would challenge a number of the costs and savings set out in the Financial Memorandum. Specifically questions over the following costs remain:</td>
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<td>- The potential loss of VAT Section 33 status is of significant concern. On the basis of the Government’s procurement system, verified by actual claims for recovery of VAT over the preceding 5 years by Strathclyde Fire and Rescue, it is clear that this loss could cost the Scottish Fire and Rescue Service some £10m per annum, not £4m as included in the Financial Memorandum. Scottish Government is attempting to resolve this matter with HM Revenue and Customs and HM Treasury. However, it should be noted that efforts by Scottish Government to resolve this issue when the Scottish Police Services' Authority was created were unsuccessful. Resolution of this matter will be essential to sustain performance and protect services to communities.</td>
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<tr>
<td>- Costs incurred by Local Authorities are estimated by COSLA to be £3-£4m for both Police and Fire. Although it is difficult to compare this to current costs, as a benchmark, Board expenditure within Strathclyde Fire and Rescue currently totals £211,000. If costs going forward exceed current levels, it would be hoped that these additional resources would be found outwith operational budgets.</td>
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<td>- Programme Management, Training and Change costs are estimated to be £3m, £2m to manage the transition planning process and £1m for training and change. These costs appear to be significantly under estimated when compared to the equivalent figures for Police of £23m for Programme Management and £16.5m for Training. In addition, costs are spread over Years 2-4. This must be brought forward into Year 1 or Year 0 to be meaningful.</td>
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**ICT costs** are estimated to be £9m with Optimism Bias of 53%. This level of Optimism Bias differs from that considered appropriate and in line with Treasury Green Book for Police. The figure used there is 100% and given the early point in the process of assessing ICT assets, this would appear to be more realistic.

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<td>Redundancy costs of £4m have been assumed on the basis that any reduction in uniform numbers could be managed through staff turnover and retirements and that only a third to half of non uniformed headcount reductions would require some form of voluntary redundancy package. Both of these assumptions appear to be significantly flawed. Even if uniformed staff reach minimum retirement age, there is no certainty they would elect to do so.</td>
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<td>In relation to non uniformed staff, the assumption that between half and two-thirds would leave without redundancy is without foundation. Again, this estimate and assumption must be compared to that of Police which is based on the actual costs incurred through the recent Police SPSA Programme. A natural attrition rate of 3% has been assumed with redundancy costs of £80.8m, some 20 times the estimate contained within the Fire Financial Memorandum. Projections of turnover levels within Fire Non Uniformed staff based on the age profile of current employees is 1.47% per annum over the next five years.</td>
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<td>In addition to the costs noted above, the following estimates of savings cannot be supported by CFOAS at this time:</td>
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<td>- Across a number of headings, savings have been assumed in the number of senior uniformed officers required to deliver that particular aspect of our Service, ie Learning and Development</td>
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£0.9m
Corporate Services
£3.5m
Prevention and Protection
£2.5m
Response
£0.9m.

However, officers engaged in the above activities are not solely employed for that purpose. They perhaps, more importantly, form part of the Service’s Incident Command structure. CFOAS has significant concerns that some of the assumptions made are overly optimistic and appear to pre-judge the outcome of the work that still requires to be done to develop a safe, resilient and effective emergency Incident Command response. Factors that appear to be omitted from the analysis undertaken by Scottish Government officials so far include the need to support and improve firefighter safety, as highlighted in the many HSE and FBU reports into firefighter injuries and fatalities in recent years.

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<th>Questions</th>
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<td>• Other key areas of concern include:</td>
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Paragraph 270 Learning and Development – There is an assumption that training currently being delivered across the country is adequate and appropriate. This is not the case. In designing the new Service in Scotland, we must ensure that every firefighter is capable and competent to carry out the role we ask them to undertake to protect the community they serve.

Paragraph 271 Corporate Services – Whilst we agree that savings can be made by the removal of duplication and the introduction of streamlined processes, the level of savings assumed and the pace at which they could be delivered is unrealistic. Until the design of the new Service is developed, the level of support cannot be fully assessed and therefore the necessary costs and savings cannot be quantified. It should be noted that some of the savings within this area are of a capital nature (£0.4m), are duplicated (audit fees) and are costs currently incurred by Scottish Government.
Resilience (£1m) not Fire Authorities.

Paragraph 273 Prevention and Protection – CFOAS believes that estimates of savings within this area are over-generous, have no supporting evidence base and will not enable the Service to deliver risk reductions across Scotland. They do not consider the emerging changes to risk and without a proper impact assessment may disproportionately affect vulnerable and at risk groups. In order to deliver appropriate services across Scotland, including Fire Investigation, reinvestment of savings will be required.

Paragraph 274 Response – Significant savings are assumed from a review of Crewing Practices £7.8m and Control Rooms £3.7m. Given earlier commitments in relation to maintaining frontline outcomes, no compulsory redundancies and staff transferring to the new Service with existing terms and conditions, the speed and level of savings to be delivered in these vital areas cannot be supported without robust evidence.

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<th>CFOAS Response</th>
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<tr>
<td>2. If relevant, are you content that your organisation can meet the financial costs associated with the Bill</td>
<td>Paragraph 254 Non Operational Asset Sales – The ability of the Service to realise such assets for sale will only be known when structures are developed and an assessment of the existing estate is fully considered. However, non operational assets are not necessarily stand alone and easily separable from the operational estate. The majority are either physically part of an operational fire station or located within the same site. In addition, valuations are for accounting purposes only and do not reflect current market values. We can therefore not support the conclusion that capital build and refurbishment would be largely cost neutral nor that the timing of income and expenditure would match.</td>
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which your organisation will incur? If not, how do you think these costs should be met?

In addition, paragraph 269 highlights that all figures are quoted relative to costs actually incurred in 2010-11. Since that time Services have reduced expenditure by almost £10m per annum. When this is factored into Table 3.2, it can be seen that additional savings of £5.7m would be required by 2014-15 and a further £5.8m by 2018-19 in order to achieve the estimates contained within the Outline Business Case. These targets appear more realistic notwithstanding comments made earlier, however, it must be recognised that within this period, the Service is likely to have to fund pay awards and other inflationary pressures from within existing budgets.

In relation to costs, it is not possible for Services to fund one-off set up costs from within operational budgets therefore it is anticipated that these will be funded in full by Scottish Government.

3. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

As highlighted in our response to questions above, the costs and savings outlined within the Financial Memorandum do not accurately reflect the margins of uncertainty surrounding the resourcing requirements of a single Fire and Rescue Service.

It would therefore appear prudent that given this uncertainty, Scottish Government consider allocating a Contingency Fund in order to meet any potential shortfalls. This would be of significant benefit as both Police and Fire will no longer have the ability to hold reserves which could be appropriate used for this purpose.

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<th>Questions</th>
<th>CFOAS Response</th>
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<tr>
<td>4. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other</td>
<td>Much work requires to be undertaken in relation to structures, Incident Command requirements and support functions to facilitate Service needs before any accurate estimates of likely costs and savings can be made.</td>
</tr>
<tr>
<td></td>
<td>There are a number of areas of costs that have not been included within the Fire and Rescue Service Financial Memorandum such as relocation costs/excess travel, rebranding costs required on</td>
</tr>
</tbody>
</table>
### costs might be incurred and by whom?

Day 1, eg new Warrant Cards for all staff, equipment standardisation, etc. In addition, costs associated with bringing Services up to the same standards across the country have not been factored in. These will all be matters that the new Scottish Fire and Rescue Service will require to address, some sooner rather than later.

### 5. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

It is too early to state with any degree of certainty the level of potential future costs associated with the Bill and any future subordinate legislation. For example, should Scottish Government extend the nature and range of additional functions which the Fire and Rescue Services are to respond to, the financial impact of doing so will require to be considered at that time.

### Additional Comments

In addition to answering the question set within the questionnaire, CFOAS would wish this Committee to consider the following key areas:

- Under the Police and Fire Services (Finance) (Scotland) Act 2001, Reserves of up to 5% of revenue budgets can be held. The holding of Reserves is regarded as good financial management practice by bodies such as CIPFA [LAAP Bulletin 77] as they provide a contingency to cushion against the impact of unexpected events or emergencies. In the case of a primary emergency service such as fire, such events could include above budgeted pay awards or inflationary pressures, protracted emergency incidents or other exceptional circumstances. As expenditure within an emergency service can be volatile, and the ability to hold Reserves supports the operational independence of the Service, encouraging managers to plan in a more strategic manner over the medium term rather than on an annual “spend it or lost it” basis, it is disappointing that this flexibility in relation to financial management is lost to the Scottish Fire and Rescue Service.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM (CIPFA) THE CHARTERED INSTITUTE OF PUBLIC FINANCE AND ACCOUNTANCY & THE CIPFA DIRECTORS OF FINANCE SECTION & THE SCOTTISH LOCAL AUTHORITIES CHIEF INTERNAL AUDITORS GROUP

(This is CIPFA’s submission to the Scottish Government’s consultation in November 2011. CIPFA indicates that from review of the Financial Memorandum, its core comments remain extant and has asked that the submission is considered as evidence to the current inquiry)

1.1 This submission specifically addresses some of the key financial management foundations which are essential if good corporate governance is to be in place for both the police and fire national boards.

1.2 The Scottish Government expect that savings of £130M each year will be achieved by the proposed reform of both police and fire. The relatively short period of consultation has not allowed us to conduct a detailed examination of the financial benefits claimed within the business cases for reform. Our approach has been to focus upon the risks associated with reform of this scale and we have recommended appropriate measures.

1.3 However, we recognise that the achievement of that level of savings of that magnitude, along with achievement of the wider operational benefits from reform will be of significant public interest. There is a clear role for both the Scottish Parliament and the Auditor General to both validate and to track the realisation of both financial and non-financial benefits claimed by the proposed reform.

1.4 "Financial management is an essential element of good corporate governance and forms part of the firm foundations of an organisation, underpinning service quality and improvement and is the basis of accountability to stakeholders for the stewardship and use of resources".

1.5 We share that view and reform in itself will present a series of risks to the financial management of the outgoing boards as well as to the incoming new bodies. Central to risk mitigation will be the maintenance of a sound control environment. Although, there is no prescribed timetable the 3 distinct risk periods in a hypothetical timescale could be:

- the period prior to reform – 2011/12,
- the 'shadow' period – 2012/13; and

1.6 We have identified actions which should be taken to mitigate the risks. A shadow board can begin to take responsibility for determining the nature and

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4 Statement by K.McCaskill MSP, Minister for Justice 8th September 2011
extent of the significant risks that it is willing to take to achieve its strategic objectives. The boards can develop sound risk management and internal controls systems. And clearly, the newly formed boards will take responsibility for the “go-live” risks.

1.7 In the absence however of any shadow period and shadow board, consideration needs to be given to how these risks are managed. Central to the mitigation of risk is the assurance work undertaken by the internal audit function and the need for independent assurance on risk mitigation to those charged with governance.

1.8 The Chief Financial Officer and the work undertaken by the finance function is at the heart of the achievement of world class financial management and we also comment on the role of the Chief financial Officer. We have used some of the recognised themes of world class financial management to structure our categorisation of risks⁶:

- Financial planning;
- Financial monitoring and forecasting; and
- Financial Reporting.
- Financial governance and leadership

1.9 The consultation paper does not provide detail on a transition timetable or on ‘shadow’ period arrangements. A shadow period of operation would allow the new authorities to operate in parallel with the existing bodies while new governance arrangements are embedded and while resources are transferred and acquired.

1.10 Prior to local government reorganisation in 1996, there was a shadow period of one year. There is however evidence that even with a one year shadow period, smooth transition proved to be challenging for local authorities⁷.

1.11 We recommend that a shadow period commensurate with the scale of the change should be introduced. The shadow period will be a critical period for the incoming boards with opportunity to design and develop:

- A detailed plan of implementation with clear deadlines and milestones;
- The control environment both nationally and locally;
- Clarity on the extent to which financial management will be devolved;
- Development of internal financial rules both nationally and locally; and
- Appointment of a head of internal audit.

1.12 Finally, we observe that the funding and financial management of police and fire bodies have been inextricably linked to local government finance . It is essential that the scale of the task that will be required to extract police and fire from the current arrangements is not underestimated.

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⁷ Overview Report on 1996/97 and 1997/98 Audits of Local Authorities
1.13 Throughout the remainder of this submission it will be assumed that there will in fact be an appropriate shadow period and that a detailed plan of implementation will be developed. We further recommend that a clear and prescribed timetable is set to enable the appropriate governance and financial management arrangements to be set out.

1.14 We begin our response with some commentary on the broader dimensions of corporate governance.

2 CORPORATE GOVERNANCE

Impact Upon Accountability

2.1 We have tested the proposed governance arrangements and have recognised that there are characteristics from two recognised models of governance:

- the policy governance model\(^8\); and
- the constituency/representative model.

2.2 The creation of national boards is consistent with the Carver/Policy Model. The clarity in terms of roles and responsibilities and accountability offered by this model is confused by the proposal within the consultation to create structures within local government for police and fire. The consultation paper indicates a level of discretion on the role of local authorities including whether a specific local authority committee should be formed or whether joint arrangements should be made with other local authorities.

2.3 Our concern with the proposal is that it will result in ‘abdicating’ behaviour rather than ‘accountable’ behaviour. For example, in the case of police, with a local commander, a local committee as well as the national police authority it could be difficult to recognise where accountability actually lies. The result could be that there is local tension with the national police board for adverse outcomes as a result of resourcing decisions taken by the national police board.

2.4 The proposal could also result in significant duplication. For example, the consultation paper anticipates that the national board and the local structures will be concerned with examining local performance.

Board Membership

2.5 The composition of a recently introduced public body resulted in adverse comment by Audit Scotland and provides useful lessons for the proposed reforms, in particular the proposed membership of each board\(^9\).

2.6 Given the likely NDPB status of the two new boards we assume that the requirements for a designated accountable officer will be met by the Chief

\(^8\) Dr John Carver, Policy Governance Model

\(^9\) The Scottish Police Services Authority, Audit Scotland (2010)
Constable and the Chief Fire Officer. The clear lesson learnt from this recent example is that the accountable officer should be a member of the board and we recommend that the proposed arrangements ensure board membership for the accountable officer.

2.7 We support the use of the Public appointments process to recruit non-executive members to the board but we acknowledge that this would be inappropriate for securing representative members.

2.8 Whilst diversity in board membership is important, this must be balanced against experience and expertise required at the early stages of both the police and fire boards. The capability and capacity of the board must be strong from the outset. The board will be required to make critical decisions which will determine its success. Critical experience and skills in this first round of board member appointment and nomination must be risk and change management. The audit committee will be vital in the early stages and therefore it will be essential to appoint board members with audit committee experience.

2.9 The role of the chair(s) of the boards and their relationships with accountable officers are both critical. We recommend the early appointment of the chair. Appointment of chairs with the required skills and experience of merger and reform will be essential. Membership of boards should include individuals who have been selected because they can display expert credentials and have experience of providing effective independent oversight and scrutiny of services.

The Roles of Management and Governance

2.10 A clear risk in any new governance arrangement is a blurring of the functions of management with the functions of governance. With specific regard to police reform, we note that the forensic service will report to, and be directly accountable to, the police authority and not to the Chief Constable. In practice, this will require the police authority board to take on managerial oversight.

2.11 Audit Scotland also commented on the governance SPSA and its relationship with SCDEA which was effectively independent of the Chief Executive. We recommend that the adverse governance comments made by Audit Scotland are addressed and that they are not replicated within the new arrangements

3. FINANCIAL PLANNING

Prior to Reform

Capital Financial Plans

3.1 Risk: Prior to the start of the new bodies, the existing bodies are likely to be required to continue to operate through up to two financial years. Investment decisions will be taken by these bodies but, will in turn be different from the

10 SPSA Audit Scotland Report (2010)
bodies which will ultimately be responsible for the long term revenue repayment of that investment. The risk is that capital investment is undertaken which results in assets which do not fit with the requirements of the successor board(s). In the current context, this is particularly important given that subsequent revenue consequences will fall to be met by the shadow and successor body.

3.2 Control: One means to alleviate this risk is to require critical review of immediate capital expenditure with any major forward capital investment (other than immediate business critical purchases) deferred until the successor board(s) can have an input into the transaction.

3.3 Risk: The failure to properly manage the transfer of assets is a risk. An essential part of ongoing asset management is the maintenance of comprehensive asset records, usually in the form of an asset register. The recent experience of a new public body\(^{11}\) evidences the weaknesses in information held on assets used to deliver services.

3.4 Control: Each body will have to ensure that its asset records are capable of transfer (to the shadow body) at a predetermined and coordinated date. We recommend that a clear timetable for finalisation of assets for transfer is agreed

**Revenue Financial Plans**

3.5 Risk: The resource allocation for police and fire is currently embedded within the local government finance settlement. The risk is that extraction of police and fire from the local government finance settlement could be protracted. This could be particularly challenging for Fife and Dumfries and Galloway forces where the arrangements are effectively integrated within each local authority.

3.6 Control: There is a need for an early and close working arrangement between the local government directors of finance, COSLA, ACPOS and CFOA to ensure an early focus on the implications.

3.7 Risk: The significant task that is faced in the practical dismantling of the current financial arrangements is brought further into focus when the likely budget timetable and the approach to budgeting is considered. There is a risk that, because of the potentially tight timescale, the first budget of the new boards could merely be an aggregation of historic budget approaches based on historic plans and are not keyed in to the objectives of the new board.

3.8 Control: We recommend that there is a realistic lead-in time and clear timetable for initial budget preparation by the new boards and that consideration is to adopting an outcome approach to budget development

**VAT**

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\(^{11}\) SPSA Report by Audit Scotland (2010)
3.9 Risk: The Scottish Police Services Authority (SPSA) was introduced in 2007, it was later established that the body was not in fact registered as a VAT exempt body\textsuperscript{12}. It is understood that this was an oversight of legislative drafting and that there was subsequent financial and administrative consequences to the Scottish Government, the SPSA and to HMRC.

3.10 Examination of the outline business cases indicate that the impact of VAT is being considered and with an estimated annual transfer value of £26M this is a significant matter for early resolution.\textsuperscript{13}

3.11 Control: We recommend that, prior to commencement of the shadow period, the appropriate direction and confirmation from HMRC is finalised to enable the new police and fire authorities to properly account for VAT and that VAT status is properly reflected in legislation governing the reforms. We would further recommend that the specific asset transfer issue\textsuperscript{14} which recently faced a new public body are addressed in discussions with HMRC

**Balance Transfer**

3.12 The successor boards will need to have a clear view of all available resources. The balance sheets will ordinarily recognise the balances which, under normal circumstances, would be carried forward into the next financial year.

3.13 These balances will have been funded from local taxation. While the base premise of the consultation paper is that all assets (and liabilities) will transfer to the successor board(s) both local authorities and the Scottish government, will require to establish the legal basis to enable balance transfer to new bodies or whether balances have legally to be returned to constituent authorities.

3.14 Risk: There is evidence from previous reorganisation that negotiations on closing balances continued after successor authorities had been formed\textsuperscript{15} with consequences for financial planning.

3.15 Control: We recommend that the necessary deliberations on balance transfer takes place at the earliest possible stage.

3.16 Risk: Outgoing bodies could seek to wind down balances in order to utilise funds with a risk that value for money is not obtained from short-term spending decisions which, in turn would have a direct impact upon the decision-making by the successor boards.

\textsuperscript{12} Value Added Tax Act 1994 Sections 33 and 96.
\textsuperscript{13} Outline Business Cases Fire page 60 £4M and Police page 89 £22.1M (Total £4M + £22.1m = £26.1M)
\textsuperscript{14} Scottish Police Services Authority, Report by Audit Scotland (2010)
\textsuperscript{15} Overview Report on the 1996/97 Audits of Local Authorities para 7.1
3.17 Control: In the meantime, existing Boards should have a clear strategy and policy position regarding the application of reserves as part of sound financial management and good corporate governance.

**Shared Resources**

3.18 It is likely that currently, between boards and local authorities there will be some evidence of shared staff resources. An early decision will be required for staff on whether their duties are to be transferred directly to the successor boards. Where contract termination is required an early decision will require to be made on whether any liability falls to be funded by the local authority (if it is the employer).

3.19 Risk: The police and fire forces which are financially administered within both Fife and Dumfries and Galloway Councils will present similar but separate issues for staffing and balance transfer. It is likely that these forces will have some element of shared services and/or shared resources. Practically, some local authorities will host historic loans fund debt.

3.20 Control: Early liaison will be required between the councils and the existing constabularies and fire services. Fundamental to this is ensuring that there is a consistency of approach in how all bodies are treated in the disaggregation process.

**The Shadow Period**

**Revenue and Capital Financial Plans**

3.21 Risk: The level of capital investment going forward can only become apparent when the new business objectives have been set out by the new board(s) to enable achievement of the policing plan. This will have to be supported by a comprehensive asset assessment as part of the new asset management strategy. This means that at an early stage the Board(s) will have to consider and approve the proposed level of investment. Similarly, for revenue expenditure plans, the boards will have to be in a position to approve the first year’s revenue budget prior to the commencement of 2013/14. To enable all of this, the forward financial plans, both capital and revenue will have to have been developed in order that the board can approve it formally prior to commencement of financial year 2013/14. The risk is that within a constrained shadow period, the budgets are merely an aggregation of the previous financial plans of the outgoing bodies and are not in a finalised position to allow board approval.

3.22 Control: This can be avoided by early appointment of an executive lead with responsibility for the development of revenue and capital financial plans accompanied by an asset management strategy.

**The Post-Reform Period**

**The Continuing Cost of Police and Fire to Local Authorities**
3.23 The requirement (or opportunity) for local authorities to consider whether there should be a police and/or fire committee (or to introduce other arrangements) means that some costs of uniformed services will continue to be borne by local authorities. Those costs will be in the form of staffing and other central costs required to govern committees. The present costs of administrative delivery will be met in part by the general revenue grant received from the Scottish Government. This is a funding source which will be ultimately withdrawn. This means that, after reform and in practice, costs will continue to be borne by local authorities without any associated funding. The risk is that, local authorities could elect not to maintain committees without an appropriate funding stream to meet the expectation within the consultation paper.

3.24 Control: Possible mitigating action could be the continued payment of an appropriate portion of general revenue grant to local authorities.

Capital Investment

3.25 Capital expenditure by the current boards and forces is undertaken under the Local Government (Scotland) Act 2003. That Act together with accompanying regulation, requires the application of the Prudential Code for Capital Finance in Local Authorities. Separate legislation provides the legal power to borrow\textsuperscript{16}. Although not specified, it is anticipated that the new Scottish Police Authority will no longer be a body defined by S.106 of the Local Government Scotland Act 1973 and will become either an agency or a non-departmental public body. Consequently, the Prudential Code will not apply and the police and fire services in Scotland will have lost access to borrowing to support capital investment.

3.26 Risk: The risk is that in the absence of the right to borrow to fund capital investment, there will be insufficient capital resources available to finance the new board’s capital plans.

3.27 Control: A robust asset management strategy should be developed which prioritises investment and sets out the forward costs of maintenance and includes a developed long term plan for disposal.

4. FINANCIAL MONITORING AND FORECASTING

The Shadow Period

4.1 Risk: Presently each board will have its own system of budgetary control in place which budget holders will be familiar with. For example, budget holders will receive budgetary control statements, will be required to review expenditure and will have access to business support personnel who help them to understand the control statements. The risk is that budgetary control fails during the transition period.

\textsuperscript{16} The Local Government (Scotland) Act 1975
4.2 Control: the shadow period will be essential in finalising the design of the system of budgetary control (based on the desired level of devolved financial management) and it will be vital that the chief financial officer can communicate to all budget holders their responsibilities as well as what budget holders can expect from the finance function.

4.3 The system of budgetary control will therefore have to be embedded at an early stage to enable the successor boards to function effectively and to enable close monitoring of the use of resources. Any system will have to be carefully designed to support the board and any devolved system should adhere to the following core principles:

- the provision of high quality accurate information on a timely basis;
- coverage of appropriate financial and non-financial indicators; and
- use of integrated systems to both record and produce information.

4.4 Risk: We have already noted in this submission that the Scottish Government expect that savings of £130M each year will be achieved by reform of both police and fire. The successor boards are expected to deliver a high level of savings. Realisation of these savings will of course be a key success factor. A significant risk they face is not only the failure to achieve the savings anticipated within the outline business case but that without independent verification of the robustness of the business cases that unrealistic savings will be budgeted for.

4.5 Control: It is essential that the savings projections made in the outline business cases are robust and independent verification of the business cases along with Parliamentary committee challenge is recommended. It is also essential that a clear and transparent financial plan which itemises where savings are to be made is set out. This should be supported by management and governance attention which regularly focuses upon the realisation of savings.

5. FINANCIAL REPORTING

Prior to Reform

Annual Financial Statements

5.1 At present, each police and fire force prepare and publish financial statements as required by the Local Government Scotland Act 1973 and as further directed by specific regulation. As a consequence of the statutory framework, each force adheres to the CIPFA/LASAAC Code of Practice on Local Authority Accounting. (the Code).

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17 World Class financial Management. Audit Commission, 2005, page 36
5.2 The financial statements are prepared against a timetable which requires that the statements are finalised and submitted to the Accounts Commission by 30th June each year. This is followed by a period of statutory audit which is concluded by 30th September each year (although this is not a statutorily driven date).

5.3 Risk: Depending upon the date of transition and the implementation timetable, the final financial statements will be undertaken and signed by the chief Financial Officer after each force has in fact been abolished and preparation will be undertaken by staff of the successor board(s). As evidenced during local government reorganisation in 1996, there could be significant delay with the production of the annual financial statements and an increased risk of qualification to the financial statements.\(^\text{18}\).

5.4 Control: Each body will have to plan appropriately to ensure that there is smooth transition and handover of final financial statements along with clear accounting policies and all supporting working papers are properly scheduled for transfer to the successor board(s). As part of the existing accounting standard setter organisation for these bodies, we would be prepared to assist with development of a detailed year-end schedule with clear trigger points to ensure that financial statements are completed on time.

**Audit**

5.5 Risk: The audit of the financial statements is largely undertaken in the period following 30th June. Depending on the implementation timetable this will result in audit after each body has in fact been abolished. The practical risk is that staff will not be available to address issues that arise as a result of audit.

5.6 Control: Each body will have to plan to ensure that there is a continuity in responsibility and accountability with specific staff designated for this purpose.

5.7 Risk: The preparation and audit of the financial statements will be undertaken by officer and auditors with no clear governance framework of accountability.

5.8 Control: There is a clear role for the outgoing audit committees to be retained to allow them to exercise governance responsibility for the financial statements of the outgoing bodies.

**The Shadow Period**

**Annual Financial Statements**

5.9 Although not specified within the consultation, the successor board(s) are likely to be a ‘sponsored body’ and therefore subsequently governed by the requirements of the Scottish Public Finance Manual rather than the

requirements of the local authority accounting code. The timetable for preparation and laying of accounts and accountability arrangements will be different to that under the present local authority framework.

5.10 Risk: Inadequate consideration is given to the implications of migrating to the Scottish Public Finance Manual and the requirements of the FREM with possible risk of non-compliance and subsequent qualification to the initial financial statements (2013/14) of the new boards.

5.11 Control: During the shadow year, work needs to be undertaken which examines the differences between the financial reporting requirements of the SPFM and the local authority code in order that policies and in turn practices can be adapted to ensure compliance and that these are in place.

The Post Reform Period/Go Live

Timetable of Accountability

5.12 As indicated above, the present date for preparation of the annual financial statements is 30th June. The SPFM requires sponsored bodies to prepare annual financial statements by 30th September. Clearly this means that an immediate effect of the proposed modernised governance and accountability arrangements will be to ‘design in’ delay to publication of the annual financial statements.

5.13 The spirit of the consultation paper is that of modernisation and simplification. It is an unfortunate by-product that annual financial statements will be produced three months later than under the present arrangements.

5.14 We recommend that consideration is given to maintaining the present timetable for production of the annual financial statements.

6. FINANCIAL GOVERNANCE

The Period Prior to Reform

Control Environment

6.1 Risk: There is a risk that the existing bodies commit the new boards to levels of expenditure which would otherwise not have been committed or is unsustainable.

6.2 Control: A delegated authority structure is required supported by strategic procurement controls in order to that there is clarity on who has ‘authority’ to commit expenditure. It would also be advisable to have focused procurement delegation with clarity on procurement practices to be followed. There is a key

19 Scottish Public Finance Manual, Scottish Government, para 23
20 Scottish Public Finance Manual, Scottish Government, para 29
role for internal audit to continue to provide independent assurance on the control environment.\textsuperscript{21}

**The Shadow Period**

*Organisational Culture with a strong focus on Financial Accountability*

6.3 Risk: In the development of a new single organisation, the necessary focus on maintaining operational delivery could result in a low profile for financial accountability.

6.4 Control: A scheme of delegation which clearly sets out financial accountability from board level will have to be developed. Central to this will be the extent financial accountability to be devolved to area commanders and to senior officers or to staff below that level. The arrangements must enable the creation of a culture where individual and collective responsibility for stewardship and use of resources are given a high priority.

**Financial Skills**

6.5 Risk: A high degree of financial literacy is required from board members, managers and all those through the organisation with a role in or an interest in finance. There is a risk that the basic financial literacy outwith the finance department is not part of the competencies for service delivery.

6.6 Control: A structured assessment is required of the competencies required for board members and management and which, somewhat crucially identifies where gaps need to be filled.\textsuperscript{22}

**The Post Reform Period/Go Live**

*The System of Financial Management*

6.7 Risk: The design and implementation of a strong system of financial management will be necessary. The system should foster a culture which enables continuing challenge on financial matters at board as well as at operational level. A failure to design that system appropriately could mean that the necessary financial foundations are not in place.

6.8 Control: Assessment of what requires to be considered for the design of the new system of financial management should be undertaken in a structured environment\textsuperscript{23}.

7. **FINANCIAL MANAGEMENT GENERAL COMMENTS**

*Financial Timetable*

\textsuperscript{21} The Role of The Head of Internal Audit in Public Sector Organisations (CIPFA)

\textsuperscript{22} Improving Financial Literacy in Public Service Organisations, A Good Resource Pack, (CIPFA)

\textsuperscript{23} CIPFA Financial Management Model
7.1 The reform necessitates some significant alterations to the financial management cycle which existing bodies adhere to. Whilst a significant element of the cycle is routine, the scale of the task of implementation should not be underestimated. We would highlight the following observations:

- The system of financial planning is currently aligned to the local government budget setting timeline with funding announcements in November/December each year setting the basis for the forward year’s budget. The successor boards will now have to be aligned to the Scottish Government financial planning timescale;
- A range of financial returns are currently made by boards to the Scottish Government at prescribed periods throughout the financial year. Alignment to the financial returns that are required from agencies/NDPB’s will have to be made;
- The present date for preparation of the annual financial statements is 30th June each year. The SPFM requires sponsored bodies to prepare annual financial statements by 30th September each year. An immediate effect of the proposed modernised and governance and accountability arrangements will be to ‘design in’ delay to publication of the annual financial statements.

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24 Scottish Public Finance Manual, Scottish Government, para 29
Background
1. COSLA welcomes the opportunity to provide a submission to the Finance Committee on the Police and Fire Reform (Scotland) Bill. The Committee should note that our submission focuses on the high level financial implications as a result of moving to a single Police and Fire service, rather than concentrating on the detailed questions as outlined by the Committee.

2. The Committee should also be aware that COSLA is also submitting evidence as part of the scrutiny of the Police and Fire Reform Bill to the Scottish Parliament’s Justice and Local Government and Regeneration Committee. These submissions provide the Parliamentary Committees with more detail around COSLA’s position on some of the wider areas associated with the Police and Fire Reform (Scotland) Bill, however we would be more than happy to share these submissions with the Finance Committee should members consider this helpful.

Financing Principles
3. COSLA would wish to ensure that in moving to a single Police and Fire Authority that there are essentially two overarching principles that are applied:

   i. The first of these is to ensure that there is as smooth a transition process in transferring to a single Police and Fire authority as possible, and this involves appropriate engagement with all key stakeholders to work through this process.

   ii. The second is to ensure that the single Police and Fire Authorities remain properly resourced to ensure that they can deliver the necessary services to support the safety and wellbeing of communities in Scotland.

Transition to a Single Police and Fire Service
4. As highlighted above, COSLA would wish to ensure that there is as smooth a transition process in transferring to single Police and Fire authorities as possible, and this involves appropriate engagement with all key stakeholders to work through this process. COSLA acknowledges that various groups have or are in the process of being set up by the Scottish Government to work through many of the issues which have been highlighted within this submission, and we will work with the Scottish Government to ensure that there is appropriate stakeholder representation and consideration of the issues which are necessary to ensure that the transition to a single Police and Fire service is delivered in as smooth a way as possible.

5. COSLA is currently in discussions with the Scottish Government and respective stakeholders through a wide range of working groups which have or are in the process of being set up to consider the issues associated with moving to a single Police and Fire service. Particularly, throughout these discussions, COSLA would wish to ensure that there is appropriate consideration around:
i. The actual funding which will be required to deliver the single Police and Fire service and ensuring that this is at an appropriate level in order to provide the services required to support the local communities. This will include discussions around the current funding which is provided as part of the Local Government Finance settlement, both revenue and capital.

ii. The assets and liabilities that are currently held and used by the existing Police and Fire Boards and consideration around what will transfer as part of the new arrangements.

iii. Wider workforce issues associated with the creation of a new single Police and Fire service including transfer of staff and any wider pension’s implications. Given the risk around Police and Fire pensions is currently transferred and met by the Scottish Government, COSLA would wish reassurances that the current arrangements will remain when moving to a single Police and Fire service.

iv. Clear accountability for control of costs and delivery of savings during transition to the new National arrangements. Given the April 2013 provisional start date and the likely timescale for appointments to SFRS, SPA and Chief Officer posts, it will be extremely challenging to establish clear accountability for financial management for the financial year 2013-14.

Properly Resourced Single Police and Fire Authority

6. The Financial Memorandum which is being presented to Parliament includes a range of costs and anticipated savings arising from the move to the single Police and Fire service. Many of these costs have previously been included as part of the Outline Business Case for moving to a single Police and Fire Service. COSLA welcomes the Committee’s scrutiny of the costs to ensure that these are based on robust evidence and that any anticipated savings are realistic and can be realised particularly within the timescales identified.

7. In general terms, COSLA believes that the estimated costs and savings set out in the Financial Memorandum are not supported by robust evidence. For example, there are particular concerns regarding the reasonableness and accuracy of the following key estimates:

- The Fire and Rescue Outline Business Case includes estimated savings of £8m pa through “risk assessing and applying consistent crewing practice which could involve some redistribution. This includes reviewing risk-based thresholds for crewing appliances.” The timing and level of savings assumed in this area is not supported by evidence. This is likely to be a highly sensitive political matter and delivery of this saving should be considered as high risk both in terms of achievement of estimated savings and maintenance of service outcomes.

- Voluntary Redundancy (VR) costs for Police Staff are estimated at £81m over 5 years including £73m over the 3 years from 2013-14. This estimate implies a voluntary reduction in Police Staff numbers of around 2,000 FTE (30%) over a three-year period. No robust evidence is available to support this estimate and the timing and level of costs does not seem plausible. In
addition the estimated VR costs for Police (£81m) are 20 times greater than
the estimate of £4m which is included for VR within the Fire & Rescue
Service – a ratio of around 5:1 for Police costs relative to Fire and Rescue
costs would be expected given relative staffing and budget levels.

Financial Implications arising from the proposed model of Governance
8. COSLA has previously expressed wider concerns around the proposed NDPB
model of governance and the impact on overall national and local accountability;
however there are also a number of financial implications in moving to this model
which we would wish to highlight to the Committee, and these are outlined in more
detail within the paragraphs below.

9. Members of the Committee will be aware that under the current structures for
Police and Fire, the forces are able (under section 33 of the Value Added Tax Act
1994) to recover VAT costs incurred. The Financial Memorandum which has been
presented to Parliament recognises that the proposed service delivery model will
mean that forces will no longer be able to recover VAT and as such there will be an
additional cost to both Police and Fire services, and ultimately from overall public
finances. We do have concerns around the need for this additional cost to be
incurred, particularly given the scale of the financial impact on the available public
finances. We recognise that the Scottish Government is in discussions with HM
Treasury and HMRC to ascertain whether there can be any exemptions to this and
this is welcomed. Nevertheless there remain some concerns from professional
associations around the estimated additional costs which would be incurred, with
indications suggesting that this could be significantly more than the current estimated
costs. Given the significance of this additional recurring cost, we urge the
Committee to seek resolution of this matter. The Committee is asked to scrutinise
the robustness of the current estimated costs, the potential service implications of
this additional expenditure, and the likelihood that HM Treasury and HMRC will grant
exemptions to the SPS and the SFRS.

10. In addition to the VAT implications, the proposed governance structure will not
allow the new single Police and Fire Services to be able to hold reserves. The
holding of reserves is regarded as good financial management practice as they
provide a contingency to cushion against the impact of unexpected events or
emergencies. Given the nature of the services which Police and Fire deliver,
expenditure within an emergency service can often be volatile, and reserves are
often utilised to smooth the impact of such events including; above budgeted pay
awards or inflationary pressures, protracted emergency or major incidents or other
exceptional circumstances. Given this flexibility would no longer exist; the
Committee may wish to seek reassurance from the Scottish Government how it
intends to deal with any such fluctuations or major incidents from within their overall
resources.

Resourcing Local Authority Arrangements
11. In addition, the Committee will be aware that one of the intentions of the Bill is
‘to strengthen the connection between services and communities, by creating a new
formal relationship with each of the 32 local authorities, involving many more local
councillors and better integrating with community planning partnerships’. There still
remains uncertainty around the wider establishment and arrangements of these
Committees, however given there is likely to still remain a role for local authority Fire and Police Committees, there needs to be consideration around the financial cost to local authorities in delivering this local arrangements, particularly given the funding to deliver the single Police and Fire service will be removed from the Local Government settlement.

12. The Financial Memorandum provides some initial estimates in the order of £3-4m which has been provided by COSLA around the anticipated cost to local authorities in establishing and administering these Committees. This may be an area which the Committee may wish to consider in more detail to ensure that there is an appropriate level of remuneration provided to Councils to meet these on-going costs required to deliver the appropriate local scrutiny, particularly given earlier concerns which have been raised by Audit Scotland and indeed previous Scottish Parliamentary reports regarding appropriate scrutiny.

13. In addition, there still remains uncertainty as to where any informed independent professional advice on policing and fire will come from to inform the local committees. There are a number of options which are currently being considered including examples for police to establish a national resource providing support locally or by gaining access to the resources of the SPA. Clearly there may be additional on-costs in providing informed local arrangements which has not been separately identified within the Financial Memorandum, and again this may be an area which the Committee may wish to explore in more detail in order to tease out any anticipated cost.

Conclusion
14. COSLA has highlighted a number of areas which they hope that the Committee will consider as part of its scrutiny process of the Police and Fire Reform (Scotland) Bill. We are however more than happy to provide the Committee with any further clarification around any of these issues which are outlined within this submission.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

COPFS provided a written response to the first stage of the consultation exercise specifically in relation to police reform. The Service was consulted on the preparation of the financial memorandum to the Bill and therefore did not comment on the financial assumptions used.

COPFS is not operationally affected by Fire Reform and therefore did not provide comment in relation to this aspect of the legislation.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes the cost information and context provided to the Scottish Government by the COPFS has been accurately reflected in the financial memorandum.

3. Did you have sufficient time to contribute to the consultation exercise?

The timescales provided were sufficient, additional time would not have resulted in any material change to the information provided.

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

COPFS cost information has been included in paragraph 205 of the financial memorandum, this accurately reflects the information provided to the Scottish Government.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

We are unable to comment on the validity of the figures provided for other organisations.

6. If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?
COPFS anticipate that any costs arising from police reform based on the current legislative proposals will be met from the COPFS spending review allocation.

7. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The figures provided by COPFS relate to ICT development costs and include a margin of uncertainty. We believe the cost figures provided to be realistic based on experience of dealing with a range of police operational reporting systems and the ICT development costs associated with changes to these systems.

Wider Issues

8. Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

COPFS are not in a position to comment on the validity of the wider costs and assumptions used in the preparation of the financial memorandum. However it would appear that input from a range of criminal justice organisations that might be impacted by police reform have been incorporated in the financial memorandum.

It should be noted that since a final operating model for the new police service is yet to be agreed there is uncertainty around the figures used. This is however acknowledged in paragraph 133 of the financial memorandum.

9. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

We do not anticipate any additional costs arising from subordinate legislation. The Bill itself does not place additional legislative burdens on the Crown.
### Questions

<table>
<thead>
<tr>
<th>Consultation</th>
<th>Dumfries and Galloway Council (Police and Fire and Rescue Authority) Response</th>
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</thead>
<tbody>
<tr>
<td><strong>1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?</strong></td>
<td>Dumfries and Galloway Council submitted a response to both consultation exercises undertaken by the Scottish Government. The Council urged the Government to prepare and publish clear Business Cases with substantiated rationale. The Council’s response to the first consultations (February 2011) on the Future of the Fire and Rescue Service and Policing in Scotland highlighted that:</td>
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<tr>
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<td>- reform needs to be fully considered and evidenced - previous re-organisations have cost many £millions more than envisaged and resulted in massively lower than projected savings</td>
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<td>- whole systems need to be considered, including funding arrangements and investment decisions that support public services</td>
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<td>- predicted savings should be accurate and realistic to measure against the cost of change (both monetary and performance)</td>
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<td>- there is a lack of empirical data about benefits/cost of reform</td>
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<td>The Council’s response to the second consultation (September 2011) Keeping Scotland Safe and Strong highlighted that:</td>
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<td>The simplification of funding arrangements is helpful but there are several specific issues:</td>
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<td>- transfer of budgets from Councils to the Scottish Government; there are many cases where there are shared use of properties, shared assets and additional funding arrangements within a particular locality (Police)</td>
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<td>- control of local budgets under the new</td>
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structure - tied in to accountability for the Local Policing and Fire and Rescue Plans
- methodology for the allocation of local budgets that need to take into account key demand factors (e.g. rurality, demographic change) and prevention activity
- Councils must be able to challenge and influence national budgets (capital and revenue)
- consideration needs to be given to mutual aid/charging arrangements with other Police and Fire and Rescue Services, particularly in cases of long term support

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| 2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum? | There are still concerns about:
  - the timescale in which savings are expected to be achieved
  - the lack of detail regarding savings (see first bullet point in Q1 above)
  - the issue of VAT liabilities
  - the ability for the new services to borrow or carry forward revenue |

| 3. Did you have sufficient time to contribute to the consultation exercise? | The consultation period allowed for some general financial issues to be raised but not for detailed analysis and figures. The consultation also coincided with the Council’s budget setting process/Council budget setting day. The Council therefore needs to reserve its position as there is more detailed information that it has not been possible to complete within the timescale. |

**Costs**

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are
**Questions**

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<tr>
<td>Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?</td>
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<tr>
<td>Wider Issues</td>
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<tr>
<td>Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?</td>
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<tr>
<td>Questions</td>
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<tr>
<td>Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?</td>
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- TUPE transfer of Police Support Staff into the new service - possible liability on the Council if conditions are not protected
- The Council may need to consider funding additional services if the new Police/Fire and Rescue services do not provide the current level/standard of service e.g. paying for extra police or adding to the Council’s own services e.g. to tackle antisocial behaviour/noise
- Assets and liabilities - further clarity is required about what will transfer as part of the new arrangements
I refer to your invite to provide evidence for scrutiny of the Financial Memorandum produced to accompany the Police and Fire reform (Scotland) Bill. Fife Fire and rescue service fully endorses the return that will be made, on behalf of the 8 Scottish Fire and Rescue Services, by CFOA Scotland and would ask that all the points raised are taken into consideration.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

Yes.

Question 19: What are your views on the proposed new funding and financial accountability arrangements set out above?

We believe these principles to be correct.
In 10.4, we would seek to amend the proposal as;

The role of Scottish Parliament will be to:

• hold the Scottish Fire and Rescue Service Board accountable for its own running expenditure and the effective scrutiny of the Scottish Fire & Rescue Service expenditure. An additional role of the SFRS Board must be to ensure that the funding principles are based upon delivery of adequate service provision set by sound assessment of risk.

Given the current situation of pensions funding for Scottish services being determined by the UK Government without any influences from the Scottish Government, then care must be taken when setting any future budgets for a single service as this may cause additional external decisions to detrimentally impact on the finances.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes, however, no comment has been made regarding the pensions being set by the Department for Communities and local Government with no ability for the Scottish Government to make any contribution.

Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

N/A
Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

No. Most if not all of the assumptions have been made on the Outline Business Case (OBC). None of these assumptions have been tested against the reality of the single service as no model has been produced. It is difficult to understand where some of these figures have come from and example being:

Response
274. Savings for response are estimated to be £13.5m per annum from the third year. The range, to account for margins of uncertainty, is £9.47m - £13.5m. This includes: rationalisation of common risk analysis tools and licences; smaller expert teams carrying out consolidated risk analysis and data input; reduced need for duplication and numbers of teams covering operational guidance and procedures; reduction in duplication of research and development teams; reviewing distribution and asset requirements for national resilience equipment; risk assessing and reviewing crewing and emergency cover practices; consolidating control rooms; and revenue generation from additional charging for certain special services such as lift rescues.

How assumptions can be made on things such as ‘crewing’ when it is the stated position is ‘to protect frontline outcomes over the transition period’ is not clear. A number of the figures stated are not quantified and are aspirations and do not fit with the Governments desired outcomes.

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

Yes

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Again it is difficult to give accurate assumptions when the shape and design of the service has not been determined, also when we are uncertain of the financial recovery then it is difficult to answer with any authority. VAT is also another example, it is estimated that it might cost £4m per year but we are not sure.

Wider Issues

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

The Minister for Community Safety has stated in a letter to the FBU that the OBC is not a ‘blueprint’

Thank you for your letter of 17 August, outlining the FBU's comments on the Scottish
As you appreciate, this was a draft Outline Business Case (OBC) that was circulated at the Ministerial Advisory Group meeting in June, and work has been ongoing over the summer to refine and improve the methodology and figures contained within it. At the same time, the Outline Business Case is a planning tool that is intended to provide evidence and analysis to support decisions - it is neither a blueprint nor a prediction of the future delivery of our Fire and Rescue Services.

Whilst the OBC serves only to compare options against each other, the publishing of a document which highlights significant savings will be very influential in any future budget setting exercise. Therefore accurate castings and achievable savings only should be included. We do not think that the assumptions in the OBC are accurate and these areas require further work.

Also no estimate of the savings from the abolition of the 8 boards and associated costs that are associated with these has been made along with the savings from the loss of the ‘fire convener’s forum’ and any service advice (Chief Fire Officers).

We also have the funding of the chief fire officers association which is given a grant from the Government and the large cost to each service that this organisation has encouraged in order to attempt to service the technical standards that must be maintained on a UK basis.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

The framework document and the strategic plan and any review of these could add additional responsibilities for the service which as yet have not been defined, these functions may have additional cost associated with them.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM GRAMPIAN JOINT FIRE AND RESCUE BOARD

In response to your letter regarding the Finance Committee questionnaire I am writing to confirm that Grampian Joint Fire Board took part in the Scottish Government consultation exercise and did make comment on the financial assumptions.

Whilst Grampian Joint Fire and Rescue Board do not have any specific local financial implications arising from the Memorandum, as Treasurer to the Joint Board I am writing to fully endorse and support the response made by CFOAS to the questionnaire.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM HIGHLAND COUNCIL

Consultation

The Council did not make any specific comment on the financial assumptions in the previous consultation exercise. This was largely due to a lack of information surrounding the business case to support the Government's proposals.

It is however difficult for individual Boards and Councils to comment from a local perspective when the costings require to be evaluated at an all Scotland level.

It is however our view that the costings contained within the Business Case should have been subject to independent audit and scrutiny. This review should have applied to all options under consideration.

Costs

1. The Bill has failed to consider the level of support services provided to Joint Police and Fire Boards at a local level. These services, through providing shared services, have delivered a range of functions including finance, personnel, legal, IT and governance, in an efficient manner and often at marginal cost.

   In the case of Highland, the value of these support services is currently £441,000 (Police £261,000; Fire £180,000) and it is unlikely that these costs can be saved elsewhere as they largely reflect part costs of staff time. Any posts that are reduced will incur redundancy costs.

2. It is difficult to consider whether the estimated costs and savings are reasonable in light of the comments made in relation to the previous consultation. However the list appears comprehensive, but assumptions need to be reviewed when final structures are agreed.

   The Bill has left the question of local governance and accountability fairly open and allows a degree of local interpretation. It is not clear what additional costs may be required at an individual Council level, but there will be some additional costs of supporting local democracy.

3. As stated in 1 above, there will be a net cost to Councils arising from the marginal costs of supporting the existing Board structures.

   It is essential that these costs are netted against the transfer of grant from local to central government.

4. The Financial Memorandum has certainly identified the scale of risk around most of the financial assumptions. Previous experience of restructuring has
been that costs are understated, and savings overestimated. Whilst the risks have been recognised it is essential that these are monitored, and final costs and savings reported for comparative and transparency.

Timescales appear reasonable in light of the scale of structural change.

Wider Issues

5. These have been covered in the responses above. The Financial Memorandum does not capture residual costs accruing to councils, or additional costs of supporting new democratic arrangements at a local level.

6. It is difficult to identify any future costs in addition to the comments above.
POLICE AND FIRE REFORM (SCOTLAND) BILL FINANCIAL MEMORANDUM

SUBMISSION FROM HER MAJESTY’S INSPECTORATE OF CONSTABULARY FOR SCOTLAND

1. Introduction

1.1 HMICS is grateful for the opportunity to provide evidence to the Finance Committee. Whilst we believe that the below text answers the Committee’s questionnaire, we have done so within some wider relevant background explanation and comment. We hope this is helpful.

2. Context

2.1 In April 2010, work began through the Scottish Policing Board to establish an understanding of how policing might meet future estimated reductions in budgets. Although these early estimates turned out to be pessimistic, they initiated work to assess the potential for saving policing costs under different structures.

2.2 This was brought together in the Sustainable Policing Project, Phase 2 report, Options For Reform.

This work included three components:

1) the costs of policing calculated from the inaugural use of a new financial model - Police Objective Analysis (POA)

2) an illustration of how policing might be organised in the future – Target Operating Model (TOM)

3) and based on (1) and (2) above, some calculations of costs and savings arising from implementing different structures

2.3 The phase two report was created at some pace and was thought by many stakeholders to be illustrative of potential costs, savings and timescales rather than predictive.

This was largely due to the fact that:

- the base financial data (POA) was, due to the immaturity of the model and unfamiliarity of its application, considered to have margins of error

- the TOM provided a delivery model for policing, but this was not the service’s agreed or detailed position on how policing in Scotland should be organised

- the process of estimating costs and savings arising from implementing the different structures not only compounded the margins of accuracy in (1) and (2) above, but was at times predictably short on important detail of how changes were to be implemented and how costs were to be removed.

25 Sustainable Policing Project - Phase 2 Report: Options for Reform, March 2011
3. Consultation

3.1 HMICS has submitted a response to the 'Keeping Scotland Safe and Strong' consultation on reform of police and fire and rescue services in Scotland\(^26\).

3.2 This response and our inputs to the various attendant meetings were calibrated in the anticipation that further, more detailed and hence accurate and reliable data would be produced, to reduce the margins of uncertainty perhaps inherent in the abovementioned early project work.

3.3 Having consistently highlighted what we considered to be areas of uncertainty in the financial case, we consider that opportunities to complete subsequent work to increase its validity and reliability have not been as fully grasped as might have been expected.

3.4 As detailed further in the next section, we particularly note the similarities in estimated costs and savings projections and the subsequent budget settlement for policing as set out in the Comprehensive Spending Review (CSR), and within that the potential for carry forward of significant margins of error.

4. Costs

4.1 The phase two report provided a figure of potential savings amounting to £153m per annum\(^27\). Later, when the policy decision of maintaining 17,234 police officers was 'factored-in', the overall cash savings projection was reduced to £130m per annum\(^28\). From that, the potential VAT liability of £22m per annum\(^29\) has to be taken into account leaving a projected savings figure of £108m per annum.

4.2 The CSR settlement for policing appears profiled to achieve a recurring reduction in police budget of £106m per annum. Not only are these two figures surprisingly similar (£108m per annum - £106m per annum), as we identify at paragraph 2.3 above, the OBC figure (£108m) is founded on the TOM and POA, both of which contain margins of uncertainty.

4.3 Irrespective of these uncertainties, in effect, the CSR settlement provides both the timescale and level of savings that police reform has to deliver.

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<thead>
<tr>
<th>Figures in £m</th>
<th>Police Reform</th>
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<tr>
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<td>2012-13</td>
</tr>
<tr>
<td>Assumed Savings</td>
<td>-6</td>
</tr>
<tr>
<td>Assumed Costs</td>
<td>18</td>
</tr>
</tbody>
</table>

26 HMICS response to "Keeping Scotland Safe and Strong: A Consultation on Reforming Police and Fire and Rescue Services in Scotland" September 2011
27 Sustainable Policing Project - Phase 2 Report: Options for Reform, March 2011, page 55, table 9
28 Outline Business Case page 92, table A12
29 Outline Business Case page 89, para 59
4.4 This profile appears challenging even beyond the current CSR period. For example, the predicted cash flow balance of implementing reform in the final year of the CSR (FY 2014/15) shows a net deficit of £13m and yet by FY2016/17 it is necessary to be delivering savings of £106m recurring.

4.5 This has to be set against a wider concern that the projections in the phase two report and the OBC have not yet been sufficiently validated, a fact that the OBC appears to acknowledge:

**Efficiency - Methodology and Assumptions**
The profiled efficiencies contained within the appraisals are based on the efficiencies identified within the Sustainable Policing Project Phase 2 Report. Further work will be required to refine the scale and profile of efficiencies to be achieved, but it is considered that the Sustainable Policing Project Phase 2 report provides a reasonable indication of potential scale and trend.

4.6 Importantly, irrespective of how ‘reasonable (an) indication of potential scale and trend’ this is, the savings appear to have been built into the CSR settlement anyway.

4.7 As an illustration of context and as indicated at 4.4 above, the reform profile represents a change from a 1% overspend in the overall police budget in one financial year to a 9% under-spend two years later. This context includes policy constraints such as maintaining police officer numbers, not using compulsory redundancies and restrictions on staff movement from one area to another.

4.8 This is a challenging environment for implementing change of the scale and complexity anticipated under police reform. HMICS fully accepts the right of government to set such constraints. We raise the issue only to highlight the fact that since we have yet to see detailed plans for how this change can be successfully implemented within this context, that we have difficulty providing public reassurance that such changes are possible without risks, including those to performance.

4.9 Underpinning the above are factors related to margins of error in the financial memorandum. Some of these are intended to be mitigated through the use of optimism bias. We can see how this can be applied to a known factor such as ‘reducing duplication’ if it is clear what duplication has been identified and what steps are going to be taken to reduce it.

4.10 However where optimism bias is applied to a factor such as ‘process improvement’ it is important to be clear exactly how an individual process is going to be improved before going on to allocate levels of certainty about the scale of savings that will be derived. It is this level of clarity that we find lacking.

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30 Outline Business Case page 78, Appendix 3, paragraph 4
4.11 Further, in relation to ICT where optimism bias is applied at the rate of 100% instead of the relevant guidance of 200%\(^{31}\), we would not share the apparent confidence in the positive prognosis for, or current condition of, police ICT infrastructure.

4.12 Finally in relation to costs and for completeness, HMICS wish to inform the Finance Committee that in our submission to Justice Committee we are seeking some redrafting of the Bill sections relating to our status and organisation. (Sections 71 to 79) We consider that a reclassification of our organisation’s status would assist to formalise our independence and that this is a necessary and proportionate response to the wider changes in policing landscape and its governance brought about by police reform.

4.13 We acknowledge that there are some costs arising from these changes but the majority relate to changing the arrangements for current work rather then generating new costs. For example we consider that current work to report on police performance would be better sited within a fully independent HMICS.

4.14 The total new annual cost relevant to a proposed change of organisational status is estimated at £125k with a further £250k estimated in costs of existing work transferring to HMICS. We consider these to be a direct result of police reform.

5. ‘Wider Issues’

5.1 We consider that the financial memorandum captures the majority of the cost headings of reform. However, as discussed above we would advocate that the detail of these figures should be viewed with an element of caution.

5.2 One area where we consider there may be increased and uncosted impact, is in the servicing of 32 local police committees. These groups, freed from any national responsibility for policing, are likely to energetically pursue locally tailored policing through their 32 different policing plans.

5.3 Not only is the appeal route for dissatisfaction with these not clear, neither is the amount of work required to provide reports and respond to the committee’s recommendations. It will be important that the parliamentary scrutiny process affords opportunities to clarify what is intended in this regard to ensure an appropriate balance between local accountability and cost.

6. Conclusion

6.1 HMICS will continue to focus upon working with all stakeholders to ensure that changes to policing in Scotland build upon its sound foundation.

6.2 Police reform provides opportunities to:

- simplify policing across Scotland

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\(^{31}\) Outline Business Case, page 50
- create the best affordable service
- improve governance and accountability

6.3 HMICS would welcome the opportunity to discuss these issues with the Scottish Parliament Finance Committee

6.4 We can provide copies of our Local Government & Regeneration Committee and Justice Committee submissions on this matter, should they be required.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

Northern Constabulary were fully committed to all of the Scottish Government consultation exercises and fed in comments from a Force perspective but also as part of ACPOS. Comment on the financial assumptions was made collectively for the Police Service by the Finance Management Business Area (FMBA) of ACPOS and the Force contributed to this response.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

We believe that there are still issues within the financial assumptions contained within the Financial Memorandum but as part of the Police Service we will now work as part of Police Reform to provide extensive detail on the costs and savings to be generated as part of the reform programme.

3. Did you have sufficient time to contribute to the consultation exercise?

Individually as a Force and collectively as part of ACPOS we had sufficient time to contribute to the consultation exercise.

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

This question is aimed more at organisations external to the Police service but there are still issues around the impact on Local Authorities who provide services to the Police.

4. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

There are still a number of issues around the reasonableness and accuracy of the costs and savings within the Financial Memorandum but we will contribute to the work currently being undertaken by the Central Reform Team to establish the “as is” position and work towards building up the detailed costs and savings as part of the reform programme.
If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

We need clarity on a number of issues to be able to comment fully on this area. The issue of redundancy costs is one which will impact on us as an organisation and the mechanism for accessing the funding identified for reform has to be clear.

5. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

The addition of Optimism Bias has added more realism but further work is required, and is currently being undertaken, before we can be confident with the projections.

**Wider Issues**

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

There are likely to be significant costs which have still to be quantified – costs of a new HQ (work to be undertaken at Police College) and all the associated IT work.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

We believe that there will be future costs but cannot quantify these at this time.
We refer to your letter of 19 January 2012 and would respond to the questions raised as follows:

Consultation

The Boards/Council did not make any specific comment on the financial assumptions in the previous consultation exercise. This was largely due to a lack of information surrounding the business case to support the Government’s proposals.

It is however difficult for individual Boards and Councils to comment from a local perspective when the costings require to be evaluated at an all Scotland level.

It is however our view that the costings contained within the Business Case should have been subject to independent audit and scrutiny. This review should have applied to all options under consideration.

Costs

1. The Bill has failed to consider the level of support services provided to Joint Police and Fire Boards at a local level. These services, through providing shared services, have delivered a range of functions including finance, personnel, legal, IT and governance, in an efficient manner and often at marginal cost.

   In the case of Highland, the value of these support services is currently £441,000 (Police £261,000; Fire £180,000) and it is unlikely that these costs can be saved elsewhere as they largely reflect part costs of staff time. Any posts that are reduced will incur redundancy costs.

2. It is difficult to consider whether the estimated costs and savings are reasonable in light of the comments made in relation to the previous consultation. However the list appears comprehensive, but assumptions need to be reviewed when final structures are agreed.

   The Bill has left the question of local governance and accountability fairly open and allows a degree of local interpretation. It is not clear what additional costs may be required at an individual Council level, but there will be some additional costs of supporting local democracy. It is important that there continue to be local audit functions as part of local scrutiny. The democratic / elected member contribution to local audit can allow important and effective challenge and lead to performance improvement. The new local command areas will benefit from such local examination and this could be linked to the selection of topics for internal audit.
3. As stated in 1 above, there will be a net cost to Councils arising from the marginal costs of supporting the existing Board structures.

   It is essential that these costs are netted against the transfer of grant from local to central government.

4. The Financial Memorandum has certainly identified the scale of risk around most of the financial assumptions. Previous experience of restructuring has been that costs are understated, and savings overestimated. Whilst the risks have been recognised, it is essential that these are monitored, and final costs and savings reported for comparative and transparency.

   Timescales appear reasonable in light of the scale of structural change.

Wider Issues

5. These have been covered in the responses above. The Financial Memorandum does not capture residual costs accruing to councils, or additional costs of supporting new democratic arrangements at a local level.

6. It is difficult to identify any future costs in addition to the comments above.
Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

PCCS took part in both consultations. There were no financial assumptions made in relation to the PCCS (to be renamed Police Investigations and Review Commissioner (PIRC)) and so we did not comment on financial assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Not applicable. However, it should be noted that the PCCS was not consulted on any of the financial information now included in the Financial Memorandum in relation to PCCS/PIRC. It is our understanding that figures on investigative costs were informed by consultations between officials and the Independent Police Complaints Commission (IPCC).

Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

1. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Bill contains significant financial implications for the PCCS/PIRC and we do not believe that they have all been accurately reflected in the Financial Memorandum.

   a) Para 169 – Costs of recruiting Commissioner: £10k. Expected to be cost neutral (as a Commissioner due to be (re-)appointed August 2012). It is our understanding that the post of Police Investigations and Review Commissioner is a new post and will be advertised via the public appointments process. £10k seems adequate taking account of advertising costs.

   b) Para 170 – costs of undertaking investigations: £2M - £4m per annum. We have had no input to these figures. However, our own preliminary budget estimates indicate that this would appear to be a reasonable range of estimated costs if the projected workload figures are accurate. However as mentioned above, it is our understanding that figures on investigative costs were informed by consultations between officials and the IPCC. We would note that, at our suggestion, officials approached Association of Chief Police Officers for Scotland (ACPOS) for information regarding the number
of relevant investigations. They provided figures from across all 8 forces that suggest, on average, the potential for about 35 cases a year. However, in the Republic of Ireland last year, the Garda Síochána Ombudsman Commission (GSOC) carried out 103 similar type investigations generated by a force of just over 14,000 officers. The new police service of Scotland will have 17,000+ officers so the reliability of the figures supplied by ACPOS has to be questioned. If the figures are accurate, then between £2 and £4 million appears reasonable and would allow the recruitment of enough investigating staff. If the figures are an underestimate, then this could prove challenging. Note that we have done no modelling of resources -v- demand and so this is very much a superficial answer.

c) Para 171 – Costs of preparatory work: £80k - £122k. This cost is in respect of appointing investigations staff, including a Head of Investigations, in advance of the PIRC commencing its additional functions on 1 April 2013. This cost may be underestimated as we believe that the full investigations team will need to be appointed at least 3 months prior to being operation in order to allow for induction, training in procedures & protocols and the testing of systems. The Head of Investigations would ideally be appointed at least 6 months prior to 1 April 2013 in order to take forward the project to implement the new investigative function and to recruit the investigative staff required.

d) Para 172 – Costs for changes needed to accommodate new staff: £50k – £76.5k. We believe this may be significantly under-estimated. PCCS currently has 16 members of staff and this number may be double or more when the new investigative team is recruited. The current office at Hamilton cannot accommodate this number of additional staff. Even if additional accommodation can be found in the same building, the costs of adaptations required, including communications and IT cabling, security, etc., could exceed the estimated cost. It would be completely impractical to locate the enlarged organisation over two separate locations so in the event that the whole organisation has to be relocated to a new building, the costs will be far in excess of £50k - £76.5k. For example, due to the nature of our work and the sensitivity and confidentiality of information held, we require high levels of physical security and our present offices already have CCTV and a secure filing room. This would be expensive to install in a new location. There may also be additional security requirements for investigations, based on the experience of other police oversight bodies, such as an exhibits room (temperature controlled), secure interview room(s) and somewhere to keep firearms.

e) We believe there is a key omission in the Financial Memorandum in relation to start up costs which have not been included at all. There will be significant one-off costs required prior to the operational date, i.e. required during financial year 2012-13. These include:

i. Recruitment costs
ii. Training costs – e.g. family liaison, forensics, crash scene investigation, interviewing, evidence handling, crime scene liaison

iii. IT software costs – e.g. a case management system and a major crime investigation system such as Holmes 2 or Clue. These are likely to require customisation and extensive testing to ensure they are fit for purpose and capable of full operational functionality from Day 1.

iv. IT hardware for additional staff – PCs, laptops, printers, faxes

v. Furniture – desks, chairs, filing cabinets

vi. Telephony - both landlines and mobiles for investigators.

vii. Vehicles – there will be a requirement for a small pool of vehicles to use on investigations across Scotland.

viii. Forensic kits

ix. Re-branding and marketing following change of name and role.

x. Possible change management programmes for existing staff

xi. Legal costs - e.g. in relation to TUPE for any affected staff in the existing police forces

This list is not exhaustive.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

Estimated costs – investigation costs £2-£4M a year over 15 years seems reasonable and accurate on the basis of the limited information available to us. However, as mentioned at 1(b) above, a major factor which will affect this is workload and the resultant number of investigative staff required. We are concerned that the estimated caseload of 35 investigations a year may be too low when compared to other oversight bodies, including IPCC and GSOC.

Estimated savings – not applicable to PCCS/PIRC

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

There may be other costs for PCCS associated with the transition. For example, it is anticipated that a significant amount of senior management time will be taken up which may require to be backfilled by other means, such as overtime payments or temporary staff. Our financial settlement for 2012-13, which has been agreed in principle with our Sponsor Department, does not include these potential costs. At the time of preparing the budget bid, we did not have any information on how the Bill would affect us and so it only covers “business as usual”. If a start-up costs budget could be agreed, we would propose that a modest amount of this be used to cover the additional costs that PCCS will incur during 2012-13 in relation to the transition under the Bill.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

No. The margins of uncertainty for some of the costs seem narrow (e.g. preparatory work and accommodation). The timescales are not necessarily accurate either in terms of start-up costs which would be required during 2012-13 which have not been considered at all.

**Wider Issues**

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

No, there may be significant associated costs in relation to forensics services. Chapter 3 of the Bill (Para 31) states that “the [new police] Authority must provide forensic services to the Police Service, the Lord Advocate and procurators fiscal (and may provide forensics services to such other persons as it thinks fit).” The Explanatory Notes (Para 85) makes it clear that the Authority must not charge the Lord Advocate and procurators fiscal (i.e. the Crown Office and Procurator Fiscal Services (COPFS)) for forensic services provided. This has implications for PIRC. If we carry out an investigation as directed by COPFS there would be no charges for forensic services. However, if the Commissioner exercises his powers under the new sections 41B and 41C of the 2006 Act (“serious incidents” and public interest respectively) and carries out an investigation, the forensic costs might be prohibitive. We would suggest the Bill needs to be amended to say that the SPA must (rather than 'may') provide these services to PIRC free of charge.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

Not known. However, the Bill does allow for ministers to make regulations and PCCS believes there may be benefit in using these regulations to clarify roles and responsibilities, possibly resulting in some efficiency savings.

There is a possibility that the increased publicity about the organisation as a result of the Bill and the additional powers for investigations will result in an increase in workload for the existing role, i.e. an upsurge in complaint handling review applications. It is not possible to quantify this at present but it may impact on the budget and expenditure for 2012/13 and subsequent years.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

The Scottish Court Service was invited but did not formally participate in the consultation exercises. However, we have liaised separately with Scottish Government on the financial implications arising from the Bill.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Our comments on the financial assumptions are reflected accurately in the Financial Memorandum.

3. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Our comments on the financial assumptions are reflected accurately in the Financial Memorandum.

4. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

The Financial Memorandum accurately reflects the financial implications for the Scottish Court Service.

Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

See response to Q2 above

If relevant, are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

The Scottish Court Service will not be in a position to absorb the additional costs and will expect costs to be met by the Scottish Government.
Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

We have no reason to doubt the margins of uncertainty associated with estimates and timescales reflected in the Financial Memorandum.

**Wider Issues**

Do you believe that the Financial Memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

We believe the Financial Memorandum accurately reflects the financial implications for the Scottish Court Service and have no further comment to make.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

We are unaware of any further related costs.
Completion of the questionnaire was discussed by the Scottish Fire Conveners Forum who agreed that a co-ordinated approach on the questions raised by the Committee should be pursued through the Chief Fire Officers Association of Scotland (CFOAS).

CFOAS Finance Officers have led discussion on behalf of the Service on the financial aspects of the Bill with SG officials through both the consultation process and development of the Government’s outline business case. It has been made clear to Clerks to the Boards that none of this precludes any individual Board / Authority making its own submission directly to the Finance Committee.

It should be noted that the Convener of Fife Police, Fire and Safety Committee does not wish to be associated with the submission.
Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so, did you comment on the financial assumptions made?

The Scottish Police Federation did not comment in detail on the financial assumptions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

N/A

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs

4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details?

Each of the Joint Police Boards / Authorities currently provides facilities for the eight branches of the Scottish Police Federation (SPF). These facilities vary from office space in police buildings to separate off site facilities. The provision of facilities is essential to ensure the SPF can manage our functions of welfare and efficiency. Almost all of the day to day activities of the SPF provide direct benefit to the police service, help ensure best value is delivered and assist local elected members in holding the police to account. We would like the bill to explicitly state that it is also a function of the authority to provide facilities for the SPF.

5. Do you consider that the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?

The Scottish Police Federation has not been exposed to the methodology or raw data upon which the assumptions are made. It is difficult to envisage any circumstance in which a 15 year estimate could confidently be claimed to be accurate. No one can accurately predict the future and by its very nature policing will continue to evolve to deal with issues not currently in anyone’s thinking. However we are of the view it is instinctive and logical that the removal of needless duplication, the replacing of 8 headquarters (and all the associated costs) with 1 will in itself deliver longer term savings and provide the service additional financial capacity to meet these challenges when presented.
In respect of this the SPF raises a note of caution. Clearly it is right that a local authority can ask the local commander to account for policing in their area. We are mindful however of the potential, in the seeking of reports and information, for a huge bureaucracy to be created at 32 locations as oppose to the current eight.

6. If relevant, are you content that your organisation can meet the financial costs Associated with the Bill which your organisation will incur? If not, how do you think these costs should be met?

This is difficult to answer but we would highlight that the future of the Police Negotiating Board is uncertain. Whilst this uncertainty exists in its own right and not as a consequence of the bill, this may necessitate future legislation and result in additional costs falling on the Scottish Government and Police Service.
SPSA is not in a position to comment on fire reform and provides the following written evidence with respect to police reform:

Consultation

Did you take part in either of the Scottish Government consultation exercises which preceded the Bill and, if so did you comment on the financial assumptions made?

SPSA responded to both of the consultation exercises which preceded the Bill. Its responses included comments on the financial assumptions.

Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

SPSA were pleased to see that a number of comments made were reflected in the Financial Memorandum and, in the case of the first Consultation, within the proposition outlined within the second Consultation exercise.

SPSA remains concerned over the current assumptions relating to the cost of ICT. SPSA agrees and supports the assumptions, within the OBC, that no cash savings will be delivered within the ICT function and that there is the potential to divert spend from existing projects - although this requires robust re-prioritisation by ACPOS and forces. However we believe that significant ICT spend is likely to be required to support changes to business process and resourcing. ICT is a key enabler of Reform. As such SPSA believes that, even with the 100% optimism bias provided for ICT costs within the Financial Memorandum, the cost of change relating to ICT within the OBC and reflected within the Financial Memorandum may be under-stated.

In this context, SPSA is pleased to note that the Financial Memorandum recognises that the detail and profile of cost and savings may change as the programme progresses (paragraph 133 and 143 refer).

SPSA wishes to make clear that we recognise that the OBC assumptions relating to ICT costs were consistent across all options for Reform (i.e. this did not prejudice in favour of the preferred option within the OBC) and believes that the best opportunity to contain costs through optimising the benefits of ICT convergence and scale lies within the preferred option of the Single Force.

SPSA is concerned by the assumption that the reduction to staff numbers will be achieved through natural attrition and voluntary redundancy. While this may be achievable in theory, these are blunt instruments and unlikely to result in the optimum skill, experience and grade profile.

Current policy around voluntary rather than targeted redundancy also constrains
the ability to reduce expensive, senior staffing levels where excess capacity is most likely, and as a result may increase the potential impact of job losses among staff on average pay or below.

**Did you have sufficient time to contribute to the consultation exercise?**

Yes.

**Costs**

**If the Bill has any financial implications for your organisation do you believe that these have been accurately reflected in the Financial memorandum?**

SPSA does not yet have clarity on how the various costs and benefits associated with Reform will impact individual budgets in 2012/13. For example it may be necessary for SPSA and others to make staff reductions ahead of the transfer to the SPA but the apportionment mechanism associated with the Voluntary Redundancy costs is not yet clear.

SPSA believes that there are some limited costs associated with the wind up of the NDPB (for example sign off of accounts) although these would fall after transfer and might therefore be considered a cost to Scottish Government rather than to SPSA.

SPSA welcomes the fact that costs for due diligence associated with the necessary Transfer Schemes are incorporated within the Programme Costs. While we recognise that the net assets and liabilities will remain within the public sector we believe that an appropriate level of due diligence is essential to ensure that the full extent of risk (including financial exposure) is understood and managed by the SPA from Day 1.

**Do you consider the estimated costs and savings set out in the Financial Memorandum and projected over 15 years for each service are reasonable and accurate?**

SPSA does not have access to the full financial data for the eight police forces nor do we have an understanding of the savings that have already been made by forces within 2011-12. As such we can only comment in general terms.

**COSTS**

SPSA retains concern with respect to the assumptions relating to the cost of ICT (see previous comments). However SPSA believes that the overall costs are within the range expected for a programme of this scale and complexity.

**SAVINGS**

In general the savings as a proportion of the overall police budget seem reasonable. SPSA understands that the estimated savings within the OBC are based on the potential for efficiency within individual operational and support
functions through mechanisms including re-structure, improved process and economy of scale. SPSA believes that it essential that these savings are delivered through genuine efficiency rather than top down cost-cutting and that priority is given to driving down non-staff costs.

SPSA understands from the OBC that the savings profiled for 2011/12 within the Financial Memorandum relate only to “cross functional savings” (reductions to allowances and overtime) for officers and staff. SPSA does not have access to the forces projections of out-turn for 2011-12 and believes that it is essential to model the 2011/12 efficiency delivered and review the profile of savings in that context.

In addition to achieving clarity with respect to the 2011/12 position SPSA believes that it is essential that we address the 2012/13 programme and budget collectively to ensure that we achieve the optimum outcome.

However, SPSA is concerned that current policy will constrain the ability of the force to translate efficiency to cashable savings and that some of these constraints, for example police officer numbers and no compulsory redundancies, may lead to less efficient and suboptimal solutions in the short-term.

Are you content that your organisation can meet the financial costs associated with the Bill which your organisation will incur? If not how do you think these costs will be met?

SPSA is funded through Grant in Aid from Scottish Government. SPSA assumes that the costs of supporting Reform and undertaking Transfer will be met within the overall programme costs or the provision of additional Grant in Aid.

Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and timescale over which such costs would be expected to arise?

SPSA does not have access to detailed financial data for the eight forces so can only respond in general terms.

In general terms SPSA believes that the Financial Memorandum (and the OBC to which it refers) reflects the level of uncertainty that would be expected at this stage of the Reform programme. SPSA believes that greater certainty will be achieved as more detailed analysis and planning progresses.

Wider issues

Do you believe that the Financial memorandum reasonably captures costs associated with the Bill? If not, which other costs might be incurred and by whom?

As yet SPSA does not have clarity on the detail related to the arrangements for Forensic services. SPSA has experienced a previous transfer of responsibility and
budget for Forensic Services. On that occasion there was an historic lack of investment within the service and no provision for future investment was transferred.

As Forensic services transfers again, and under separate Governance arrangements, SPSA believes that it is essential that there is clarity around the current and future funding arrangements for Forensic Services including provision for Research and Development and essential equipment re-fresh.

SPSA is not aware of any other costs associated with the Bill.

Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation? If so, is it possible to quantify these costs?

SPSA cannot identify specific scenarios or costs and cannot quantify these but believes that it would be appropriate to register and assess the potential risk of such costs arising.

SPSA Additional Comments

SPSA welcomes the opportunity to make additional comments and these are provided below:

BALANCING RESOURCE

SPSA understands and welcomes the positive commitment to policing outcomes that lies behind the current policy to protect police officer numbers.

It is widely recognised that staff provide many professional functions in support of the police service, for example through HR, Finance and ICT specialists. However police staff also play a vital role within operational policing itself making the distinction between police officers and police staff less clear than it might seem in that:

- not all police officers are currently employed on the “front line” or in roles that require the use of warranted powers;
- many police staff are employed in roles that, while not requiring warranted powers, are at the “front line” of policing for example within Forensic Services and often as the first point of contact with the public.

This has been recognised by forces over recent years with a healthy and efficient balance of police officer and staff roles achieved. There is a significant danger that this balance and inherent efficiency will be degraded under current constraints.

In the same way that re-structure will enable rationalisation and economy of scale within corporate functions largely undertaken by staff it should, in SPSA’s view, enable rationalisation and economy of scale within some functions undertaken by police officers without detriment to “front line” policing outcomes. In particular there may be the opportunity to reduce the number of senior officers traditionally employed
within headquarters.

SPSA hopes that Reform will provide an opportunity for the single police force to review its resourcing requirement to achieve efficiency, effectiveness and flexibility through an appropriate blend of police officers and police staff, skills, experience and rank or grade profile.

SPSA also hopes that the process of Reform will provide Scottish Government and the public with the confidence to focus on the delivery of improved policing outputs and outcomes without constraint (other than budgetary) on inputs.
Introduction

UNISON Scotland welcomes the opportunity to respond to the call for written evidence from the Scottish Parliament’s Finance Committee regarding the above Bill.

UNISON is Scotland’s largest trade union representing over 162,000 members working in the public sector in Scotland, and represents police staffs as well as Fire and Rescue control room and support staff in Scotland. UNISON Scotland welcomes the opportunity to respond to this consultation exercise.

Consultation

1. Did you take part in either of the Scottish Government consultation exercises which preceded the Bill, and if so, did you comment on the financial assumptions made?

UNISON Scotland submitted a response to both consultation exercises and highlighted our concerns about the lack of detail on the financial assumptions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Although the Financial Memorandum contains more information on the savings there is still a lack of detail, with too many assumptions made about the costs of the restructure and the projected savings.

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs and Wider Issues

Not all of the questions within this section of the call for evidence directly affect UNISON Scotland. For this reason we will provide a more general response to the issue of costs.

It is difficult to assess whether the estimated costs and savings provided within the Financial Memorandum are either reasonable or accurate. The paper highlights a wide range of figures for both costs and savings, depending on what assumptions are made. For instance, in the case of the police reform the costs range from £137million to £163million, while the potential savings range from £1.135billion to £621million.

Similar variations are identified in the more detailed breakdowns later in the report, highlighting potential cashable and non-cashable savings, with some savings
potentially coming from increased productivity but no comment on how this will actually be achieved.

Although the Financial Memorandum provides more information than the previous consultation exercises, there is still a distinct lack of detail.

UNISON Scotland is also concerned that local authorities may end up with additional budgetary pressures paying for the scrutiny of complaints, training for members, or even the administration of a local police board and local fire and rescue board – when this should come from the SPA/Scottish Fire & Rescue Service resources rather than from local authorities own funding streams.

There is also a concern regarding the VAT liability for both new organisations, as highlighted within the report. This issue needs early clarification, if there is no VAT exemption then this will be a recurring cost on both budgets (approx £22million per annum for the police and £4million per annum for Fire and Rescue).

As the Government has set a target to maintain police officer numbers, the focus of the savings are concentrated on police staffs. This means some 2000 police staffs posts could be made redundant followed by job substitution by police officers. This is in contrast to the report by the National Police Improvement Agency in England and Wales, which examined how forces could save resources by removing the use of a warrant card for some jobs where there is no need for one, and having a better workforce mix between civilian and uniformed staff. As UNISON has previously highlighted, most Scottish police forces are already less efficient and effective in this regard than forces in England.

Police staffs includes properly qualified civilian personnel delivering a wide range of routine, complex and specialised functions that are central to modern day police forces, while allowing uniformed officers to concentrate on operational policing duties. Taking trained operational police officers off the streets to perform administrative tasks – at greater cost, is economic madness.
Subordinate Legislation Committee

16th Report, 2012 (Session 4)

Police and Fire Reform (Scotland) Bill

Published by the Scottish Parliament on 22 March 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meetings on 28 February and 20 March 2012, the Subordinate Legislation Committee considered the delegated power provisions in the Police and Fire Reform (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Justice Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

2. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”).

3. In the consideration of the Bill at its meeting on 28 February, the Committee agreed to write to the Scottish Government to raise questions on the following delegated powers in the Bill.

4. This correspondence is reproduced in the Annexe.

OVERVIEW OF THE BILL

5. The Police and Fire Reform (Scotland) Bill was introduced in the Scottish Parliament on 16 January 2012. It is a Government Bill which seeks to create a single police service and a single fire and rescue service. It sets out the governance arrangements and framework for the new services.

6. The Bill abolishes the existing police authorities and fire authorities. Throughout much of Scotland (with the exception of Fife and Dumfries and Galloway), the individual authorities have been brought together to form joint boards, which will also be abolished.

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1 Police and Fire Reform (Scotland) Bill, Delegated Powers Memorandum: http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Police_and_Fire_Reform_(Scotland)_Bill_-_delegated_powers_memorandum.pdf
7. Part 1 of the Bill deals with the police service. It largely repeals the Police (Scotland) Act 1967 and creates a single police force, to be known as the Police Service of Scotland (“the Police Service”), and a single police authority, the Scottish Police Authority (“the Authority”). The Bill sets out a comprehensive framework for the organisation, structure, principles, governance and funding of the Police Service and the Authority, and provides for the reconstitution of the Police Complaints Commissioner as the Police Investigations and Review Commissioner. Further, the Bill sets out the functions, powers and duties of Her Majesty's Inspectors of Constabulary in Scotland, and restates offences in relation to assaulting or impeding police officers, escapes from custody and the impersonation of police officers.

8. Part 2 of the Bill deals with the fire and rescue service. It amends the Fire (Scotland) Act 2005 to establish a single Scottish Fire and Rescue Service (“SFRS”), and to transfer to it fire-fighting, fire safety and other functions under that Act. Though one service is created, no substantive changes are being made to the functions of the fire service in comparison with the existing functions of councils and joint boards as fire and rescue authorities under the 2005 Act.

9. Part 3 of the Bill contains general provisions. Finally, there are seven schedules which set out detailed arrangements in relation to various areas under the Bill.

DELEGATED POWERS

10. The report considers each of the delegated powers in the Bill.

11. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers contained in the following sections (as they are listed in the DPM)—

sections 10(2); 11(5); 15(2); 63 (new section 33A); 65; 67; 71(2); 97(1) (paragraph (e) of definition of “international joint investigation team”); 99 (new schedule 1A, paragraph 2(4)); 99 (new schedule 1A, paragraph 3(d)); 112 (new section 41A(6)); 117 (new section 43A); schedule 1, paragraph 2(4); schedule 1, paragraph 3(h); schedule 3, paragraph 4; schedule 4, paragraph 2(1); schedule 5, paragraph (1); and schedule 6, paragraph 22(13)(b).

12. The Committee's comments and, where appropriate, recommendations on the other delegated powers are detailed below.

13. Where a power is taken in Part 1 of the Bill in relation to the police service and an equivalent power is taken in Part 2 in relation to the fire and rescue service, these have been grouped together for the purposes of the Committee's consideration and of this report. This applies to sections 5(1) and 116 (direction-making powers), and to the powers contained in paragraphs 11(1), 16(1) and 17 of schedule 4, together with the powers contained in paragraphs 3, 5 and 6 of schedule 5 (powers to make staff and property transfer schemes).
Section 5(1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: no procedure

Section 116, new section 42A – Power to give SFRS general or specific directions

Power conferred on: the Scottish Ministers
Power exercisable by: direction
Parliamentary procedure: no procedure

Background

14. Section 5(1) requires the Scottish Police Authority (“the Authority”) to comply with any direction given by the Scottish Ministers.

15. The power cannot be used for directions in relation to a specific operation being or to be carried out by the Police Service, or the way in which the Police Service is carrying out (or is to carry out) a specific operation.

16. Section 116 inserts section 42A into the 2005 Act. The provision enables the Scottish Ministers to give the Scottish Fire and Rescue Service (“SFRS”) general or specific directions.

17. Directions made under these powers require to be published by the Scottish Ministers, and must be laid before the Parliament (although they are not subject to any further parliamentary scrutiny).

Comment

18. The Committee considers that directions under these powers might conceivably be made in relation to a very wide range of issues, subject to the restriction in section 5(2) on making directions about operational police matters. It accepts, however, that it is not uncommon to take general direction-making powers of this nature when establishing a new public body by statute. The Scottish Government indicates that the powers might be used to ensure that the Authority and SFRS comply with general Government policy, for example on pay and workforce issues, or take action on recommendations from bodies such as the Auditor General, parliamentary committees and public inquiries.

19. The Scottish Ministers acknowledge that they could not direct either the Authority or SFRS to act contrary to the requirements of any other enactment. They also confirm that, if an appropriate power to act is contained elsewhere in legislation, then it would be used in preference to the more general power of direction.

20. The Committee notes the explanation given by the Scottish Ministers, and in particular their stated intention to use specific powers to require the Authority and SFRS to act in particular ways where those powers exist, rather than relying on the general power of direction. They also note Ministers’ intentions to use these
powers rarely and only where all other appropriate routes to secure the same outcome have been exhausted.

21. Accordingly, the Committee is satisfied that it is appropriate to delegate these powers, and that they be exercised in the form of directions.

Section 49 – Power to make regulations as to the governance, administration and conditions of service of constables and police cadets

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: negative procedure

Background

22. Chapter 8 of Part 1 provides for the governance and administration of police. In particular, section 49 gives the Scottish Ministers a general power to make regulations for the governance, administration and conditions of service of constables (including special constables) and police cadets, and they are required to do so.

23. That general power is supplemented by sections 50 to 54, which set out in more detail the areas in which regulations may be made. These cover appointments, promotions, probation, efficiency and effectiveness, restrictions on private life or business interests, resignation, and retirement (section 50); conditions of service (section 51); duties (section 52); disciplinary procedures (section 53); and personal records (section 54).

24. Section 55 requires the Scottish Ministers to consult and share a draft of the regulations with the Chief Constable, the Authority, the staff associations and where appropriate the Police Negotiating Board for the United Kingdom. Section 56 allows regulations to make provision for the delegation of functions. It also confirms that, in the absence of express provision, nothing in Part 1 affects the generality of the powers conferred in section 49.

Comment

25. The power in section 49 (as supplemented by the rest of Chapter 8) is a very wide one. The governance and administration of the police service is, by virtue of it, almost entirely to be set out in delegated legislation. The Committee notes, however, that a similar system pertains under the 1967 Act, and the DPM indicates that the first set of regulations made under section 49 will largely be the same as those currently made under the 1967 Act.

26. As the DPM states, it is likely that these regulations will be detailed, technical and (in some respects) administrative in nature. On balance, given the detailed nature of the matters which are to be dealt with in delegated legislation, the Committee finds the delegation of these matters to be acceptable in principle. However, the Committee draws the breadth of the regulation-making power to the attention of the lead committee so that it may consider whether it would be more
appropriate for any of the subject matter of Chapter 8 to be dealt with in the Bill itself.

27. In doing so, the Committee also recommends that consideration be given to the appropriateness of the first set of regulations being largely the same as those made under the 1967 Act. In particular, it is concerned that the context in which the regulations will operate is quite different. For example, the differences arising from the establishment of a single police authority may have implications for the use of this power. Furthermore, a number of years have elapsed since the original power was created and, again, the Committee has concerns that changes may have arisen in, for example, the administration of the police service during the intervening period which could also have an impact on the operation of the regulations. In such a case, a simple translation of the original regulations to the new regime may not be appropriate.

28. Regulations made under these provisions will be subject to negative procedure. The Committee is content that this represents an appropriate level of scrutiny. In reaching that view, it has considered the nature and detail of these regulations, and the potential for regular amendment, against the significant matters with which the regulations will deal. The Committee observes, however, that any regulations would be subject to the consultation requirements in regulation 55 which help to ensure that those affected by the regulations would have their views taken into account.

29. Given the breadth of the power in section 49, the Committee draws it to the attention of the lead committee. In doing so, the Committee recommends that the lead committee give consideration to the context in which the power will be exercised.

30. It is otherwise content that the exercise of the power be subject to the negative procedure.

Section 84(1)(b) – Power to specify the type of goods and services the SPA may provide

Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background

31. Section 84 makes provision for the Authority to provide goods and services to any other public body or office-holder. Subsection (1)(b) provides the Scottish Ministers with power to specify the type of goods and services that may be provided to persons other than public bodies or office-holders, and the persons to which they may be provided.

Comment

32. The Committee was concerned that this power appeared to be very general in its terms, and (at its broadest) might be taken to enable the Scottish Ministers to make regulations permitting the Authority to supply goods and services of any
description to any person. Given that supplying goods and services does not appear to be within the ordinary functions of a police authority, the Committee asked the Scottish Ministers to explain the circumstances in which it is envisaged that this power might be used.

33. The Scottish Ministers indicate that this power would only be exercised where they were satisfied that it was appropriate for particular goods or services to be supplied to particular categories of person, and that by making it exercisable by subordinate legislation then the Parliament also has an opportunity to satisfy itself as to the appropriateness of what is proposed. They envisage that the power might be used, for example, to enable the Authority to charge overseas governments and police forces for the provision of forensic services.

34. The Committee considers that, if this power is intended only to be used in relation to goods and services which are in some way connected to the functions of the Authority (such as the forensic services mentioned in the example), then it is appropriate to delegate that power. However, the power in section 84(1)(b) is not expressly restricted in that manner and the Committee considers that it would be possible in the future to specify goods and services of whatever nature under this provision, regardless of the intentions of the Scottish Ministers at present.

35. The Committee considers that the power in section 84(1)(b) is capable of being exercised in a particularly broad manner so as to specify goods and services of any nature. Given that the apparent intention of the Scottish Ministers is to permit the Scottish Police Authority to supply goods and services which are connected with its functions, it takes the view that the power ought to be drafted so as to reflect that intention.

36. The Committee considers that the negative procedure provides sufficient opportunity for the Parliament to scrutinise the exercise of this power.

Section 84(3)(b) – Power to specify the type of goods and services the Police Service may provide
Power conferred on: the Scottish Ministers
Power exercisable by: order
Parliamentary procedure: negative procedure

Background

37. This power broadly mirrors the power in section 84(1)(b), and differs from it only in that it relates to the Authority making arrangements for the supply of goods and services by the Police Service, rather than directly providing them itself.

Comment

38. The Committee was similarly concerned as to the very general nature of this power, and asked the Scottish Ministers to explain the circumstances in which they envisaged that the power might be used.
39. The Scottish Ministers again indicate that this power would only be exercised where they were satisfied that it was appropriate for particular goods or services to be supplied to particular categories of person, and that by making it exercisable by subordinate legislation then the Parliament also has an opportunity to satisfy itself as to the appropriateness of what is proposed. Specific examples envisaged include providing driver training to foreign police forces and private companies, and the letting of facilities at the Scottish Police College to private sector organisations for conferences.

40. Again, the Committee considers that, if this power is intended only to be used in relation to goods and services which are in some way connected to the functions of the Police Service (such as the examples given), then it is appropriate to delegate that power. However, the power in section 84(3)(b) is not expressly restricted in that manner and the Committee considers that it would be possible in the future to specify goods and services of whatever nature under this provision, regardless of the intentions of the Scottish Ministers at present.

41. The Committee considers that the power in section 84(3)(b) is capable of being exercised in a particularly broad manner so as to specify goods and services of any nature. Given that the apparent intention of the Scottish Ministers is to permit the Scottish Police Authority to make arrangements for the supply of goods and services by the Police Service which are connected with its functions, it takes the view that the power ought to be drafted so as to reflect that intention.

42. The Committee considers that the negative procedure provides sufficient opportunity for the Parliament to scrutinise the exercise of this power.

Section 120(1)(b) – bolt-on powers to make ancillary provision in relation to the exercise of all powers to make orders, regulations and rules
- Power conferred on: the Scottish Ministers
- Power exercisable by: orders, regulations and rules
- Parliamentary procedure: dependent on the procedure applicable to the main power being exercised

Section 121 – Ancillary Provision
- Power conferred on: the Scottish Ministers
- Power exercisable by: order
- Parliamentary procedure: affirmative where making textual amendments to primary legislation and otherwise negative

Section 122 – Transitional Provision
- Power conferred on: the Scottish Ministers
- Power exercisable by: order
- Parliamentary procedure: negative procedure

Section 124 – Commencement
- Power conferred on: the Scottish Ministers
- Power exercisable by: order
Parliamentary procedure: to be laid before the Scottish Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010

Background

43. This Bill contains a number of mechanisms by which ancillary powers may be exercised.

44. Section 120(1)(b) provides for “bolt on” powers to make supplementary, incidental, consequential, transitional, transitory or saving provision when exercising any power to make orders, regulations and rules under the Bill. The inclusion of “bolt on” provision does not alter the level of parliamentary scrutiny which applies.

45. Section 121 is a standalone power to make supplementary, incidental or consequential provision for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under the Bill. An order under section 121 may modify any enactment, including the Bill itself: if it does so then the order is subject the affirmative procedure. Otherwise it will be subject to the negative procedure.

46. Section 122 is a further standalone power to make transitional, transitory or saving provision for the purposes of, or in connection with, the coming into force of any provision of the Bill. Although an order under section 122 may modify any enactment, including the Bill, it will always be subject to the negative procedure.

47. Section 124 enables the Scottish Ministers to appoint a day (or days) for the coming into force of Parts 1 and 2, and section 123, of the Bill. A commencement order made under section 124 may also contain transitional, transitory or saving provision. Orders under section 124 will be laid before the Parliament but are not subject to further parliamentary control.

Comment

48. The Committee acknowledges that it is frequently considered appropriate to confer power on the Scottish Ministers to make ancillary provision of one kind or another. However, the Committee considers that it should examine whether the particular scheme of ancillary powers proposed in any Bill is appropriate to its circumstances. In particular, the Committee considers carefully what level of scrutiny is to be applied to the exercise of the powers and whether different options for the exercise of ancillary powers are proposed.

49. The Scottish Ministers consider that the power in section 120(1)(b) may be distinguished from the other powers in that it is intended to cover the situation where ancillary, transitional, transitory or saving provisions are required in connection with subordinate legislation made under the Bill. The Committee observes that this power overlaps to an extent with section 121, under which ancillary provision may be made for the purposes of, or in connection with, or for the purposes of giving full effect to any provision made under the Bill. However, the same cannot be said for section 122 which appears to be confined to making
transitional provision for the purposes of, or in connection with, the coming into force of any provision of the Bill itself.

50. The Committee observes that the power in section 120(1)(b) enables the Scottish Ministers to make ancillary and transitional provision in the same instrument as the related substantive provisions, and acknowledges that this may improve transparency and clarity for the end user. However, it does not consider that this should be determinative of the appropriate level of parliamentary scrutiny.

51. In relation to the power in section 121, the Scottish Ministers acknowledge that the existing police and fire and rescue services have powers, duties and responsibilities under a wide range of legislation. They advise that, although a substantial exercise has been undertaken to identify all relevant references (Schedule 6 contains minor and consequential amendments in consequence), it is always possible that some may have been missed and will emerge at a later date. The Ministers accordingly consider it appropriate that they be able to make incidental, consequential or supplementary provision to deal with these matters without resorting to further primary legislation. The Committee recognises that this is acceptable in principle. It considers it appropriate, where such an order amends primary legislation, that it be subject to the affirmative procedure, and otherwise subject to the negative procedure.

52. The Committee notes that the inclusion of an ancillary order-making provision which allows for the making of transitional, transitory and saving provisions is quite normal in a Bill. As with any Bill, the Committee can see that circumstances may arise, necessitating adjustments of the nature outlined by the Scottish Ministers. However, the Committee does not accept the Scottish Ministers’ view that negative procedure would always be appropriate for the exercise of this power, given that it may modify any enactment, including the Bill itself. The Ministers have not indicated in what circumstances they anticipate making transitional, transitory or saving provision which would require the modification of primary legislation. The Committee considers that, where textual amendment of primary legislation is contemplated, the order should be subject to the affirmative procedure.

53. The Committee accordingly finds the powers in sections 120(1)(b), 121, 122 and 124 acceptable in principle. Subject to the following comments, it also finds the parliamentary procedure applied acceptable.

54. The Committee recommends that, as is the case with the power under section 121, the power in section 122 should be subject to the affirmative procedure where it is used to make textual amendments to primary legislation, and to the negative procedure otherwise.

55. In general, the Committee recommends that, where there is a choice available to the Scottish Ministers as to which of the mechanisms to use to make a particular provision it should have regard to the complexity and effect of the provision proposed and should afford the Parliament the opportunity for a higher level of parliamentary scrutiny in complex cases or where the exercise of the power affects individual rights.
Schedule 4, paragraph 11(1) – Power to make a staff transfer scheme (police)
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Schedule 4, paragraph 16(1) – Power to make a police property transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Schedule 4, paragraph 17 – Power to make a local authority property transfer scheme (police)
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Schedule 5, paragraph 3 – Power to make a staff transfer scheme (SFRS)
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Schedule 5, paragraph 5 – Power to make an SFRS property transfer scheme
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Schedule 5, paragraph 6 – Power to make a local authority property transfer scheme (SFRS)
Power conferred on: the Scottish Ministers
Power exercisable by: scheme
Parliamentary procedure: no procedure

Background

56. These six powers make provision for the making of staff and property transfer schemes in respect of the Authority and SFRS, and include power to make schemes transferring property and staff from local authorities.

Comment

57. As the Authority and SFRS will take over the functions previously discharged by local authorities in their roles as police and fire authorities, the Committee considers it appropriate that provision be made for transferring relevant staff and property to the new bodies, and that this be done by subordinate legislation instead of being expressed in the Bill itself.

58. However, the Committee notes that this is to be done by way of a “scheme”. This form of subordinate legislation is not a Scottish statutory instrument and will be subject to no parliamentary scrutiny at all. Nor will these schemes be subject to
the normal publication requirements which apply to Scottish statutory instruments. The Scottish Ministers confirm that they do not intend that these schemes should be Scottish statutory instruments. They express the view that these are purely administrative matters and that it would be an inappropriate and inefficient use of parliamentary time to scrutinise these schemes. The Scottish Ministers express further concerns that the publication of these schemes would enable the identification of individuals to whom the staff transfer schemes apply, and that this would breach confidentiality. This concern appears to apply in particular to the staff of the Scottish Police Services Authority ("SPSA") and of the Scottish Crime and Drug Enforcement Agency ("SCDEA").

59. The Committee does not share the Scottish Ministers’ concerns. It observes that it is usual practice for staff and property transfer provision either to appear on the face of a Bill or for it to be made by order, and for those orders to be subject to the negative procedure. The Committee observes, indeed, that this approach has previously been adopted in relation to policing matters: section 31 of and Schedule 3 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 provide for the making of staff transfer orders transferring staff to SPSA and SCDEA. Indeed, the Committee notes that the power contained in paragraph 2(1) of Schedule 3 was then exercised by the Scottish Ministers when they made the Scottish Police Services Authority (Staff Transfer) Order 2007 (SSI 2007/88).

60. Although paragraph 2(4) of Schedule 3 provides for the making of a scheme in relation to the transfer of staff, this only applies where a staff transfer order under section 2(1) requires one to be made. The transfer of staff is effected by the staff transfer order itself, which is subject to parliamentary scrutiny. It is then possible, if considered necessary, to make an unpublished and unscrutinised scheme containing the fine detail.

61. The Committee accordingly considers that the form of these six powers is inappropriate and does not allow for adequate (or, indeed, any) parliamentary scrutiny. These powers represent a departure from normal practice in this area and the Scottish Ministers have not advanced any reason for this departure which the Committee considers convincing.

62. Accordingly, the Committee recommends that the powers contained in paragraphs 11(1), 16(1) and 17 of Schedule 4, and in paragraphs 3, 5 and 6 of Schedule 5 ought to be exercised in the form of a Scottish statutory instrument so that they will be subject to parliamentary scrutiny, and that they should be subject to the negative procedure.

63. In addition, the Committee draws to the attention of the lead committee to the example found in Schedule 3 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. It considers that the approach adopted in that enactment adequately balances the need for parliamentary scrutiny of the transfer of staff and property with the operational need to maintain confidentiality.
ANNEXE

Scottish Government Response to Subordinate Legislation Committee

POLICE AND FIRE REFORM (SCOTLAND) BILL AT STAGE 1

1. Thank you for your letter of 29 February to Tim Ellis, which sought further clarification of some of the powers in the Police and Fire Reform (Scotland) Bill. Tim passed your letter to me, as the Bill Team Leader for the Police and Fire Reform (Scotland) Bill, for reply.

2. Your questions, and the Scottish Government’s response to them, are set out below:

Section 84(1)(b) – Power to specify the type of goods and services the SPA may provide

SLC question
3. The Committee asks the Scottish Government to explain the circumstances in which it envisages using this power. In particular—

- What types of goods and services might the Authority be authorised to supply?
- What descriptions of persons might the Authority be authorised to make such a supply to?

Scottish Government response
4. The Scottish Government envisages using this power in those instances where it is persuaded that it would be appropriate for the Scottish Police Authority (SPA) to supply certain types of goods or services to the general public, to overseas governments or to the private sector; the provision of goods and services by the SPA to other parts of the public sector is already permitted under Section 84(1)(a).

5. The Scottish Government considers there is a good case for permitting the provision of certain kinds of goods and services to such categories of people but does not consider this should be unfettered. The purpose of the enabling power is to allow constraints to be placed on that provision so that Ministers and Parliament can be satisfied on the appropriateness of the service begin provided, the categories of person they are being provided to and that providing these services would not impact on the ability of the service to carry out its core functions effectively.

6. One example of where this provision might be used is the provision of forensic services to overseas government/police services on a repayment basis. Section 31 of the Act allows the SPA to provide forensic services to anybody it considers appropriate but under section 84 Ministers could specify the categories of forensic service that SPA can charge for. An example of this would be the provision of training or specialist forensic services to third parties, either within the
UK or overseas. A further example might relate to the development of a scientific technology or process. Enabling the SPA and the Police Service of Scotland to provide quality services to third parties based on the professionalism and expertise within Scottish policing has the potential to enhance the reputation of Scotland’s police service and forensic service all over the world.

Section 84(3)(b) – Power to specify the type of goods and services the Police Service may provide

SLC question
7. The Committee asks the Scottish Government to explain the circumstances in which it envisages using this power. In particular—

- What types of goods and services might the Authority be authorised to make arrangements for the Police Service to supply?
- What descriptions of persons might the Authority be authorised to make arrangement for the Police Service to provide such a supply to?

Scottish Government response
8. The Scottish Government intends to use this power in those instances where it is persuaded that it would be appropriate for the SPA to make arrangements for the Police Service of Scotland to supply certain types of goods or services to the general public, to overseas governments or to the private sector; the provision of goods and services by the Police Service of Scotland to other parts of the public sector is already permitted under Section 84(3)(a). The purpose of the enabling power is to allow constraints to be placed on that provision so that Ministers and Parliament can be satisfied on the appropriateness of the service begin provided, the categories of person they are being provided to and that providing these services would not impact on the ability of the service to carry out its core functions effectively.

9. Examples of the sorts of goods and services that might be provided under this provision include driver training. This could include driver training for overseas police forces and/or private companies where drivers could be driving heads of state, VIPs and other people potentially at risk of attack, kidnapping etc.

10. Other examples include renting out facilities at the Scottish Police College at Tulliallan or the Jackton Training Centre in East Kilbride to private sector organisations for conferences, training events etc.

Section 120(1)(b) – Bolt on powers to make ancillary provision in relation to the exercise of all powers to make orders, regulations and rules

SLC question
11. This provision is not treated separately in the Delegated Powers Memorandum, and no commentary is provided on the need for these powers in relation to the individual powers to which the “bolt on” provision applies.

12. The Committee therefore asks the Scottish Government to explain why this power is required in addition to separate standalone powers to make ancillary
provision provided in sections 121 and 122 and the further power to make transitional, transitory or saving provision in connection with commencement under section 124.

13. The Committee also asks the Government to explain why it is considered that the negative procedure would be sufficient level of parliamentary scrutiny for supplementary, incidental or consequential provision.

Scottish Government response

14. The powers provided in sections 121, 122 and 124(3) enable ancillary, transitional, transitory and saving provisions to be made in connection with provisions of the Bill. Provision may be made in the context of commencement of those provisions or to give those provisions full effect. Section 120(1)(b) is intended to cover the slightly different scenario where ancillary, transitional, transitory and saving provisions are required in connection with subordinate legislation made under the provisions of the Bill. For example:

- If the Scottish Ministers used their power in section 11(5) to remove a particular rank, transitional provision would be required to determine what future rank officers in that rank would move to, arrangements for pay protection and so on. Consequential provision might also be needed to amend legislation which reserves particular powers to officers of a certain rank or above.

- If new regulations relating to conduct were made under section 49, transitional provision would be required to set out how cases would be managed which were in progress when the new regulations came into force.

15. The procedure for supplementary, incidental or consequential provision in these cases is determined by the power under which the order, regulations, or rules are made, since the ancillary provision is dependent on the main provisions of the instrument. In this context any supplementary, incidental or consequential provision remains parasitic on another power and should remain subject to the same procedure deemed appropriate for the other power.

Section 121 – Ancillary Provision

SLC question

16. The DPM does not provide any indication as to when the Scottish Ministers consider that this power may have to be exercised.

17. The Committee therefore asks the Scottish Government to explain what further supplementary, incidental or consequential provision might be required under the power in section 121.

Scottish Government response

18. Both police and fire and rescue services have powers, duties and responsibilities under a wide range of legislation, with many interdependencies. A substantial exercise has been undertaken to identify all relevant references, and we intend to bring forward amendments at Stage 2 to make the necessary
adjustments to primary legislation, in addition to those included in the Bill at introduction. However, it is always possible that some points may be missed, in other legislation or in the Bill itself, or that amendments may be made at Stage 3 which need to be reflected elsewhere. The Scottish Government considers it appropriate that powers are available to make incidental, supplementary or consequential amendments to ensure the new services can operate effectively without the need for further primary legislation.

19. Due to the size of the project, we also propose to make consequential changes to secondary legislation through an order under section 121.

Section 122 – Transitional Provision

SLC question

20. The DPM does not provide any indication as to when the Scottish Ministers consider that this power may have to be exercised. Furthermore, although it is subject to the negative procedure, this power may be used to modify any Act, including this new Act.

21. The Committee therefore asks the Scottish Government to explain what further transitional, transitory or saving provision might be required under the power in section 122, and to explain why it is considered appropriate that this be subject to negative procedure even if modifying primary legislation.

Scottish Government response

22. The purpose of the Bill is to create a single police service and a single fire and rescue service for Scotland, abolishing the current 8 regional services. Inevitably, significant transitional and saving provisions will be needed to ensure a smooth transfer, wind up the current services and ensure that conditions are protected for all staff and officers. We intend to bring forward a number of amendments at Stage 2 to facilitate the transition process, but there may be issues which are not agreed at that stage or which are later found to need adjustment. It is therefore appropriate to take a power to make further transitional, transitory and saving provisions by order.

23. It is necessary for this power to include the power to modify the effect of certain provisions of the Bill and other enactments. The Bill extensively amends the Fire (Scotland) Act 2005 and the Police, Public Order and Criminal Justice (Scotland) Act 2006, and largely repeals the Police (Scotland) Act 1967, and it is likely that transitional and saving provisions will be required to maintain parts of these until the transfer to the new services is complete. It is also important to ensure there is no gap in enforcement, for example where fire and rescue authorities are consulted on licensing applications or can issue enforcement notices. We consider it is appropriate to use negative procedure for all transitional provisions, since these cannot make permanent changes to primary legislation.
Schedule 4 paragraph 11(1) – Power to make a staff transfer scheme (police)

Schedule 5 paragraph 3 – Power to make a staff transfer scheme (SFRS)

Schedule 4 paragraph 16(1) – Power to make a police property transfer scheme

Schedule 5 paragraph 5 – Power to make an SFRS property transfer scheme

Schedule 4 paragraph 17 – Power to make a local authority property transfer scheme (police)

Schedule 5 paragraph 6 – Power to make a local authority property transfer scheme (SFRS)

SLC question

24. The schemes made under these powers may effect significant transfers of property, particularly from local authorities to the SPA and the SFRS. Similarly, they have the potential substantially to affect individuals’ terms of employment by altering their employers.

25. The Committee therefore asks the Scottish Government to confirm whether the schemes made under these powers are not intended to be Scottish statutory instruments and, if so, to explain why it is considered appropriate to make significant provision of this nature in an instrument that is not subject to the publication and laying requirements which apply to a Scottish statutory instrument.

Scottish Government response

26. The schemes made under these powers are not intended to be Scottish statutory instruments. The schemes are an administrative mechanism for giving effect to the transfer of employees and property to the new services, in line with the policy and principles set out in the provisions of the Bill, which are themselves subject to Parliamentary scrutiny. The schemes will consist of administrative detail, listing buildings, other assets and staff, rather than any substantive policy. It is therefore considered unnecessary for those schemes to be subject to Parliamentary procedure, and indeed it is considered that to require Parliamentary scrutiny of this type of administrative detail would be an inappropriate and inefficient use of Parliamentary time.

27. Further, the staff transfer schemes would enable the identification of individuals to which the staff transfer schemes applied and, as was the case in the transfer of staff to the SPSA and Scottish Crime and Drug Enforcement Agency (SCDEA), we consider that this would breach confidentiality. We also believe that the nature of certain assets that will be transferred by scheme, for example, equipment used for covert police operations, makes an administrative transfer preferable to an SSI.

28. The Bill already makes clear that staff transferring to the new services will do so on the same terms and conditions of service. There are also specific requirements in the Bill for consultation with those potentially affected by the staff transfer scheme, while the transfer of property will be subject to agreement
between all parties involved, with provisions for compensatory payments if necessary.

Section 5(1) — The Authority must comply with any direction (general or specific) given by the Scottish Ministers

Section 116, new section 42A — Power to give SFRS general or specific directions

SLC question
29. It appears that the directions under these powers might conceivably be made in relation to a very wide range of issues, subject to the restriction in section 5(2) on making directions about operational police matters.

30. The Committee therefore asks the Scottish Government in what circumstances it envisages exercising its direction-making powers and the matters to which that exercise might relate.

31. The Committee also asks whether directions may be made which conflict with subordinate legislation made under other powers in the Bill and whether, in that scenario, the directions or the subordinate legislation would prevail.

Scottish Government response
32. General powers of direction for Ministers are a common feature of the public body landscape. Indeed, such powers are included in the legislation for 11 of the 13 statutory bodies established by Acts of the Scottish Parliament. In the case of both the SPA and Scottish Fire and Rescue Service (SFRS) the Scottish Ministers envisage exercising these powers rarely and only when all other appropriate routes to securing the same outcome have been exhausted. Such powers could, for example, be used to ensure that the SPA and SFRS comply with general Government policy that applies across the whole of the public sector, such as policy on pay and workforce issues. The power could also be used to ensure that the SPA and SFRS take action on recommendations arising from the work of external, independent bodies such as the Auditor General, Parliamentary Committees and public inquiries. The Scottish Ministers may also direct the SPA or SFRS in circumstances where it is necessary to do so to exercise the will of Parliament.

33. Ministers would never direct SFRS or SPA to act in a manner which is contrary to how those services are required to act by virtue of any other enactment. Such a direction would be ultra vires and unenforceable. Conversely, if there is an appropriate power contained elsewhere in legislation which would allow Ministers to require SFRS or SPA to act in a certain manner, then that particular power would be used rather than any broader power of direction.
Background


2. The Scottish Government has responded to the report. The cover letter from the Cabinet Secretary for Justice and the Scottish Government’s response are reproduced in the appendix.

Government response

3. In its report, the Committee raised points on sections 5 and 116, 49, 84, 120 to 122 and 124. It also made recommendations on the powers to make transfer schemes in schedules 4 and 5.

4. The Scottish Government response provides detailed consideration of the Committee’s points and confirms that it will lodge an amendment at Stage 2 to meet the Committee’s concern about the power in section 122. It has not, however, agreed to take forward any of Committee’s remaining recommendations.

5. The Committee will give further consideration to the delegated powers contained in the Bill after Stage 2.

Recommendation

6. Members are invited to note the Government’s response on the Bill and to note that the Committee will reconsider the Bill after Stage 2.
Appendix

Correspondence from the Cabinet Secretary for Justice dated 30 April 2012

POLICE AND FIRE REFORM (SCOTLAND) BILL: SUBORDINATE LEGISLATION COMMITTEE REPORT TO THE JUSTICE COMMITTEE

This letter responds to the Subordinate Legislation Committee’s report to the Justice Committee on the Police and Fire Reform (Scotland) Bill, which was published on 22 March 2012.

Firstly, I would like to thank the Committee for its detailed consideration of the delegated power provisions in the Bill.

The Committee has made comments and recommendations in relation to a number of those powers. The Scottish Government’s response to the Committee’s findings is attached as an annex to this letter.

I hope that this response is helpful, and am of course happy to provide any further information or other assistance which might help the Parliament and its committees in its consideration of the Bill. I look forward to working further with Committee members throughout the remaining Parliamentary stages of the Bill.

I am sending a copy of this letter to the Convener and Clerk to the Justice Committee, and to the Clerk of the Subordinate Legislation Committee.

KENNY MACASKILL
ANNEX

SCOTTISH GOVERNMENT RESPONSE TO ISSUES RAISED IN THE REPORT

Section 5(1) and section 116 (inserts section 42A into the Fire (Scotland) Act 2005) – Powers for the Scottish Ministers to give general or specific directions to the SPA and SFRS

Section 5(1) of the Bill enables the Scottish Ministers to give general or specific directions to the SPA, with which the SPA must comply. Subsection (2) restricts this power so that it may not be exercised in relation to specific police operations.

Section 116 inserts section 42 into the Fire (Scotland) Act 2005, to enable the Scottish Ministers to give general or specific directions to SFRS, with which SFRS must comply.

In its letter to the Scottish Government of 29 February, the Subordinate Legislation Committee queried the circumstances and matters in relation to which these powers might be used and whether directions may be made which conflict with subordinate legislation made under other powers in the Bill. In its response to that letter, the Scottish Government explained that the powers would be used rarely and only when all other appropriate routes had been exhausted. The Scottish Government further explained that any directions made could not conflict with any other statutory requirements on the services.

I note that the Committee has accepted our assurances on this matter and is content that these powers may be delegated to the Scottish Ministers.

Section 49 – Power to make regulations as to the governance, administration and conditions of service of constables and police cadets

Section 49 of the Bill enables the Scottish Ministers to make regulations in relation to the governance, administration and conditions of service of constables and police cadets. Sections 50 to 56 make further provision about those regulations, including requirements for consultation.

The Subordinate Legislation Committee has expressed concerns about this power and has drawn it to the attention of the Justice Committee for further consideration. I understand the Committee’s concerns relate to the breadth of the power, however there appears also to be a suggestion that the power is potentially not suited to the new structure of the Police Service, as well as a concern that regulations made under the power should not simply replicate existing police regulations. The Committee has not previously queried this power, therefore the Scottish Government would like to take this opportunity to clarify its purpose and intended use.

Section 49 mirrors closely section 26(1) of the Police (Scotland) Act 1967. Sections 50 to 56, while not expressly limiting in their nature, are illustrative of the sorts of matters which must or may be dealt with in regulations under section 49. Regulations made under section 49 can delegate functions to others as appropriate, including the Scottish Ministers, the SPA and the chief constable, among others. Again, this mirrors the powers in the 1967 Act.
The purpose of these powers is to allow the Scottish Ministers to determine the balance to be struck between Ministerial regulation of aspects of administration of the police (generally terms and conditions and frameworks for assessing conduct, discipline and performance) and leaving the day to day administration to the SPA, the chief constable and others as appropriate. It is the Scottish Government’s view that this applies equally under a single service model as under the current 8 force structure. It is not clear from the Committee’s report why the new structure could make the approach in section 49 potentially unsuitable, nor is there any indication of the issues currently dealt with in regulations that the Committee considers should instead be dealt with in the Bill.

It therefore remains the Scottish Government’s view that the power as framed in the Bill is appropriate and strikes the right balance in the context of a single Police Service. I welcome the Committee’s comment that it agrees that negative procedure is appropriate.

**Section 84 – Power to specify types of goods and services the SPA may provide**

Section 84 of the Bill confers a power on the Scottish Ministers to specify by order the types of goods and services that may be provided to persons other than public bodies or office holders, and the persons to which they may be provided. Section 84(1)(b) provides for this in relation to provision by the SPA. Section 84(3)(b) provides for this in relation to arrangements made by the SPA for provision by the Police Service.

In its letter of 29 February, the Subordinate Legislation Committee queried the scope of this power and, in particular, the circumstances in which it may be used. In its response to that letter, the Scottish Government explained that the power would only be exercised where Ministers were satisfied that it was appropriate for particular goods or services to be supplied to particular categories of person, and that the reason for taking the power to specify this by order was to enable Parliamentary scrutiny of any such proposals.

The Scottish Government notes that the Committee accepts this explanation, but that the Committee considers that the power is nonetheless capable of being exercised in a broad manner, for example so as to enable the SPA and Police Service to supply goods and services which are unconnected with its functions. The Committee suggests that the Bill should be amended to clarify the intention that the power would only be exercisable in connection with functions of the SPA and Police Service.

It is the Scottish Government’s view that this is already the position, without the need for amendment to the Bill. I hope that the Committee will find the following explanation helpful.

The powers in section 84(1)(b) and (3)(b) may be wide enough to allow the Scottish Ministers to specify that goods and services of any nature may be supplied to any person who is not a public body or office-holder. It should be noted that the intention
is to retain some Ministerial control over the types of goods and services that may be provided by the SPA and Police Service outside the Scottish public sector.

While the power to specify the types of goods and services which might be provided is not subject to specific constraints, the SPA’s power to provide goods and services (and make arrangements for their provision by the Police Service) is itself constrained. In particular, section 84(2) makes clear that the SPA can only provide such goods and services as may be specified under subsection (1)(b) if it considers the provision of those goods and services to be “appropriate and consistent with the proper carrying out of its functions”.

Section 84(4) makes clear that arrangements may be made for the provision of goods and services specified under subsection (3)(b) where this is consistent with the proper carrying out of police functions. It is by this mechanism that the Bill seeks to ensure that goods or services are provided only where there is a connection with the functions of the SPA and police service.

Section 120(1)(b) – bolt-on powers to make ancillary provision in relation to the exercise of all powers to make orders, regulations and rules

Section 121 – Ancillary Provision
Section 122 – Transitional Provision
Section 124 – Commencement

Section 120(1)(b) enables the Scottish Ministers to make supplementary, incidental, consequential, transitional, transitory or savings provisions in connection with subordinate legislation made under the provisions of the Bill.

In its letter of 29 February, the Committee queried why this power is required in addition to separate standalone powers to make ancillary provision provided in sections 121 and 122 and the power to make transitional, transitory or saving provision in connection with commencement under section 124, and why the negative procedure was considered appropriate. In response, the Scottish Government explained that section 120(1)(b) is intended to cover the slightly different scenario to these powers, i.e. where such provisions are required in connection with subordinate legislation made under the provisions of the Bill. The Scottish Government further explained that the appropriate procedure will be determined by the power under which such subordinate legislation is made.

I note that the Committee has accepted this explanation of the need for section 120(1)(b), and finds the power and parliamentary procedure acceptable in principle, and is of the view that the procedure to which particular provisions which could be made under section 121 or section 120(1)(b) are subject should not simply be determined by the related substantive provisions, but also by the individual circumstances of each case.

Section 121 enables the Scottish Ministers to make supplementary, incidental or consequential provision for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under the Bill. An order made under this section which contains a provision which adds to, omits or replaces any part of an Act is subject to the affirmative procedure. Any other order made under this section is subject to the negative procedure.
In its letter of 29 February, the Committee queried when such a power might be exercised. In its response, the Scottish Government indicated that it was conducting a substantial exercise to identify all relevant references to police and fire and rescue services in other legislation, and that this power was simply intended to cover anything missed, or to take account of any amendments made at Stage 3. I note that the Committee is content with this explanation and the Scottish Government’s approach on the correct form of parliamentary procedure.

Section 122 enables the Scottish Ministers to make transitional, transitory and savings provisions in connection with the coming into force of any provision made by or under the Bill. This power is restricted by the fact that only transitional and transitory provision can be made, and is therefore subject to the negative procedure.

In its letter of 29 February, the Committee queried when such a power might be exercised, and why the Scottish Government felt it should be subject to the negative procedure. In response, the Scottish Government indicated that the power is required as there may be issues not agreed in time for, or arising after, Stage 2. The negative procedure is considered appropriate for all transitional provisions, since these cannot make permanent changes to primary legislation.

I note that the Committee is content with this power, but recommends that the power in section 122 should be subject to the affirmative procedure where it is used to make textual amendments to primary legislation, and to the negative procedure otherwise.

It is the Scottish Government’s view that the temporary nature of transitional provisions means that the negative procedure would be appropriate. However, we acknowledge the merit to a consistent approach to textual modification between sections 121 and 122. The Scottish Government will therefore lodge an amendment at Stage 2 with the intention that an order under section 122 which makes textual amendments to primary legislation would be subject to the affirmative procedure.

Section 124 enables the Scottish Ministers to appoint days on which the provisions in the Bill come into force (other than sections 120, 121, 122 and 125 which come into force on the day after Royal Assent). The power will be subject to no procedure.

I note that the Subordinate Legislation Committee finds the power in section 124 acceptable in principle.
Schedule 4, paragraph 11(1) – Power to make a staff transfer scheme (police)
Schedule 4, paragraph 16(1) – Power to make a police property transfer scheme
Schedule 4, paragraph 17 – Power to make a local authority property transfer scheme (police)
Schedule 5, paragraph 3 – Power to make a staff transfer scheme (SFRS)
Schedule 5, paragraph 5 – Power to make an SFRS property transfer scheme
Schedule 5, paragraph 6 – Power to make a local authority property transfer scheme (SFRS)

In its letter of 29 February, the Committee asked the Scottish Government to confirm and explain why the schemes made under these powers would not be Scottish Statutory Instruments (SSI), and therefore would not be subject to the publication and laying requirements applying to a SSI. In its response, the Scottish Government confirmed that the schemes made under these powers would not be SSIs, and that they would not be subject to parliamentary scrutiny because they are purely administrative matters, and for reasons of confidentiality.

I note that the Committee does not share this view, and is recommending that these powers should be exercised in the form of a Scottish Statutory Instrument so that they will be subject to parliamentary scrutiny, and subject to the negative procedure. It has also drawn the attention of the Justice Committee to the approach adopted in Schedule 3 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which provided for the making of staff transfer orders transferring staff to SPSA and SCDEA, which it feels adequately balances the need for parliamentary scrutiny of the transfer of staff and property with the operational need to maintain confidentiality.

The Scottish Government understands these concerns, but notes that the majority of staff (all constables, all joint board staff, all SPSA staff, police cadets, HMICS staff and joint fire board staff) are transferred directly by the Bill (Schedule 4, paragraphs 3 to 10, 13 and 15 and Schedule 5, paragraph 2). Provision is also made about the terms of transfer. The majority of staff transfers are therefore subject to Parliamentary scrutiny.

A staff transfer scheme may be made only in respect of staff of local authorities and, in the case of fire, civil servants. For police, the power is simply to identify such staff who are to be treated as police employees. The transfer itself will be given effect by paragraph 10 of Schedule 4 to the Bill and on the terms specified in that paragraph. The nature of the transfers and the principles which will apply are therefore provided for in primary legislation and also subject to Parliamentary scrutiny. It therefore remains the Scottish Government position that it is appropriate for the transfer itself to be given effect administratively, without the need for further legislation.

The transfer of property, rights and liabilities by administrative scheme rather than by statutory order is not unique or unusual. There is no distinction in this respect between the powers conferred by the Bill and the powers conferred by paragraph 6 of Schedule 3 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, which enabled the transfer of property, etc administratively. There was no provision in that Act for the transfer of property by Order.
Present:

Marco Biagi (Committee Substitute)  Nigel Don (Convener)
James Dornan (Deputy Convener)  Mike MacKenzie
Michael McMahon     John Pentland
John Scott

Apologies were received from Chic Brodie.

**Police and Fire Reform (Scotland) Bill:** The Committee noted the Scottish Government's response to its Stage 1 report and agreed to consider the bill again after Stage 2.
Police and Fire Reform (Scotland) Bill: Stage 1

14:37

The Convener: Agenda item 6 is consideration of another Scottish Government response to a committee report. Members will have seen the briefing paper and the response from the Cabinet Secretary for Justice, in which the Government makes a commitment to lodge a stage 2 amendment on the delegated powers under section 122. Therefore, the committee will consider the bill again once stage 2 has been completed.

Do members have any comments, or are we content to note the response and to reconsider the bill after stage 2?

John Scott: I welcome the Government's commitment to meet the committee's concerns about the power in section 122 and to introduce an amendment in that regard. I am disappointed that that is the only response that we have received, but there it is. It is perhaps a matter of regret that the Government has not taken more notice of our concerns, but that is a matter for it.

The Convener: Thank you. Members have no further comments.
Justice Committee

Police and Fire Reform (Scotland) Bill

Response from the Scottish Government to the Justice Committee’s Stage 1 Report

This letter responds to the Justice Committee’s report on the Police and Fire Reform (Scotland) Bill, which was published on 2 May 2012.

I would like to thank the Committee for its thorough and positive consideration of the Bill, and for its support for its general principles. The attached annex sets out the Scottish Government’s detailed response to the Committee’s findings.

I look forward to Thursday’s debate, and to continuing to work with the Committee as the Bill progresses through its Parliamentary stages.

Kenny MacAskill MSP
Cabinet Secretary for Justice
9 May 2012
POLICE AND FIRE REFORM (SCOTLAND) BILL: SCOTTISH GOVERNMENT RESPONSE TO THE JUSTICE COMMITTEE’S STAGE 1 REPORT

<table>
<thead>
<tr>
<th>Committee conclusion</th>
<th>Scottish Government's response</th>
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<tr>
<td>Scottish Police Authority and Scottish Fire and Rescue Service Board</td>
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<tr>
<td><strong>Role, size and composition</strong></td>
<td>The Scottish Government welcomes the Committee’s recommendations on the role, size and composition of the Board. These Boards will play a crucial role in the success of the new services.</td>
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<tr>
<td><strong>2.</strong> We are of the strong view that the primary function of the SPA and of the SFRS Board is to govern the new services and to hold the chief constable and chief fire officer to account.</td>
<td>We strongly agree that the primary function of the Boards is to govern the new services and hold the chief officers to account – not to provide local representation.</td>
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<td><strong>3.</strong> We are not convinced that the Bill should specify a set number of either lay or local authority members to sit on the boards, as we believe that flexibility is required to ensure the most suitable individuals are appointed.</td>
<td>We also welcome and share the Committee’s view that the composition of the Board should not be prescribed in legislation, particularly as the appropriate size and composition may change over time. It is more important that each Board should have the right combination of members to do their jobs effectively, and that those members should be appointed on the basis of experience, ability and suitability. Arrangements are being made to provide a comprehensive induction for the Chair and members of the Boards on appointment to ensure that the Boards operate to the highest standards.</td>
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<td><strong>4.</strong> The Committee is reluctant to stipulate the size of the SPA and SFRS Board, as we believe that the quality and experience of their members are far more important than numbers. However, we lean towards the view that a board of fewer than 11 members would not provide the breadth of knowledge and experience required to demonstrate effective governance, nor would it allow for the vacancies and absences that will inevitably arise.</td>
<td>In terms of the size of the Boards, the Scottish Government notes the Committee’s views, and will take a final decision following the Stage 1 debate.</td>
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<td><strong>5.</strong> The Committee recommends that part of the Boards’ initial work should include suitable training for all members to ensure they are equipped to contribute effectively to the work of the boards.</td>
<td>The Scottish Government also strongly agrees that the Boards should take steps to be open and transparent and to engage stakeholders and communities in their work. We fully expect the SPA and SFRS to meet in public and publish their papers, but we want that transparency to go further, and for both organisations to consider innovative ways of opening up their decision making and allowing others to contribute.</td>
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<td><strong>6.</strong> The Committee agrees with witnesses that the</td>
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SPA must be transparent in delivery of its functions, including holding its meetings in public and publishing its papers, to demonstrate accountability and gain trust, particularly with the public.

**7.** We believe that the same principles of transparency should apply to the SFRS Board.

**Relationship between the SPA and SFRS Board and local government**

8. We are not convinced that there is a need for a formal mechanism to be included on the face of the Bill to help resolve disputes between the national police or fire and rescue boards and local authorities. The Scottish Government welcomes and shares the Committee’s views about the value of a statutory dispute resolution mechanism. Such a mechanism would risk becoming the first port of call as soon as issues arise, and could detract from the important relationship between the local authority and local senior commander/officer.

9. The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms. The “Pathfinder” pilots are currently considering the relationship between the national boards and local authorities. The findings from those pilots, which we plan to make publicly available, will help inform any guidance on this issue. A Learning Network has been established to enable the Pathfinders to share good practice as they develop their new local scrutiny and engagement arrangements and this group, which cam together for its first national network even on 19 April, is currently sharing information through an online Knowledge Hub which is freely available to all interested parties at [https://knowledgehub.local.gov.uk/group/localscrutinyandengagementnetwork](https://knowledgehub.local.gov.uk/group/localscrutinyandengagementnetwork)

**Power to specify the type of goods and services the SPA may provide**

10. The Committee notes the Subordinate Legislation Committee’s concerns that the power to specify the type of goods and services the SPA may provide appears to be “very general”. On balance, however, we accept the Scottish Government’s reassurances that the power will only be exercisable in certain circumstances and that the Scottish Government welcomes the Committee’s views on this issue. As we made clear in our response to the Subordinate Legislation Committee on 30 April, the Bill already effectively provides that this power would only be exercisable in connection with functions of the SPA and Police Service. While the power to specify the types of goods and services which might be provided is not subject to specific constraints, the SPA’s power to provide goods and services (and make arrangements for their provision by the Police
the Scottish Parliament will have an opportunity to examine the related subordinate legislation.

Section 84(2) makes clear that the SPA can only provide such goods and services as may be specified under subsection (1)(b) if it considers the provision of those goods and services to be “appropriate and consistent with the proper carrying out of its functions”.

Section 84(4) makes clear that arrangements may be made for the provision of goods and services specified under subsection (3)(b) where this is consistent with the proper carrying out of police functions. It is by this mechanism that the Bill seeks to ensure that goods or services are provided only where there is a connection with the functions of the SPA and police service.

### Reserves

11. The Committee is unclear as to why the Bill does not give the SPA and SFRS the ability to accrue reserves. We therefore ask the Scottish Government to provide an explanation as to why this power, which was available to the police and fire and rescue authorities and joint boards, is being removed.

Public bodies operate to different financial rules to local government. All public bodies are required to operate within a financial regime set by HM Treasury which does not allow the holding of reserves locally.

Large sections of the public sector in Scotland operate effectively and efficiently in this way. These range from relatively small organisations such as the Police Complaints Commissioner for Scotland with a budget of around £1 million; to bodies such as Greater Glasgow and Clyde Health Board with a budget of £1.9 billion, to the Scottish Government with a budget in 2012-13 of about £28 billion.

The Scottish Government is confident that, with large single budgets, the SPA (with a budget of around £1.4 billion) and SFRS (with a budget of around £350 million) will be able to operate efficiently and effectively in the same way as all these other bodies do.

### Role of the Scottish Ministers

12. The Committee believes there must be a balance between operational independence and democratic accountability of the police and therefore accepts the Scottish Government's position that use of the power of direction may be necessary in very limited circumstances and in relation to non-

The Scottish Government welcomes the Committee’s recognition of the balance the Bill seeks to strike between operational independence and democratic accountability.

The Scottish also shares the Committee’s view that a definition of operational independence on the face of the Bill would not be helpful, and believes that it would risk putting some aspects of policing beyond scrutiny and
operational matters only. Furthermore, we are not convinced that including a definition of operational independence on the face of the Bill would be helpful.

The Bill very clearly defines the respective roles and responsibilities of the Chief Constable, the SPA and the Scottish Ministers. It is also absolutely clear that the only person who can direct and control constables is the Chief Constable, and that the only person who can direct the Chief Constable in the investigation of crime is the Lord Advocate or appropriate procurator fiscal.

Scottish Ministers are not persuaded that guidance or a protocol would add to that clarity. The Government will, of course, continue to work with all stakeholders to make sure that the clarity in the Bill is translated into policy and practice.

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<tr>
<th>Role of the Scottish Parliament</th>
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<td>13. We do however acknowledge the genuine concerns of witnesses on this matter and would urge the Scottish Government to work with stakeholders to try to allay these fears, perhaps by developing guidance or a protocol and making use of suggested definitions of operational independence, such as that provided by the Scottish Police Federation, as a starting point.</td>
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<td>14. The Committee accepts that the move to national services and the abolition of local government authorities and boards places an onus on the Scottish Parliament to enhance and formalise its scrutiny of the police and fire and rescue services. Accordingly, we welcome provisions in the Bill requiring strategies and plans to be laid before the Parliament.</td>
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<td>The Scottish Government welcomes the Committee’s findings. Effective Parliamentary scrutiny is essential to democratic policing, and the Bill provides many opportunities for such scrutiny. In the Scottish Government’s view, the Justice Committee would be best placed to take the lead in relation to such scrutiny, given the breadth of its activities. However, Scottish Ministers recognise that it is a decision for the Parliament itself to make. The Scottish Government will provide whatever assistance is required.</td>
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15. The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police.

16. The Committee agrees with the Finance Committee that effective post-legislative scrutiny of the move to single services will be crucial and would welcome a commitment by the Scottish Government to provide sufficient information to assist this process.

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<tr>
<th>Priorities, strategic and local plans, and annual reports, including local scrutiny</th>
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<tr>
<td>The Committee notes that the chief constable is to be involved in preparation of the strategic and annual plans, but we are unclear as to exactly what “involve” means in practice. We therefore seek clarification on this and on why there is no similar requirement to involve the chief constable in the preparation of the strategic police priorities.</td>
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<tr>
<td>The SPA and the Chief Constable are separate entities. The Bill is clear that the SPA is responsible for the preparation of strategic and annual police plans, but that it must involve the Chief Constable. This will ensure that the Chief Constable has an active and meaningful role in the development of the Plans. It also enables a flexible approach to such involvement, rather than prescriptive processes and procedures.</td>
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<td>The Bill enables the Scottish Ministers to determine strategic police priorities relating to the policing of Scotland or the carrying out of the SPA’s functions. It requires Ministers to consult the SPA and a range of other persons, which we expect would include the Chief Constable.</td>
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<tr>
<th>Local accountability and scrutiny</th>
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<td><strong>Local Budgets</strong></td>
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<td>The Committee believes that, in the interests of transparency and accountability, a “snapshot” of resource allocation within local authority areas as of 1 April 2013 should be given to local authorities so that they can measure any future changes, such as the transfer of funds, assets, and human resources.</td>
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<td>The Bill already provides local authorities with very broad powers to request information and reports on the “carrying out of” fire and rescue functions, and the policing of the local area. Providing that such requests are “reasonable”, local commanders and local senior officers will be required to provide that information, which could include resourcing, insofar as it relates to the provision of services in that area. We see no need to make further provision for this.</td>
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18. The Committee would welcome clarification as to whether, in practice, local authorities will |

19. The Committee would welcome clarification as to whether, in practice, local authorities will
have a degree of influence over local police resources.

provides that local plans be subject to local authority approval. Local authorities will also have powers to monitor performance, provide views and make recommendations on local services, and will be able to continue to provide additional funding for local services. Taken together, these provisions provide a suite of broad powers, enabling local authorities to help shape the design and delivery of police and fire services in their area. The extent to which this focuses on resources will undoubtedly vary, but the vision set out in the Bill is one of joint working and partnership to improve shared outcomes for local communities.

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<th>Rank of local commander and local senior officer</th>
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<tr>
<td>The Committee agrees with the Local Government and Regeneration Committee that the rank of local commander and local senior officer is not significant, and endorses the view that the knowledge and relationships that they build will be a more significant factor in negotiations on resources.</td>
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The Scottish Government welcomes and agrees with the Committee’s view.

The Committee notes that funding for additional police officers is currently provided by local authorities. The Scottish Government has indicated that there appears to be no reason why this cannot continue under the Bill. The Committee seeks clarification on how this would work in practice.

As already referred to, following reform, local authorities will still be able to fund additional officers to help make their local communities safer and stronger. The funding which councils currently provide from their own budgets for those additional officers will be retained by them and will not transfer to the Scottish Government.
<table>
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<th><strong>Local scrutiny</strong></th>
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<tr>
<td>22. The Committee does not believe that the manner in which local authorities are to scrutinise the local plans should be included on the face of the Bill, as we believe this would be too prescriptive and would not allow any flexibility for local authorities to develop scrutiny mechanisms best suited to their own local areas.</td>
<td>The Scottish Government welcomes the Committee’s agreement that the Bill should not be prescriptive about how local arrangements are delivered locally. The guidance emerging from the Pathfinder pilots will be developed and shared throughout the next 12 months.</td>
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<tr>
<td>23. However, the Committee agrees that guidance for local authorities on this matter would be helpful and therefore supports the Scottish Government’s plan to develop such guidance, informed by the outcomes of the pathfinder projects, which are currently underway. We urge the Scottish Government to ensure that this guidance is available for local authorities in time for them to put in place any scrutiny mechanisms before the single services become operational.</td>
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<th><strong>Community Planning</strong></th>
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<td>24. The Committee is not convinced by the argument put forward by some witnesses that the statutory duty to participate in local community planning should be extended to the chief constable and chief fire officer and is satisfied that this is a role more suited to local commanders and local senior officers.</td>
<td>The Scottish Government welcomes the Committee’s views. We have been engaging with stakeholders on this issue and will consider it further in the wider context of the Scottish Government/COSLA review of community planning.</td>
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<td>25.</td>
<td>The Local Government and Regeneration Committee considered in more detail witnesses’ views on how the new services could engage with the public and recommended that local commanders and local fire officers should develop strategies for engaging with the public on policing and fire services. The Committee seeks the views of the Scottish Government on this matter.</td>
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<td>26.</td>
<td>The Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint boards will be redistributed.</td>
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<td><strong>Assets and liabilities</strong></td>
<td>With the involvement of key stakeholder, including ACPOS, CFOAS and COSLA, the Scottish Government is leading on both the Identification and Transfer of assets and liabilities projects. The proposal is that all assets and liabilities on the joint Police and Fire Board balance sheets, and all assets used by police and fire services within the unitary authorities as at 31 March 2013 should transfer to the SPA and SFRS. The assets and liabilities of the SPSA will also transfer to the SPA. How these assets and liabilities are redistributed will be a matter for the two services themselves to determine.</td>
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<td><strong>Implementation</strong></td>
<td><strong>Appointment of the chief constable and chief fire officer</strong></td>
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<tr>
<td>27.</td>
<td>The Committee agrees with the overwhelming evidence that the chief constable and chief fire officer should be appointed as early as possible, and certainly before the proposed date of December 2012.</td>
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<td>28.</td>
<td>We note that the first chief fire officer may be appointed by the Scottish Ministers and would urge that this is undertaken as soon as possible.</td>
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<td>29.</td>
<td>The Committee urges the Scottish Government to consider the options suggested by witnesses and others, with a view to a chief constable being in place at the</td>
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earliest opportunity, while ensuring that the independence and robustness of the process is not undermined.

### Outline business cases

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<tr>
<th>30.</th>
<th>The Committee seeks clarification from the Scottish Government as to (a) when the full business cases for the police and fire and rescue services will be completed, and (b) whether, in principle, the annual budgets for the services will be adjusted on the basis of the full business cases.</th>
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<td>The full business cases will influence and determine the detailed design of the new police and fire and rescue services. Their production is therefore a matter for the services themselves, rather than the Scottish Government. We expect them to be completed at the earliest opportunity available to the new services. The budgets for the SPA and SFRS for 2013-14 and 2014-15 were determined in last year's Spending Review, which we believe provides sufficient funding for the services to fully undertake their respective functions.</td>
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<td>31.</td>
<td>The Committee notes witnesses' concerns regarding the ability to achieve the projected savings contained in the outline business cases within the expected timescales. Therefore, we seek clarification as to the impact of the projected redundancies of civilian posts on the front line.</td>
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<td>We agree with the Committee that this is an important issue. From 2016-17, we anticipate annual recurring cash savings in excess of £130 million across police and fire and rescue services. Removing duplication will, of course, mean fewer staff are required. Administrative support services – including HR, Finance, procurement and Communications – are currently duplicated across eight police forces and eight fire and rescue services, and that duplication will be eliminated by reform. Similarly, there will no longer be the need for eight Chief Constables, eight Deputy Chief Constables, and thirteen Assistant Chief Constables in the single police service, and eight Chief Officers, four Deputy Chief Officers, and eleven Assistant Chief Officers in the single fire and rescue service. We are entirely confident that these projected savings – the calculation of which has erred on the side of caution - are deliverable and we will look to the new Chief Constable and Scottish Police Authority to identify the right balance between protecting police officer numbers and the level of support staff required for an effective, efficient service. Similarly it will be for SFRS to determine the level of fire fighters and other staff to deliver an effective, efficient service. A projected level of voluntary redundancy which would deliver the appropriate efficiencies and removal of unnecessary duplication was factored into both business cases. We expect this reduction to be managed through not replacing people leaving the service and voluntary redundancies, rather than...</td>
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<td><strong>Value Added Tax</strong></td>
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| **32.** Regardless of whether the cost of VAT is to be met by the police and fire and rescue services or whether alternative arrangements are in place, the Committee is concerned at the possibility of a significant annual recurrent loss from the Scottish budget. The Committee urges the Scottish Government to pursue with HM Treasury all possibilities to resolve this issue, for example, (a) by treating the Police Service of Scotland in a similar way to the Police Service of Northern Ireland, and/or (b) by giving local authorities the capacity to contribute to police and fire budgets, so as to help clarify that the new bodies can “draw upon local taxation”.

The Scottish Government shares the Committee’s concerns. The purpose of these reforms is to protect frontline services in the face of budget cuts from Westminster. It would therefore be extremely unfortunate if some of the potential benefits of those reforms were to be lost in this way.

We are therefore actively exploring with HM Treasury the VAT status of the new bodies with a view to minimising any impact VAT may have. Both the Scottish Government and HM Treasury are exploring options whereby VAT may be recovered. In particular, we are aware that the Police Service in Northern Ireland is able to recover the VAT it is charged on the supply of goods or services, and are pursuing with HM Treasury a similar recovery mechanism for the new Scottish police and fire and rescue services. |

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<th><strong>Cross-border arrangements</strong></th>
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| **33.** The Committee asks the Scottish Government to provide an update on the outcome of discussions with the UK Government regarding negotiations on crossborder arrangements.

Discussions with the UK Government are still ongoing. However, the Scottish Government is very confident that the current collaborative arrangements will continue. |
### Policing

**Failure to perform duty**

34. The Committee seeks clarification as to why the Scottish Government feels that it is necessary for the offence of neglect or violation of duty on the part of a constable to be prosecuted under solemn procedure, when witnesses have argued that this matter can be adequately dealt with under common law. 

Neglect or violation of duty are extremely serious matters. Failure to have appropriate penalties risks tarnishing the reputation of the vast majority of constables who are honest and conscientious. The Scottish Government therefore believes that firm action should be taken against the very small number of constables who act unlawfully, and that they should face a statutory offence with a significant penalty. However, we are prepared to consider a reduction in the maximum penalty available.

**Police appeals tribunal**

35. On balance we are persuaded by the argument that police appeals tribunal should have membership composing solicitors and advocates, in the interests of ensuring that proceedings are impartial and determined by an appropriately qualified body.

The Scottish Government welcomes the Committee’s view.

**Retirement of senior officers**

36. The Committee notes the concerns of witnesses on the provision in the Bill to require a chief constable, a deputy chief constable or an assistant chief constable to retire in the “interests of efficiency or effectiveness”, and asks the Scottish Government to consider and respond to these concerns.

The Scottish Government notes that this is not a new power. It has always been available to police authorities and joint boards, by virtue of the Police (Scotland) Act 1967. The Scottish Police Authority will simply inherit this power, which will allow it to require a senior officer to retire where their retirement can clearly be shown to be in the interests of efficiency or effectiveness of the service.

**Forensic services**

37. The Committee accepts the Scottish Government’s rationale behind giving the Scottish Police Authority the responsibility to provide forensic services so as to create a “sterile corridor” between police investigations and forensic investigations.

The Scottish Government welcomes the Committee’s support for giving the SPA the responsibility to provide forensic services.

The details of the new governance arrangements have still to be developed, in consultation with stakeholders and the SPA, but we expect the day-to-day operational model to remain as now. Scotland will continue to have a crime scene to court forensic service. Scene of crime officers will attend crime scenes, as requested by the police, and will co-operate fully with police crime scene managers; however, the forensic service will be accountable to the
a crime scene where requested to do so by the police service.

SPA, not the Chief Constable.

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<th>39. The Committee recommends that the Bill should include a provision specifying that forensic services should be supplied to the Police Investigations and Review Commissioner at no cost.</th>
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<td>The Scottish Government recognises the importance of ensuring that the PIRC has the necessary skills and capacity to carry out its job properly. We will therefore be bringing forward an amendment at Stage 2 to ensure that forensic services will to supply to the Police Investigations and Review Commissioner at no cost.</td>
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### Complaints and investigations

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<th>40. The Committee seeks clarity on how the relationship between the Lord Advocate and the Police Investigations and Review Commissioner would work regarding criminal investigations, and in particular as to the role of the PIRC in relation to serious incidents involving the police. We further seek the Scottish Government’s views on comments by some witnesses that the power of the PIRC in relation to public interest investigations is too wide.</th>
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<td>The relationship between the Lord Advocate/prosecutors and the PIRC is similar to the current relationship that exists between the Lord Advocate/prosecutors and the police when investigating criminal complaints against the police. The only difference is that the PIRC’s role only relates to investigating any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence. Currently such investigations may be dealt with asking a different police force to investigate. As with the police, prosecutors will direct the PIRC and the PIRC must comply with any lawful instructions issued by that prosecutor.</td>
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<td>Serious incidents will be investigated by the PIRC in line with the regulations provided for at section 67 of the Bill and subject to affirmative procedure. This approach allows for greater consultation and flexibility than placing the detail on the face of the Bill and also allows for the regulations to be updated to reflect changing circumstances.</td>
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<td>In terms of the PIRC’s powers in relation to public interest investigations, the Scottish Government has listened to the views expressed by some witnesses and is considering them carefully. We need to balance these views against the PIRC’s important role in maintaining public confidence in the police.</td>
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<th>41. As with the chief constable and chief fire officer, we consider that the PIRC should be appointed as early as possible to enable their investigating team to be in place before 1 April 2013, but that the appointments process must be both independent and perceived to be</th>
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<td>The Scottish Government fully acknowledges the importance of the PIRC being fully operational from 1 April 2013. Work has therefore begun on the processes needed to appoint a new Commissioner. This will be done through an open and fair competition and an independent appointment process.</td>
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<td>42. The Committee also seeks clarification as to whether the Scottish Government intends the PIRC to be a self-contained body or whether its staff will be seconded from the police.</td>
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<td>43. The Committee agrees that the PIRC should have qualified privilege to protect him or her from defamation proceedings, as suggested by the Police Complaints Commissioner for Scotland.</td>
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<td>44. The Committee notes that the Bill specifies that complaints against the PIRC may ultimately be referred to the Scottish Public Services Ombudsman (SPSO), but that there appears to be a number of areas which the SPSO cannot investigate. The Committee invites the Scottish Government to clarify whether it considers there to be sufficient independent oversight of the PIRC’s complaints handling procedures.</td>
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<td><strong>Independent custody visiting</strong></td>
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<td>45. The Committee is broadly content with provisions on independent custody visiting. However, we note some witnesses’ concerns about the potential for access to be denied and invite the Scottish Government to clarify whether it is satisfied that this is consistent with international obligations.</td>
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<td><strong>Human Rights</strong></td>
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<td>46. The Committee notes the good practice from Northern Ireland in relation to embedding human rights within all aspects of policing and recommends that the Scottish Government gives consideration to the Bill being more explicit on human rights.</td>
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<td><strong>Fire and Rescue</strong></td>
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<td><strong>Fire and Rescue Functions</strong></td>
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<td>47. The Committee accepts that it would be helpful for the rescue aspect of the fire and rescue service’s functions to be clarified to a greater degree, but does not believe that this should necessarily be included in the Bill. We therefore ask the Scottish Government to discuss with fire bodies where best to clarify or codify their rescue functions, such as in the Fire and Rescue Framework or the next Fire</td>
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<td>Fire officer and staff issues</td>
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<td>48. The Committee notes the comments of the Fire Brigades Union and the Chief Fire Officers Association Scotland regarding the provision in the Bill which removes section 49 (on negotiation arrangements in relation to conditions of service) from the Fire (Scotland) Act 2005. We therefore invite the Scottish Government to explain the rationale for removing this provision.</td>
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At present, negotiations for fire-fighter conditions of service are conducted at a UK level through the National Joint Negotiating Council. Section 49 of the Fire (Scotland) Act 2005 gave the Scottish Ministers the power to set up specifically Scottish arrangements for negotiating pay and conditions for the eight Services. These powers have not been used. It will be for the SFRS to determine how to review future arrangements. Should it wish to proceed on a Scottish basis, it can negotiate directly with the relevant trades unions.
Police and Fire Reform (Scotland) Bill – Stage 1: The Cabinet Secretary for Justice (Kenny MacAskill) moved S4M-02800—That the Parliament agrees to the general principles of the Police and Fire Reform (Scotland) Bill.

After debate, the motion was agreed to ((DT) by division: For 93, Against 5, Abstentions 13).

Police and Fire Reform (Scotland) Bill: Financial Resolution: The Cabinet Secretary for Justice (Kenny MacAskill) moved S4M-02591—That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police and Fire Reform (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.

After debate, the motion was agreed to ((DT) by division: For 104, Against 5, Abstentions 0).
Scottish Parliament

Thursday 10 May 2012

[The Presiding Officer opened the meeting at 09:15]

Police and Fire Reform (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): Good morning. The first item of business is a debate on motion S4M-02800, in the name of Kenny MacAskill, on the Police and Fire Reform (Scotland) Bill.

09:15

The Cabinet Secretary for Justice (Kenny MacAskill): I am pleased to open the debate on the general principles of the Police and Fire Reform (Scotland) Bill, and thank everyone who has helped to shape this important bill so far. In particular, I thank the convener and members of the Justice Committee for their detailed scrutiny and comprehensive stage 1 report, and I welcome their support for the general principles of the bill.

I should set out the context. In 2007, we set out to build a safer and stronger Scotland, and we have made significant and sustained progress. Scotland’s fire and rescue services and the police are performing well. Crime is at a 35-year low and the clear-up rate for violent crime is at a 35-year high. That is helped by the 1,000 additional police officers whom we have delivered into Scotland’s communities. Fire deaths are almost 50 per cent lower than they were a decade ago.

The police and fire and rescue services work with community partners to improve the lives of the people of Scotland and to support and help to sustain economic growth. The men and women of those services—whether they are bobbies on the beat, front-line firefighters or staff who carry out important duties behind the scenes—should be proud of that record of achievement, but the unprecedented cuts that are being imposed by Westminster mean that we need to take early, decisive action to ensure that we protect those achievements. We need to reform to protect and improve front-line services in our communities, particularly for those who need them most.

Restructuring to create single services is the best way to achieve that aim. Single services will also create more equal access to specialist support and national capacity and will strengthen the connection between services and communities. That is part of our wider public service reform programme, which focuses on improving outcomes for the people of Scotland.

I want to comment on the consultation and engagement that have taken place. As well as the two formal consultations, we have worked closely with the services, staff associations, trade unions, local government and others to shape our proposals.

The Presiding Officer: Mr MacAskill’s microphone has gone off. Can we get it back on, please?

Will you resume your seat for a moment, Mr MacAskill?

09:18

Meeting suspended.

09:18

On resuming—

The Presiding Officer: Mr MacAskill’s microphone is back on. Please continue, Mr MacAskill.

Kenny MacAskill: We have listened to senior officers, officers and staff in both services and the people in communities who rely on those services. I welcome the positive way in which stakeholders have engaged with us on reform and their commitment to ensuring that it is successful. Many have emphasised that commitment—for which I am extremely grateful—in their evidence to the Parliament. That positivity has been echoed in the work of the four committees that have considered the bill and delivered constructive and comprehensive reports. The bill has benefited from, and will continue to benefit from, that engagement and scrutiny.

The Government will continue to listen to Parliament during its scrutiny of the bill, to those who will be responsible for running and scrutinising the new services through their involvement in the 16 pathfinder pilots that we have set up to trial the new local arrangements, and to the bill sounding boards that we have set up to facilitate wider consultation with key stakeholders. If we work together, I am confident that we will deliver a robust, effective and high-quality act that meets the needs and expectations of Scotland’s communities and fulfils our ambitions for Scotland.

The main legislation underpinning policing in Scotland is more than 40 years old. The bill will repeal that legislation and modernise it to create a service that will be fit to deal with the changing and more complex demands of the 21st century. The statutory framework governing the fire and rescue services was modernised in 2005. The bill will therefore amend that to establish a single service.
The bill sets out, as has never been done in legislation, a detailed framework for the new services and it modernises their governance to provide an enhanced focus on delivery of local services.

For the first time, the bill clearly defines the respective roles and responsibilities of the key players: Scottish ministers, the Scottish police authority, the Scottish fire and rescue service board, and the chief officers of both services. Also for the first time, the bill provides opportunities for Parliament to scrutinise policing and fire and rescue services regularly and systematically.

The national governance structures will ensure a focus on the local. Single services will strengthen the links between the services and the communities that they serve by enabling individual local councils, not regional joint boards, to take on a new role at a national level and to shape services in their local area.

Lewis Macdonald (North East Scotland) (Lab): I appreciate the cabinet secretary’s generosity in taking an intervention. What does he mean by a new role at national level for local authorities? How will that be an improvement on the current situation?

Kenny MacAskill: Matters will be dealt with locally and nationally. The local divisional commander will interact with the local authority at a higher level than the local authority would have interacted previously when delegates simply went to councillors or whatever. The opportunity to be in charge of what is happening locally and to play a part in what is happening nationally will be much greater than it ever was before as we move towards a national service.

As we have said—and I will be commenting on this later—there will be a role for locally elected representatives to play at the national level on the SPA, but the greater accountability at local level will allow for greater interaction between the divisional commander and more senior officers.

I welcome the Justice Committee’s constructive and wide-ranging report. I submitted a detailed, written response to the report yesterday and I will not attempt to respond to all 48 conclusions now, but I would like to consider some of the main issues that the committee raised.

The timescale for reform is challenging, but financial realities mean that we need to take early action to protect and improve the services. We need to set up the new services as soon as possible to maintain the momentum for reform, to reap the benefits, and to provide certainty for the services, their workforce and the communities that they serve.

The leadership of the services supports a start date of 1 April 2013 and I will continue to work closely with them and others to achieve that. That is just one step on the reform journey, and we will need strong leaders in place to lead the services into the future. I therefore strongly agree with the committee’s recommendation that key appointments such as the chief constable, chief fire officer, board chairs and the police investigation and review commissioner should be made as soon as possible.

Dave Thompson (Skye, Lochaber and Badenoch) (SNP): The cabinet secretary will know that, in the past, I have raised the issue of specialist back-up and support services. Obviously the appointment of the chief officers and the boards will be crucial in that respect. I am sure that he will agree that as many as possible of those services should be spread around the country and that striving to do that should be a basic principle for the boards, the new chief constable and the new chief fire officer.

Kenny MacAskill: We share that view; indeed, it has always been a desire of the Government. Ultimately, the matter is one for the boards, the authority and the respective chief officers, but we expect the board and authority to reflect Scotland’s communities not only in respect of gender and ethnicity but geographically and to ensure that the benefits of a single service—by which I mean specialisation, the availability of services and other such fruits—are shared across the country. In any case, we are working hard to achieve all of this and expect the chief officers and chairs of the boards to be in place in autumn 2012.

I share the committee’s concerns on VAT. The main purpose of reform is to protect front-line services in the face of budget cuts from Westminster. Although we based our costings for reform on such a worst-case scenario, it would be a travesty if some of the potential benefits of the reforms were to be lost in that way.

David McLetchie (Lothian) (Con): Will the cabinet secretary clarify whether the reform process is being driven by the need for protection from the so-called budget cuts from Westminster or by a desire to ensure that Scotland has the best possible service?

Kenny MacAskill: I have always made it clear that I did not come into post advocating the creation of a single service. However, the budget cuts have made it a necessity. On that basis and after discussions with those involved in the services, we have decided to make a virtue of a necessity. We have to change if we are to deal with the fundamental cuts coming from Westminster. Nevertheless, as we do so, we should take the opportunity to ensure that we provide the best possible service and that we
improve and enhance what are already outstanding services. I point out to Mr McLetchie that at the Scottish Police Federation conference a few weeks ago I received a standing ovation; meanwhile, as we speak, 20,000 officers are marching in London against the United Kingdom Government and the Home Secretary.

The Scottish Government is actively exploring with Her Majesty’s Treasury the new bodies’ VAT status and I can tell Mr McLetchie that we have been gratified at the Treasury’s willingness to discuss the matter. Although discussions are still at a preliminary stage, we as a Government are grateful for the Treasury’s attitude and are working together on a solution.

I welcome the committee’s conclusions on the role, size and composition of the Scottish police authority and the Scottish fire and rescue service boards. They will play a crucial role in the new services’ success, and the committee is quite right to point out that their primary function is to govern the new services and to hold the chief officers to account, not to provide local representation. As a result, we agree with the committee that we should not prescribe in legislation the boards’ exact make-up. It is more important that each board has the right combination of members with the skills and experience to do its job effectively.

On the size of the boards, I note the committee’s concerns about their having any fewer than 11 members and the views expressed by witnesses at stage 1. We will take a final decision on the matter after this debate, but we are happy to engage with members and other groups in that respect.

Critical to the success of the reform will be how the national boards and local authorities work with each other. The bill clearly links the national and the local by providing that local authorities will be consulted on strategic priorities and strategic plans, by placing duties on the chief constable and the SFRS that are tied to local service delivery and by ensuring that local plans reflect national strategic plans where appropriate. All that will be done while retaining the flexibility for local authorities to develop their own models of engagement and to formulate local plans reflecting local priorities and circumstances. The pathfinder pilots are considering how that will work in practice and their findings will inform any guidance on the issue.

The independent investigation of the most serious criminal allegations and incidents involving the police is crucial to ensuring public confidence and to meeting our human rights obligations. It is therefore important that the police investigations and review commissioner has everything necessary to carry out their job effectively. The Justice Committee has made a number of observations and recommendations on how the commissioner will carry out their investigations, which I will consider carefully before stage 2.

The reforms that are set out in the bill are essential to safeguard the vital front-line services on which communities depend. The reforms will improve performance by retaining local services for local communities while giving all parts of Scotland equal access to national expertise and assets. The new services will enhance partnership working at local level. Further, at national level, the Scottish Parliament will have more opportunities to scrutinise the performance of services and to hold them to account.

I move,

That the Parliament agrees to the general principles of the Police and Fire Reform (Scotland) Bill.

09:31

Jenny Marra (North East Scotland) (Lab): I welcome the opportunity to speak in the debate on behalf of the Justice Committee. We were appointed as the lead committee for consideration of the Police and Fire Reform (Scotland) Bill at stage 1, with the Local Government and Regeneration Committee as the secondary committee. I thank that committee for its report on the parts of the bill that relate to arrangements for local authorities and implementation of local police and fire and rescue services. We are grateful to the Finance Committee and the Subordinate Legislation Committee, which also reported on the bill, helping us to gain a wider understanding of the financial and technical issues. Finally, I thank all the witnesses and those who provided written submissions, some of whom found themselves in front of two or three committees within a matter of weeks.

I will begin by making clear the committee’s position on the general principles of the bill and then explain how we arrived at some of our main conclusions and recommendations. In our view, the general principles are to merge the current police and fire and rescue services into two single services, transferring the governance and oversight responsibilities from local authorities to new national boards. The key issue for the committee in considering the general principles was whether the new national structures could deliver the single services effectively throughout Scotland.

Some witnesses argued that the bill will erode the local authority role in policing and fire and rescue services, while others said that reform will not be detrimental to local policing or local fire and rescue services. The majority of committee members agreed with the latter view. We believe that reform presents an opportunity to enhance
service delivery across communities in Scotland. The majority of the committee therefore supports the general principles of the bill. However, we raised a number of concerns about implementation of the reform, which I intend to discuss briefly.

We heard overwhelming evidence from police and fire bodies that the chief constable and chief fire officer should be appointed sooner than December, as originally planned. We recommended that both positions should be filled as early as possible to ensure that there is enough preparation time to be ready on day 1, which is 1 April 2013. I am delighted that the Government has listened to the views of the committee and witnesses on the issue and has agreed to start the appointments process in the summer rather than the autumn. I hope that the Government is as supportive of the other recommendations in our stage 1 report.

The committee heard evidence that there might be difficulties in achieving within the expected timescales the projected savings that are set out in the outline business cases for reform, which were used to inform the financial memorandum. We also heard that there is, understandably, concern among civilian staff, in particular about projected redundancies. We heard that 2,000 or more civilian posts could go in the police service alone. Therefore, we asked the Government to clarify the impact of those redundancies and to set out how they might affect the front line.

Another issue that arises from reform is that, unlike the current police and fire authorities and the joint boards, the new services may not be able to recover VAT. Regardless of whether that money will need to come from the police and fire and rescue budgets or elsewhere, we are concerned that the loss of the VAT exemption will result in an annual recurrent loss of millions of pounds from the Scottish budget. Therefore, we have urged the Government to pursue with the Treasury all available options to ensure that, like the Police Service of Northern Ireland, the new services qualify for a VAT exemption.

Leaving aside implementation issues, I turn to another theme that arose from the evidence. More robust accountability mechanisms are needed for the police service than are proposed in the bill, particularly as the police authorities and joint boards, which historically have provided the main democratic oversight of the police service, are to be abolished.

Some witnesses argued that there could be more accountability to the Parliament and that it could undertake more scrutiny, and the committee agreed that there is a strong case to be made for securing in the bill parliamentary oversight of the police. We noted that there were different ways of achieving that. For example, the role could be carried out by the Justice Committee itself, by an ad hoc committee or by a new parliamentary body along similar lines to the Scottish Commission for Public Audit. We have called for those and other options to be explored further by the Government. In any event, we think that we need to find a new way of ensuring that the principle of the police carrying out their duties with the consent of the public is, and is seen by the people of Scotland to be, upheld under the new arrangements.

The boards of the Scottish police authority and the Scottish fire and rescue service provoked much discussion among witnesses, and we received a variety of views—in particular, on their optimum size. Some witnesses argued that the boards should focus on scrutiny and have a larger membership, with councillors being their foundation. Others took the view that the boards should be governing bodies and that the skills and expertise of the members was more important than the boards' size. The committee agreed with the latter view that the main function of the boards is to govern the new services and to hold the chief constable and the chief fire officer to account. We were reluctant to stipulate the size of the boards, but we leaned towards the view that a board of fewer than 11 members would not provide the breadth of knowledge and expertise that is required. We also agreed with witnesses that the boards must be as transparent as possible, to demonstrate accountability and to gain public trust.

There are a few other issues that I would like to touch on, the first of which is local budgets. With reform, it is intended that funding for the new services will be provided entirely by the Scottish Government. Some stakeholders suggested that budgets should be devolved to local authorities and local commanders, so that there is some form of accountability to the local authority for policing in an area. We believe that, in the interests of transparency, it would be helpful for local authorities to be given a snapshot of resource allocation in their area as of 1 April 2013, so that they can measure any future changes, such as the transfer of funds, assets and human resources. In addition, we have asked for clarification of whether, in practice, local authorities will have any influence over police resources.

Finally, the committee has urged the Government to put in place arrangements to ensure that the police investigations and review commissioner and his team are appointed as early as possible, so that the public can have confidence in how investigations of complaints against the police are conducted from day 1.

I reiterate that the majority of the committee supports the general principles of the bill, and I
ask the cabinet secretary to consider fully our constructive suggestions on how it might be improved. I look forward to hearing other members’ contributions to the debate.

09:39

Lewis Macdonald (North East Scotland) (Lab): Labour’s approach to the general principles of the bill starts from our manifesto commitments last year. We said that we wanted to see “a single police force for Scotland, with delegated authority and local accountability mechanisms,” and “a single fire and rescue service”.

We said that we believed that single services could improve performance, increase efficiencies
and
“free up resources for the front line”.

We also said that there should be “no cuts to police on the beat,”

that police jobs and police numbers should be protected, and that “police officers should not be taken off the front line to cover the duties that should be carried out by police staff.”

The committees that considered the bill raised a range of concerns—as we heard so eloquently from Jenny Marra—about what extra resources have been secured for front-line services under the bill, whether there are adequate mechanisms for local and national accountability, and what the impact of civilian staff redundancies will be. We share many of those concerns.

One aspect of this is the Government’s failure to find a way of maintaining the eligibility of services to recover value added tax, which is estimated to cost £22 million a year for the police service alone. The cabinet secretary said that he is still exploring how that can be addressed with ministers in the UK Government, but the views of Treasury ministers have already been made clear. They have been categorical not only in stating that a national police force is ineligible for recovery of VAT but in making clear that the Scottish ministers have known that from the outset, because the relevant statute provides for recovery only for services that are funded by local rather than central Government.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): There may be a way for local authorities to have the ability to contribute, thereby showing that these are local services. Does the Labour Party have any suggestions to assist with that?

Lewis Macdonald: I am pleased that the convener of the Justice Committee has made that point. I asked the cabinet secretary on 27 March whether he had considered whether there was any way of keeping single services within the local government family in order to limit their tax liability, as suggested by stakeholders such as the Convention of Scottish Local Authorities and Unison. Indeed, Christine Grahame will know that point (b) in paragraph 32 of the Justice Committee’s report asks precisely the same question. Unfortunately, Kenny MacAskill’s reply to me on 27 March was that, “Although we have given consideration to the suggestion that you mention, it still lacks clarity.”—[Official Report, Justice Committee, 27 March 2012; c 1229.]

The responsibility for fleshing out the suggestion clearly lies with the Scottish Government, as it introduced the bill. If the Government did not do so in advance of stage 1, I hope that it will do so in advance of stage 2. I struggled to find a response to paragraph 32(b) in the Scottish Government’s response to the Justice Committee’s report.

John Finnie (Highlands and Islands) (SNP): It seems that the trigger for exemption from VAT is local delivery, yet the UK security services are exempt. Is the member aware of that?

Lewis Macdonald: The precise statute under which VAT recovery is available to police and fire services relates not just to local delivery but to local funding. As the Justice Committee convener suggested, that is the nub of the question, and ministers have yet to answer that question.

Christine Grahame: I am delighted to take a further intervention from Ms Grahame.

Christine Grahame: Even if I were to accept the argument that there is not a solution as we have suggested, could the member say what the Labour Party’s solutions would be if it was in government? Has it investigated and explored other ways of ensuring that the VAT exemption remains?

The Presiding Officer: Mr Macdonald, I will give you extra time because of all the interventions that you are taking.

Lewis Macdonald: I am grateful to the Presiding Officer for that constructive and enlightened approach on this occasion.

I am of course willing to bat the question back to Ms Grahame’s party and Government, because this is not something that ministers have had to think about only since they were re-elected in May 2011. As Mr MacAskill pointed out to me in committee when I asked a question on this matter, the Scottish Police Services Authority has been paying VAT since the Scottish National Party was first elected in May 2007. If Mr MacAskill and his
colleagues have not found a way to persuade Treasury ministers to take a different approach to VAT on the SPSA over the past five years, it stretches credulity to think that they can intervene with Treasury ministers and persuade them to change their minds at this late stage. Clearly, there is a fundamental flaw in the way in which the Scottish Government has introduced the bill.

The Government argued in the outline business cases and the policy memorandum that single services offer greater savings than regional services. That is one of the main reasons—not the only one—for providing a single service in place of a number of regional services. However, the savings of around £20 million each year are cancelled out by the VAT liability. In judging what is the best model, ministers appear to have said that, on the one hand, they will go for the single service because it saves £20 million but, on the other, they will proceed with a bill without having solved the VAT issue even though it will cost £20 million. That is why witness after witness questioned how significant savings could be made, not just to pay the VAT, but to achieve the other economies that the cabinet secretary has promised, and which he said today have driven the Government’s approach to the bill, while maintaining police numbers as he has also pledged to do.

The savings must come from somewhere. The fear is that cuts to civilian staff posts will put the delivery of front-line services at risk. As we have heard from Jenny Marra, more than 900 posts have already gone and some 2,000 more posts are under threat. Dave Watson of Unison told the Justice Committee that one result of that will be that police officers will be paid

“at great cost, to do jobs that they are not qualified to do.”

—[Official Report, Justice Committee, 28 February 2012; c 1015.]

In its response to the Justice Committee yesterday, the Scottish Government replied to those concerns by implying that the only civilian posts under threat are administrative support posts in areas such as human resources and finance, where jobs will no longer be needed once the eight services are merged into one service. However, that is not what witnesses told the committee, and it is certainly not what trade unions representing police staff told me. Indeed, Mr MacAskill defended the approach taken in Lothian and Borders to replace police custody support staff with police officers at significantly higher rates of pay on the basis that a police officer could do something else when there was nobody to guard in the cells of the police station. That logic points in the direction warned of by Unison: reversing the civilianisation of roles that do not require a police officer, and taking the police service back to the 1970s and a less effective, less efficient and less professional era.

Kenny MacAskill: Is the member saying that the decision that was taken by the chief constable, and supported by the police board in Lothian and Borders, was wrong? I understand that the police custody support officer’s pay rate was higher than that for the police constable, and the police constable offered flexibility.

Lewis Macdonald: My concern is not with that specific decision—I highlighted the issue because the cabinet secretary chose to highlight it—but with the logic of the decision. If the view is taken that jobs that are carried out by civilian staff could just as well be done by police officers in their spare time, the risk is run that police officers cease to police. That is the fundamental risk that Unison and others have rightly highlighted. The consequence of such an approach is that, although the number of police officers stays the same, more and more are employed doing jobs that do not require the powers of a constable.

Maintaining levels of policing in our communities is not only about maintaining the headline number of officers; it is about whether officers are employed in policing. A constable who is employed in custody support in place of a civilian worker—whatever the relative rates of pay—is clearly not doing that policing job.

Such changes are not cost or risk free. For example, John Duffy of the Fire Brigades Union argued that redundancy costs in the fire and rescue service could be as much as twice the amount that is indicated in the outline business case. Part of the reason for the Government’s failure to bring forward a full business case no doubt relates to the timescale that it has imposed on the process, which was a source of concern for many witnesses who gave oral or written evidence. In other words, the problems that are identified in the outline business case have not been solved, and the cabinet secretary said yesterday that the problems will not be addressed until the new services are in place.

I am glad that the cabinet secretary has accepted the wisdom of the committee’s findings on the early appointment of chief officers, but it would not be too hard to find examples of ministerial replies where autumn does not end until nearly Christmas, and summer appears to go on all year. It would therefore be useful if the minister could, when winding up, indicate not just the season but the calendar month in which the appointments are expected to take effect.

The Government’s concession appears to indicate that the initial timetable was inadequate. The question remains—I speak from experience, as I am sure the minister appreciates—whether
simply appointing the chief officers earlier will go far enough to ensure a smooth and efficient transition from eight police and fire services to one police and one fire service. Major changes of that kind require time to work through. For example the transition in local government in the mid-1990s involved shadow councils and a transitional year, but that has not been ministers’ approach in this case.

Ministers accept that the transformation in structures and culture in these services cannot all be accomplished before 1 April 2013. They now accept the need for chief officers to be in place early. I invite them to consider carefully whether, even at this stage in proceedings, a more phased approach, following the appointment of the chief officers, might produce a more effective delivery of the targets that ministers have set.

The bill endorses the general principle of local accountability but, like the committees, we are not sure that ministers have yet got that right. It is disappointing that they have rejected the suggestion of the Local Government and Regeneration Committee on the development of strategies for public engagement in local services, and it is even more disappointing that the Government has rejected the Justice Committee’s suggestion that local councils should be given a statutory right to specific information about the level of resources provided in each council area at the point of amalgamation of services. Given the concerns that are felt in many communities about the effects of centralising services, that seems a modest proposal, which the Government’s commitment to transparency in this process should have allowed it to welcome. It is a matter to which we are bound to return at stage 2.

This is a once-in-a-generation opportunity to transform vital public services. In supporting the general principles of the bill at stage 1, we believe that ministers have more to do if they are to secure the prize of greater efficiency and better services. They should recognise the vital role that is played by civilian staff, stop the drift of police officers into civilian roles and address the issues of local accountability and democratic deficit in control of these services. I look forward to hearing ministers respond to some of those points this morning and to having the opportunity to improve the bill at stage 2.

The Presiding Officer: In line with my always constructive and enlightened approach, you have about seven minutes, Mr McLetchie.

09:51

David McLetchie (Lothian) (Con): Thank you, Presiding Officer.

I welcome the opportunity to speak in this debate on the Police and Fire Reform (Scotland) Bill. As I suspect will be the norm in speeches this morning, I will focus my comments on the establishment of a single police service for Scotland. The proposal for a single fire and rescue service, although equally important, is, in my judgment, a sensible efficiency measure and does not raise the same questions or issues of principle as the proposals for police reform do.

The Scottish Conservatives support the restructuring of police services in Scotland. Indeed, the creation of a single police force was a feature of our 2011 election manifesto. It is clear that in the current economic climate, savings have to be made throughout the public sector. A single force has the potential to create a more efficient police service for Scotland, and it is clear that the status quo of eight separate services is not an option, particularly if the current levels of front-line policing are to be maintained.

Our priority is to provide an effective, visible and local police service that is accountable to local people and communities throughout Scotland. Although I have expressed support for the general principles of the bill, we have a number of concerns on local accountability and the delivery of savings via the creation of a single police force, which I would like to outline this morning.

Any restructuring must ensure that police services are accountable to local people and that communities have a direct relationship with the police services that are serving them. The Justice Committee heard concerns from a number of witnesses that the bill does not strike the right balance between the determination of priorities at national level and local, community-based policing. The Government has invested a great deal of faith in its pathfinder projects—let us hope that that confidence is justified.

I have considerable concerns about the future employment of additional police officers who are currently funded by local authorities. According to Pat Watters of the Convention of Scottish Local Authorities, there are 600 to 800 such officers, and they are a key component of the 1,000 additional officers, who represent a pledge that we have sustained. Councillor Watters questioned whether councils would continue to fund those posts on the assumption that the additional funding would likely be transferred with the posts out of local government and into the new single service budget.

In its response to the stage 1 report, the Scottish Government asserts that local authorities will still be able to fund those additional officers and that the funding for them will not be transferred to the Scottish Government. It may be that our councils will be able to continue that
funding. However, the fact remains that the Scottish Government will be unable to guarantee the continuation of funding for those officers, even though the new police service for Scotland will be their employer. As a result, the employment of between 600 and 800 front-line police officers will be put at risk. That is not good enough and we need to find a way to localise certain aspects of the police budget to allow that and other initiatives to proceed.

On a related matter, as Lewis Macdonald pointed out in his speech, the stage 1 report urges the Scottish Government to provide local authorities with a snapshot of resource allocation to authorities as of April 2013, so that they can measure any future changes such as transfers of funds, assets and human resources. I disagree with the Government’s response to that recommendation. Although it is true that councils will be able to request some of that information from local commanders, it is simply not good enough to rely on that. In the interests of transparency and accountability, local authorities should be provided with that information before funding for the new service is centralised.

The financial memorandum, which sets out the potential savings that would come from a single police force, has been based on an outline business case that was produced by the Scottish Government in July 2011, before it had decided which reform option to pursue. The memorandum states:

“It does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets.”

Chief Constable Smith of the Association of Chief Police Officers in Scotland told the committee that the financial memorandum was “never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings.”—[Official Report, Justice Committee, 28 February 2012; c 971-2.]

On 22 February 2012, the bill team told the Finance Committee that work for the full business case was being developed, but a full business case has still not been produced. Accordingly, the Scottish Government has not been able to provide ahead of today’s debate a full breakdown of the projected savings from having a single force. Despite the indications from the bill team, the Scottish Government’s latest response now asserts that a full business case is a matter for the police and fire services themselves and will be completed at the earliest opportunity available to the services. In my judgment, that is too little, too late. Full figures are fundamental to the argument for creating a single police and fire service, and it is important that Parliament is given the necessary information before debating the bill.

Accordingly, the Scottish Government’s assertion that a single force could achieve £130 million of savings within a year, with a total saving of £1.7 billion over 15 years, is highly questionable. The Government is rightly committed to maintaining the 1,000 extra police officers we helped to secure during the previous parliamentary session but, as police staff wages represent approximately 80 per cent of the total police budget, the protection of police officer numbers will ring fence a large proportion of total police spending to make financial savings. If those numbers are to be maintained, the question is how many police staff posts will need to be lost in order to achieve the level of savings that the Scottish Government is claiming will be made.

The Scottish Government has already set savings of £88 million by 2014, of which more than £50 million must be made by reducing police staff costs, which will amount to more than 2,000 full-time posts. That is not an insignificant number, especially given the fact that, last year, the total number of police support staff was around 7,000. At a time when police staff levels have already been reduced by 1,000 posts in the past two years, it will clearly be a challenge to achieve a further reduction in staff numbers via voluntary redundancy alone. It is worth noting that Chief Constable Smith told the Justice Committee that his...
10:00

John Finnie (Highlands and Islands) (SNP): As the cabinet secretary has made clear, this reform process has been driven largely by Westminster cuts. Nevertheless, it is important that we constantly review our public services. Indeed, the Christie commission has played a vital role in that respect and the current approach to shared services will certainly be applied to the new services. As far as the Scottish police service is concerned, the status quo is not sustainable if we are to maintain front-line numbers.

There has been wide consultation on the proposals and I want to thank everyone who has contributed to the debate in either written or oral form. I certainly think that, as a result of the bill, we will end up with something that is more democratic and accountable and allows more scrutiny.

I am well aware of the concerns that have been expressed about support staff numbers. However, what have not changed are the statutory requirement for an efficient police service and the monitoring role of Her Majesty’s inspector of constabulary. Mr McLetchie quoted Chief Constable Smith in his speech, but Chief Constable Smith also made it clear that there was no movement of police officers into back-room positions.

Although I understand people’s concerns about the creation of a single service and the potential for political interference, I must reaffirm the cabinet secretary’s point that the bill clearly defines the roles and responsibilities of Scottish ministers, the police authority, the chief constable, the local council and the local fire officer and police commander in each local authority area. It also makes it clear that only the chief constable can direct police officers and only the Lord Advocate or the procurator fiscal can direct the chief constable in the investigation of crimes. Neither provision is a change to the present situation.

We also have an opportunity to strengthen links with communities. In the Highlands and Islands, Orkney sends two delegates to Inverness once every six weeks. Under a regional model, it would send only one delegate perhaps to Aberdeen once every six weeks; however, under the proposed model, the entire council will have hands-on involvement with the local commander with regard to police and fire services.

Hanzala Malik (Glasgow) (Lab): How will the council exchange views with the new police force? At the moment, representatives go before a board. If, as the member suggests, the whole council will be involved, what shape will that involvement take?

John Finnie: Of course, the pathfinder pilots are still on-going—indeed, there is one in my area—but the fact is that the policing plan will play a key role. I imagine that there will be widespread consultation on that from community council and community beat-officer level up, with the aim of delivering a plan that is appropriate to each area. Moreover, the local authorities must be involved in setting priorities that are appropriate to them.

I think that the snapshot that a number of members have mentioned is terribly important. We already have a commitment to maintain 17,234 officers, and we need a similar commitment to a baseline for front-line fire and rescue officers that will allow scrutiny to be carried out. I think that it is remiss of the committee’s report not to pick up on the fact that security in that respect partly comes down to something that is formally called regulation 19, which many police officers will be very familiar with. In my opinion, the bill alters that regulation unnecessarily, and I hope that that issue will be addressed.

The committee spent a lot of time discussing resources and resource allocation models. I should point out that, in each of the forces, tensions already exist between the localities and the centre, and we need to understand how they will be dealt with in the allocation of resources. Assistant Chief Constable Finlay of the Police Service of Northern Ireland told us in evidence that, under its current tactical tasking model, it is the merit of the individual bid for additional resources, not the rank of the person who makes it or the locality from which it comes, that is important. We also heard about the sharing of specialist services, which is important, particularly in a large landward area such as the one that I represent.

The appointment of the chief constable and chairs is important. We know that the boards’ primary function will be to oversee the new services and hold the chief officers to account. The composition of the boards will therefore be important. There should not be a bidding war, as happened at one time, to see whose area can be represented. We need people with the appropriate skills to do that work in very public bodies.

We have heard about early appointments in autumn 2012. That is quite right. That is the response, but that is subject to the progress that is made and a role for the Commissioner for Public Appointments in Scotland, which is important.

Scrutiny has been touched on. Jenny Marra accurately reported what the report says. A sub-committee of the Justice Committee to fulfil that role is another option that we could actively consider, and I think that it will feature at some point.

It is important that leadership is shown. I pay credit to the Scottish Police Federation, the
Association of Scottish Police Superintendents and the Fire Brigades Union, which have grasped what many would consider to be a very difficult issue and moved it forward.

I could say many things, but I would like to touch on the Police Service of Northern Ireland and the advice that we received from Assistant Chief Constable Finlay and Sir Hugh Orde. The report mentions the human rights aspect. We have commended the model that applies in the PSNI. I would like to see human rights references included in the oath that Scottish police officers take, the training and, indeed, the entire ethos of the new service.

Can you remind me whether I have six or seven minutes, please, Presiding Officer?

The Presiding Officer: You have six minutes, so you need to start winding up.

John Finnie: I will conclude at that. Thank you very much.

10:06

Graeme Pearson (South Scotland) (Lab): As a member of the Justice Committee, I am pleased to associate myself with the comments and recommendations in the report.

We gathered an abundance of evidence that identified various areas in which positive decisions and sensible resolution are needed. Many of the recommendations have already been commented on and, given the time that is available, I will not be able to analyse in depth all that has been said. Suffice to say, the bill must not only deliver the cost cutting that the SNP Government seeks; more important, it must deliver at a community level by improving police and fire services for the people and communities of Scotland. The Government has a duty to provide a credible strategic vision to deliver the difference.

Lewis Macdonald maintained that we are talking about a once-in-a-generation change. In my view, the bill proposes the most fundamental changes to the police and fire services in more than 200 years. The end of the current tripartite arrangements prepares the ground for a slimmed-down hierarchy but creates new accountability, governance and scrutiny challenges. A national police service demands significant and effective democratic oversight.

Various witnesses, including Robert Black, in particular, identified the need for proper governance. The Auditor General spoke powerfully in connection with what he described as a “democratic deficit” in the bill’s arrangements, particularly in regard to policing—a vacuum in the way in which democratic accountability is delivered in the bill. Should any cabinet secretary exercise powers to appoint, to pay, to obtain reports from a chief constable, convener and board, to sack a chief constable and to provide the police and fire services with their budgets, all through a civil service that is outwith the immediate oversight of a democratically elected group? The police exercise powers to arrest, to use force, to detain, to report for consideration of prosecution and to aid the conviction of a citizen. Would it not be proper for those functions to attract the highest level of democratic accountability? In Scotland, that should mean a proactive role for the Parliament.

Policing requires the consent of the public, and that consent is built on the knowledge that elected representatives at the national level effectively oversee the professionals concerned in the management and oversight of the police and fire services.

The Scottish police authority is not designed to offer democratic accountability and nor is it likely to do so, although it should be capable of effective governance of policing, as should its sister board in relation to fire and rescue. The Government suggests that the Justice Committee could deal with accountability issues. Alternative views have been expressed on that today. In my view, the Justice Committee has neither the available time nor the current focus to call to account the police, fire and associated bodies in the bill on an ongoing basis, particularly in the initial years, as will be necessary to deliver properly for our communities. Equally, an ad hoc committee of the Parliament would be an insufficient response to deliver on these most important areas of public policy in action.

The way forward is to set up a commission of the Parliament, similar to the arrangements for the Auditor General, that is designed to operate in a non-partisan fashion and is tasked with proactively seeking appropriate evidence from witnesses on the arrangements that affect those who are responsible for the range of services that are covered in the bill.

I seek confirmation from the cabinet secretary that local police and fire and rescue boards will be made fully aware of the full range of resources that are currently provided in local authority areas and that support staff will receive the same support and job security that are currently extended to police officers. I am sure that the cabinet secretary will know about the growing concern in many areas that, without proper monitoring of the resources and services that are now provided, those areas will lose out. Will he therefore ensure that a comprehensive assessment is carried out for each board area to allay those fears?

Little has been said about the support from forensic services or about those who will provide
information technology support for the new single police force. It is imperative that the cabinet secretary reaffirms the absolute need for independence in respect of the preparation and delivery of forensic services, as requested, for police and fire services. Concerns were recently raised in the High Court about the process of forensic reporting, which is worrying. The cabinet secretary’s planned arrangements for the future should take account of those concerns and ensure that there is no repetition of those worries. The arrangements for the SPSA integration provide little evidence on the IT solutions to unify the different reporting and recording systems in the eight separate police services and fire brigades. We need more detail and greater urgency on that.

It has been reported in the press that a salary in the region of £200,000 will be allocated to the heads of service. Does the cabinet secretary believe that those heads need such a salary, particularly in the current severe financial times? I do not think that they do and I do not think that the public believe so, either.

10:13

Kenneth Gibson (Cunninghame North) (SNP): It is a privilege to take part in a debate that I believe will be regarded as the beginning of the greatest change to Scotland’s emergency services in generations, as Graeme Pearson suggested in his excellent and thought-provoking speech. The financial benefits of the reforms are obvious, but I am certain that the structure will also allow us to maintain world-class services of which Scots can be proud and which other nations will continue to envy. We must also recognise the fantastic scope to create modern and dynamic services that are more suited to the constantly changing demands that are placed on them in the modern age. Stephen House, the chief constable of Strathclyde Police shares that view. He has stated:

“I believe that we should have one, single national police force for Scotland ... not because”

it is

“the cheapest option—but because it is the right option.”

Scotland’s police force has witnessed dramatic change in the past and has continued to evolve and improve. In 1973, just before the last restructuring, Scotland had 20 chief constables and 11,000 officers. Today, we have eight chief constables and more than 17,000 officers. I believe that the reforms are another example of a progressive shift away from a top-heavy structure to a focus on the front-line provision of community safety and law enforcement.

Of course, the fact that we are restructuring our police service is not an admission that something is drastically wrong and that a radical shift is required. In fact, the opposite is true. In the past 10 years, Scotland’s fire and rescue services have performed remarkably well, with deaths from fire reducing by almost 50 per cent. The success of the police force has been similarly impressive. As the cabinet secretary indicated, crime is at a 35-year low, detection rates have improved and there are record levels of public satisfaction with the service that is provided. Very often, that is down to the commitment and excellence of individual police officers, on which we should congratulate them.

Following last year’s riots in England, Professor Stephen Reicher from the University of St Andrews and Dr Clifford Stott from the University of Liverpool concluded in their paper, “Mad Mobs and Englishmen? Myths and Realities of the 2011 Riots”, that the riots were caused largely by insensitive policing. They made it clear that there were no riots in Scotland because different policing attitudes prevail, with officers in Scotland being much more engaged and willing to talk to the public than those south of the border. Anecdotal evidence from Scottish police officers who were drafted into England to help subdue the riots confirmed that that was accurate; a number of such anecdotes were discussed at last night’s police and fire reception, which I and a number of colleagues attended. It was pointed out that many rioters and young people in London and Manchester were shocked when Scottish officers struck up a friendly conversation with them. That approach is extremely important.

In view of that, it is essential that we maintain the effective approach of policing by consent that Jenny Marra mentioned, and that we retain the current number of front-line officers, so that such policing can be delivered. However, it has become apparent that, to achieve that, we—in line with every other western European country—must reform the police to gain maximum efficiency and to protect services. In essence, if we want things to stay the same, things will have to change.

The Finance Committee took evidence from a variety of key stakeholders, including the Fire Brigades Union, the Association of Chief Police Officers in Scotland, the Scottish Police Federation, COSLA and a number of regional police and fire and rescue services. Following those evidence sessions, the economic case for reform of the police and fire services was compelling.

The outline business cases for police and fire reform show that, together, the single services will deliver estimated efficiency savings of £1.7 billion over 15 years. I understand that Mr McLetchie has concerns about that figure, but the bill team gave robust responses to questions on the issue from members of the Finance Committee. As we have
heard, it is anticipated that, from 2016-17, annual recurring cash savings of £130 million will be made across police and fire and rescue services. The majority of those savings will undoubtedly come from a reduction in duplication, improved procurement and the sharing of resources.

For the police service alone, it currently costs £30 million to run the chief officers association, the eight police boards, the eight command teams of chief officers and the eight different corporate development systems, while £5 million is spent on the Association of Chief Police Officers in Scotland, £10 million on different information and communications technology systems and £1.7 million on procurement, because of the difference in specifications between forces. There is no doubt that, with a single service, significant efficiencies can be made in those areas, which could be reinvested in front-line services.

However, as I have made clear, the reforms will also help to create more dynamic police and fire services that are responsive to different challenges. Following reform, police and fire resources will be deployed more flexibly—some of that flexibility has already been introduced—and shared across the country, which will improve access to specialist services and assets, including firearms units, riot teams and specialised vehicles and equipment. That will help officers to tackle threats and to address needs that cross regional boundaries, and it will be particularly important when it comes to addressing the menace of organised crime and terrorism.

It is important to address fears that the new arrangements will disenfranchise local communities and will lead to a reduction in the quality of localised community policing, which I spoke so warmly of earlier. The bill strives to protect and, in fact, enhance the accountability of the police and fire services to local communities, and individual community requirements will continue to be prioritised.

The bill will ensure the creation of new independent bodies to hold the chief constable and the chief fire officer to account, while local area commanders will be given power and significant autonomy to make plans for their own areas; it will not be the case that such direction comes from the centre. In addition, the bill makes it clear that, under a single fire service, more responsibility will be devolved to front-line managers, who will work with locally elected officials and community planning partnerships to deliver locally focused and accountable services.

Through their councillors, local communities will have a far greater say in how policing is delivered. In my local authority area, two councillors out of 30 are on a joint police board of 34. It is estimated that, under the reforms, that will change to 12 councillors, who will have a direct and formal say in policing in the area.

I am proud that the SNP Government is taking this bold step to reform our police and fire services, and I am pleased that the two main Opposition parties are supportive of the direction that we are going in. It is important that we continue to provide high-quality services. In the face of unprecedented cuts from Westminster—cuts that David McLetchie tried to deny earlier—this approach to our emergency services is far more progressive than the policies of the coalition Government, which will slash police numbers by 16,000. Had this Parliament not been established, no doubt we would suffer the same cuts.

Once again, the SNP Government is leading the way and demonstrating an ambitious and positive way forward.

10:20

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I am sorry that Jenny Marra is not here because I was going to commend her for deputising for me. I had not anticipated that I would be here today, due to circumstances—as they say—beyond my control. It is the first time that Jenny Marra has deputised for me and I hope that it is the last as I guard my convenership like a mother hen guards her chicks. If anyone dares to cluck at the next committee meeting, they will not get a supplementary. They have been warned.

That said, I turn to the bill. I want to touch on issues raised by the committee and questions that people would ask, such as about why we are reforming. Is it just to save money? That is no bad thing in itself. Does a single service mean that local needs and requirements will be sidelined? Will the central belt—the great conurbations of Glasgow and Edinburgh—dominate? Will the Highlands and Islands, with very able advocates such as Dave Thompson opposite, get more than the Borders gets? Will the appointment of a single chief constable for Scotland risk politicising the police? Who will hold him to account? Those issues were raised by my colleague Graeme Pearson. Will people, in particular civilian staff, lose their jobs? Will there be cost savings? At the end of the day, will we have better policing? The day after the establishment of a single service, will my constituents see any difference in day-to-day policing? Those are reasonable questions.

On the issue of why we are reforming, I accept that reform has, to a degree, been driven by the cuts from Westminster. They are not so-called cuts; they are real. However, as the cabinet secretary said, we have made a virtue out of a necessity. Having eight constabularies has been a
historical accident. Some, such as Strathclyde, are huge. In Lothian and Borders—my patch—we have had the chief constable for Lothian and divisional commanders in parts of my constituency in the Borders and Midlothian, and it works swimmingly. We do not notice any joining of the seams. With a population of 5 million, it is not ridiculous—in fact it is quite practical—to suggest that we have a single police force and a single fire and rescue service.

However, reasonable concerns were raised about how local issues will be addressed, and the committee raised them in its report. We must consider those issues, even if just to allay unnecessary anxieties. We did not want to put something formally into the bill about disputes—it would be like a red rag to a bull, as it would encourage dispute—but we need to ensure, certainly in the early stages of a police force, that local communities feel that they still have a say in what is happening in their area. David McLetchie raised an important point about the additional police that local authorities have been provided with. I note what the cabinet secretary had to say and I accept it.

I move on to the politicisation of the police. The committee raised issues about the Scottish police authority. It was clear from the evidence of some witnesses—I shall not name them because it would be embarrassing for them—that if we had local authority representation, there would just be a scrap about resources and so on. The view that was generally accepted was that the authority would hold the chief constable to account and have a strategic overview. I am beginning to speak like a convener—I must get out of that habit.

I am concerned about civilian staff. The Government has said that there will be no compulsory redundancies. I hope that there are opportunities to retrain civilian staff if voluntary redundancy is not available to all or if they do not want to take it.

Less has been said about fire and rescue. So much has changed in the delivery of fire services—I am thinking of my grandfather, long dead of course, who, way back at the beginning of the last century, drove a fire cart with horses. What they dealt with then was fires. That is why they were called the fire brigade. They put out house fires and factory fires. What fire and rescue services do now is far more diverse; in fact, fires are probably the least of the things that they deal with. I recently went into one of the big fire trucks and it had computers, inflatable canoes, gadgets for climbing and descending mountains and all sorts of other material. Regrettably there were cutters, which are needed for one of the biggest issues in rural areas: vehicle accidents. It is a whole different world. The committee’s report says that, although we do not want to see it in the bill, we want some codifying and examples to show how the service has changed. Also, because of recent tragic events, we would like to see not demarcation lines but some firm guidance to the fire and rescue service on what it can and cannot do and what it is expected to do.

I want to touch briefly on human rights, because I am very cross about something in the press today, saying that the Justice Committee never deals with human rights. The remarks were made using the example of four oral evidence sessions that took place in November. I do not know how the rest of the committee members feel but I am hopping mad—I had to be contained. The press release that has been released is very calm compared with what I said because I had a bit of therapy before releasing it. The Justice Committee’s report deals with human rights at paragraphs 336 to 340. The convener of the cross-party group on human rights ensures that the committee deals with the issue. So—this time, on behalf of the committee—I say that we do treat the issue of human rights seriously.

Jenny Marra: Will the member take an intervention?

Christine Grahame: I will finish my point. If the authors think that that is academic research, then I can tell them that it is gey poor and that they should consider looking at the rest of the work that the committee does.

I apologise to Ms Marra but I must conclude on that point.

On the point about parliamentary scrutiny, I say to Mr Pearson that my mind remains open to a commission but he will need to flesh the idea out; we need much more detail and I do not know whether we have the time to do it because we would have to take a serious amount of evidence.

The Deputy Presiding Officer (John Scott): You can take Ms Marra’s intervention if you want.

Jenny Marra: Does the convener agree that it is a sign of the most robust committee, Parliament and Government that they are open to having scrutiny of something as fundamental as human rights reviewed?

Christine Grahame: I do not mind that at all, and I welcome it, but—my goodness!—to look at four oral evidence sessions and to quote what the cabinet secretary said as if the committee said it is not academic research. I would be happy to meet the people who said those things, but my hands would have to be tied together.

The Deputy Presiding Officer: Thank you very much, Ms Grahame—ebullient as ever.
Siobhan McMahon (Central Scotland) (Lab): Before I make my speech, it would be remiss of me if I did not mention those who are on strike this morning in the Public and Commercial Services Union. I wish them all the best for their campaign and for today as they picket Parliament in the rain.

The Police and Fire Reform (Scotland) Bill, which will constitute the greatest upheaval to police and fire services in Scotland for more than 40 years, presents us with a delicate balancing act. On the one hand we have the requirement to save money, reduce duplication and increase efficiency. On the other hand, our ultimate responsibility as legislators is to ensure that any public sector reform has the interests of the people at its heart. To sacrifice the latter for the former would be to fall victim to the same misconception that drives policy south of the border. Quality must always come before cost.

Several aspects of the bill are of concern to me. The first is the predicted timescale for the bill. Any fundamental reform to public services should not be entered into lightly regardless of the benefits that might accrue. I am concerned that police chiefs giving evidence to the Justice Committee have already expressed doubt about their ability to implement the changes effectively in the current timeframe. To amalgamate eight police services and eight fire services in less than a year is an enormous undertaking. Throw in the suite of savings, efficiencies and enhancements that the bill purports to make, and the problems begin to look insurmountable.

A major proportion of the projected cost savings in the police are to be made through staff reductions. To achieve that, the new force must shed 1,100 staff by 2013-14. Assuming that the bill is agreed to before the summer recess, with the new force scheduled to begin operating in April 2013, there is a very narrow timeframe within which to make the necessary redundancies. To compound that, we have yet to establish whether the target of more than 1,100 is even attainable. The limit on compulsory redundancies means that we will have to rely on voluntary redundancies and, in the current financial climate, it is doubtful that a sufficient number of people will wish to leave the police force.

Even if that were to be achieved, due process will require a prolonged period of negotiation in order to draw up fair, legal and transparent terms of severance. As a result, it seems unwise to adhere to any specific timeframe for achieving the necessary reductions. With every month that passes beyond the current schedule, more funds will be expended and less money saved.

I am sure that, like me, members will have received letters and e-mails from Unison members about the bill’s proposals. In line with its commitment to improving the quality and scope of policing, one of the Scottish Government’s flagship pledges is that there will be no reduction in front-line staff. Over the past few years, many individuals and organisations have expressed doubt about the veracity of the Scottish National Party’s claim of 1,000 new police officers on Scotland’s streets. I do not want to detract from the recent achievements of the Scottish police, but it has been suggested that a substantial proportion of those officers are performing back-office tasks in lieu of having a general reduction in support staff. There is no point in ring fencing funding for front-line police officers and then consigning them to back-office functions.

John Finnie: Chief Constable Smith said that that was not the case. Is he wrong?

Siobhan McMahon: The unions and those who work in the positions have told us that those are the facts. We need to weigh their remarks and whether they are wrong against the evidence of one person.

Equally, it is unfair and inaccurate to view support staff as being in some way inferior to those on the front line. Indeed, labelling a workforce that covers everyone from administrative workers to information technology and communications staff as “back office” does those people an immense disservice. Front-line police depend on support staff to function effectively; neither is easily dispensable and both are not interchangeable. Indeed, a chief superintendent told the Justice Committee that any changes to staff ratios that occur under this bill must strike “the right balance between police officers and police staff— the right people with the right skills ... doing the right jobs”—[Official Report, Justice Committee, 28 February 2012; c 972.]

and concluded that that would present a very “significant challenge”.

We need to strike the correct balance not only between cost and quality and between front-line officers and support staff but also between integration and accountability. Rolling eight police and fire services into one raises the obvious risk of creating an overcentralised hierarchy and it is imperative that, in attempting to achieve savings through the centralisation of resources, we do not rupture the bonds between the police and local communities.

Under existing arrangements, funding for the eight police forces comes from a variety of sources, with local authorities directly providing a substantial amount. Such an approach not only
allows for VAT savings in the region of £20 million but creates a direct link between local funding and local services. As funding for the single police force will come from a single block grant provided by central Government, it is not clear how that essential link will be maintained. The Scottish Government has stated its belief that the new arrangements will enhance councillors’ influence on local police and fire services through their involvement in the strategic planning process, but the fact is that final accountability for the distribution and spending of money will always reside with the body that holds the purse strings. Given that the Scottish police authority will have ultimate responsibility, local councillors will have no authority over budgets and no oversight of the police in their area. It is difficult to envisage how such an arrangement will give councils greater influence; in fact, it might have an adverse effect on their ability to make long-term plans and set long-term objectives. Because of uncertainty about future funding levels, they will find it more difficult to tailor policies to local requirements.

In highlighting these issues, I emphasise that the changes made under this bill must enhance the police and benefit local communities. Although I am confident that we can realise the bill’s goals of making savings while improving services, that will happen only if it is subjected to long and rigorous scrutiny that takes into account the views of all parties. We must ensure that the bonds between the police and local communities remain strong and that different authorities retain the flexibility to vary police strategies according to local need.

The Deputy Presiding Officer: I call Humza Yousaf, to be followed by Alison McInnes.

10:33

Humza Yousaf (Glasgow) (SNP): I welcome the Parliament’s broad consensus on the bill’s general principles. I appreciate that the next member to speak might well disturb that consensus, but the fact is that, as we have heard, reform of Scotland’s police and fire service is necessary to allow the Government to keep its commitment to maintaining front-line services and to remove much of the duplication that exists across the eight services.

The committee has benefited greatly from the expert knowledge and excellent contributions of two former police officers, John Finnie and Graeme Pearson. Much to the disappointment of some committee members, we still have to recruit a former fireman to the committee but perhaps that situation will change in time.

Members: You mean firefighter!

Humza Yousaf: Indeed. It is the 21st century and, as members have reminded me, I mean “firefighter” not “fireman”.

A number of issues have been highlighted that need to be discussed in relation to such a big change in one of our front-line services. The issue of timescales came up often. Although most witnesses said that the 1 April deadline might be challenging, the vast majority stressed the importance of appointing the chief constable and chief fire officer sooner rather than later. That will no doubt help the considerable changes to take root by providing clear leadership. However, the Government has a challenge in making the appointment when the police authority has not yet been created. I am keen to hear from the cabinet secretary or the minister how they intend to do that. In the meantime, I welcome the Government’s confirmation that it will bring forward the recruitment process.

My colleagues have talked about the importance of the single police force being accountable and transparent to the public, so I will not spend too much time on the topic. However, I will touch on the evidence to the Justice Committee of Sir Hugh Orde, a former chief constable of the PSNI, who spoke about how the police board in Northern Ireland held him to account publicly at least 10 meetings a year. Those meetings were televised and Sir Hugh was available for interview afterwards. That transparency proved successful, so it is important that we consider including that element in Scotland.

As has been said, the bill gives the Parliament the opportunity to have a formal role in scrutinising the police and fire services. In written evidence to the committee, the Auditor General for Scotland said:

“It is ... essential that the legislation establishes a formal mechanism to give the Scottish Parliament, as the democratic forum covering the whole of Scotland, a major role in ensuring there is open, participative and transparent oversight of policing in Scotland.”

I agree that the Scottish Parliament is the ideal body to provide such scrutiny. The democratically elected representatives of the public have the mandate to ensure that there continues to be policing by consent, which is a tradition and a fundamental value that must be maintained in relation to our police service.

The committee has had somewhat tentative discussions on how that parliamentary scrutiny should take shape, which we mention in the stage 1 report. Should there be a stand-alone committee or a commission, or should the role be part of the Justice Committee’s remit? I imagine that that theme will play a central role in the discussions as we move towards the next stages of the bill. It is fair to say that members of the committee are split
on the issue, although most of us are open-minded. Graeme Pearson articulated well the case for a parliamentary commission. Although I am keen to explore that further, my first instinct is that it might involve further bureaucracy and resource at a time when we can ill afford either. However, I am still open-minded on the issue and willing to hear the arguments.

Graeme Pearson: The member mentioned the example of Northern Ireland. Is he aware that the people who formed the board in Northern Ireland are all elected members of the Northern Ireland Assembly?

Humza Yousaf: I believe that elected members have an important role and I certainly do not discount the member’s idea of having a commission. However, when the PSNI was set up, the financial circumstances were very different from those that we are in now. We must consider all the elements.

As a member of the Justice Committee, I know only too well the demands on that committee. We have had a somewhat quiet May, but that is a rarity.

Members: Shh!

Humza Yousaf: Sorry—I am not meant to say that. However, I am keen to further explore the possibility that John Finnie mentioned of setting up a sub-committee of the Justice Committee to take on that important scrutiny role. I am sure that we will continue to discuss the issues in the months to come.

Concerns have rightly been raised about the reduction in support staff as a result of the reforms. Those staff have specific skills and play a vital role in the police force. I know that the Government, along with the police service, will aim to minimise any reduction in the number of staff. However, the myth that, as a result of the reduction, police officers will be taken away from patrolling the streets to fill out paperwork all day in a back office was firmly knocked on its head.

The issue was raised in the committee and dealt with by Calum Steele of the Scottish Police Federation, who said:

“The nature of police work means that, once an officer lays hands on an individual and takes him or her back to the police station, that officer is off the street. There is no naivety in the public that police officers will spend eight, 10 or 12 hours of their shift on the streets. If that happened, it would create an interesting relationship between the police officer or police service and members of the public.”

[Official Report, Justice Committee, 28 February; c 1013.]

Furthermore, Andrea Quinn of the SPSA said that it is “dishonest” to try to define staff as either front-line or back-office staff.

Lewis Macdonald: The member will recognise that other witnesses suggested other things. Does he agree that some civilian roles are carried out by specialists and that although police officers are simply not qualified for them, they are beginning to be asked to do them?

The Deputy Presiding Officer: The member must draw his speech to a close.

Humza Yousaf: I accept that there are specialist roles but to make the assumption that those are the ones that will lose out and that will be carried out by police officers is jumping the gun. We must all pay careful attention to what happens as a result of a reduction in support staff and clarification is vital, but making false assumptions will do more harm than good.

I am aware that I need to wind up, Presiding Officer, so I reiterate and put on record my support for having more fundamental human rights in the bill and perhaps even in the oath, as there is in the Police Service of Northern Ireland. I very much welcome the committee’s report and its recommendations.

10:40

Alison McInnes (North East Scotland) (LD): I do not want to keep members in suspense so I start by saying that the Scottish Liberal Democrats remain opposed to the bill. We do not agree with the principle of a single police force or a single fire service. We still have serious concerns about the loss of accountability, local control and political independence. We have not been convinced by the arguments about how the new services will function in practice and we have serious doubts about the outline business case and the estimated savings.

Perhaps the most disappointing aspect of the process has been the missed opportunity. When the Government announced its initial consultation last year, it did so proclaiming that it went into it with an open mind. In the consultation, a clear majority of respondents were not in favour of a single national service. Indeed, ACPOS’s submission stated that a single police force will affect front-line delivery and will increase the risk of a fall in performance, which, it noted, might lead to an increase in crime and more victims. However, the Government still declared that it was persuaded that a single service is the right option. Unfortunately, that means that, rather than being presented with a golden opportunity to modernise our emergency services, we are being pushed towards a centralised and politicised future that will ultimately be to the detriment of local services across the country.

I have only a little time and there is much to cover, so I will jump straight into some of the
highlights, if we can call them that, of the evidence that the committee heard at stage 1.

First, on cost, many of the Government’s arguments in favour of a single service have been made on the grounds of the efficiency savings that will be made, but the picture painted by the experts has been far less clear. For example, the Society of Local Authority Chief Executives and Senior Managers states that:

“The business case is deficient in many respects. It is not clear how the proposed reform will improve outcomes that are already very impressive … The claimed efficiency savings … rest upon some questionable assumptions”.

ACPOS, the Chief Fire Officers Association Scotland and the Scottish Police Federation all agree to a large extent that there is no detail in the business case, and the Government has introduced no evidence that allows us to say with any confidence what, if any, savings the single services will make. Calum Steele of the SPF summed it up very well, telling the Finance Committee:

“I very much doubt that anyone could know whether the service would be cheaper or, indeed, more expensive in the future. It is just finger in the air stuff.”

Worse, the Government is so determined to make those as yet unsubstantiated savings within its accelerated timescale that it is happy to put cost cutting ahead of positive sustainable reform. ACPOS’s Chief Constable Smith, the lead on preparatory work for the bill, summed it up, saying:

“The danger now is that we will be so focused on making cuts in financial budgets for next year and the following one that we do not get into what the exercise should be about, which is developing the best model of policing for the benefit of the people of Scotland.” —[Official Report, Finance Committee, 22 February 2012; c 669.]

The Government’s haste to push through these politically motivated reforms and to justify them with an unrealistic timetable of savings is putting the future of Scotland’s police and fire services at risk. Not content with putting our emergency services at risk with an unrealistic timetable, the devil is in the detail of the Government’s plans.

One of the key strengths of Scotland’s policing is and has long been the fact that it is local. It is largely funded by local councils, managed by local officers and officials, accountable to local people and responsive to local needs. The simple fact is that no matter how the Government might try to argue that local ties will be retained, that strength will be lost under a single force.

John Finnie: I gave the example of Orkney, where the arrangements are made in Inverness rather than Kirkwall. Surely the member must concede that the proposals for having a local commander who is answerable to a local committee is an enhancement of local democracy.

Alison McInnes: I do not concede that at all. As we have heard, there was a great deal of discussion in the committee about the tension between national and local priorities. Nothing in the bill makes it clear how local priorities will come to bear.

Indeed, we get the best out of our fire services for the same reason. Managed at a local level, they are far better placed to react to local needs, to prioritise and to adapt. A centrally run service simply cannot hope to work as well for Ellon as it does for Edinburgh.

Allied to that is the concern raised by many about the future of retained fire stations under the new service. Such stations are absolutely vital for much of rural Scotland—Grampian, for example, has 33 part-time and only three full-time fire stations—but the Government cannot yet guarantee that retained stations will not be closed when the new service comes in.

In fact, many have highlighted a real concern in that regard. With funding coming directly from Government and controlled by a Government-appointed board and chief officer, will the new service not find itself subject to one of Alex Salmond’s favourite mantras: “He who pays the piper calls the tune”? Will a centrally based fire service recognise the value of retained stations and make their continued funding a priority? As COSLA put it,

“It is all very well saying that they must have”
a local area plan agreed

“but, if the instructions from on high do not fit into that, what do the local commanders respond to? Do they respond to the local authority agreement or the edict from on high?” — [Official Report, Local Government and Regeneration Committee, 21 February 2012; c 633.]

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): Is the member seriously suggesting that, in areas such as mine where the vast majority of fire services are delivered through retained fire stations, someone somewhere is going to say that that will not continue to happen? What an absurd suggestion.

Alison McInnes: I have been asking the minister for such assurances for a long time now and have been consistently batted back with the response that it is an operational matter for the new service. If she wants to give me a guarantee that fire stations will not be closed, I will accept it gratefully.

Of course, all of this leads to the issue of political interference. The Association of Scottish Police Superintendents, Reform Scotland, ACPOS, the Scottish police authorities conveners forum and the Auditor General for Scotland
all questioned the power of direction in the bill and how it fits with the operational independence that we should be holding at the heart of our police service.

I recognise that the will of the chamber is such that, despite our objections, the bill will progress to stage 2, when we intend to lodge amendments to rectify some of its worst aspects. However, for now, we cannot support the Government's mistaken plans for the future of our police and fire services.

10:47

George Adam (Paisley) (SNP): I welcome the committee's report. Like Christine Grahame, I will start by asking why we need a single service. Unlike Alison McInnes, it seems, I feel that we have a great opportunity to modernise and make a generational change in these vital services. Although I agree with John Finnie that we find ourselves in this position partly because of the Westminster cuts, I have to say that it is often when people are faced with the biggest challenges that they get the best returns.

Every other western European country has a single police force. Although Finland introduced the regional model that some have advocated for Scotland, it returned to the national model years later. At this point, I must welcome the cabinet secretary's commitment to maintain the 1,000 extra police officers, because they are particularly valued at a local level. Indeed, that very factor, which has been mentioned quite a lot this morning, will become more important as we move on with this debate.

A lot has changed since 1975, when the current structure was introduced. I was only six years old and, as members will see, I have changed slightly since then. Christine Grahame mentioned some of the equipment that was used in those days. As a member of the Strathclyde fire and rescue board, I was invited to Paisley's festival of fire and recognised a fire engine from the late 1960s that was being used when I was a small child. The fact that it had a wooden frame shows how much the equipment has changed since that time.

We need flexibility in the deployment of resources; after all, where organisations can work together and make a difference, such resources can be deployed and shared across the country. For example, Strathclyde Police's helicopter is valued by just about every other police force and there is a lot of debate and argument over who gets to use it. Strathclyde fire and rescue board had many debates about aerial rescue pumps, which basically bring together two different bits of machinery and can help to cut costs. I do not want to bring up any old debates that I had with Mr Malik on the fire and rescue board, but the board itself discussed whether those pumps represented the right way forward. Strathclyde Fire and Rescue had aerial rescue pumps, whereas Highlands and Islands Fire and Rescue Service had had them but did not order any more. The proposed reforms might give us a uniformity of service. The scale of the new service will give us much greater opportunity to make such purchases.

As a member of Strathclyde fire and rescue board, I welcomed the focus on the local, which the cabinet secretary talked about, because scrutiny and local accountability are extremely important. I have seen the value of that. Even at a Strathclyde level, there could have been more devolution. I welcome the part of the bill that provides for that. I suggest that, in my area, Renfrewshire Council, Inverclyde Council and East Renfrewshire Council, which have come together on the civil contingencies group, could work together on a joint police and fire board. No one else has discussed the idea and, as I am no longer a councillor, it is nothing to do with me, but it might be a good way of providing access to officers.

It is important that fire and rescue services continue to be involved in community planning. In Renfrewshire, we have ensured that they have been involved in their local area committees and various other council committees. That is something that the public want. There is a huge difference between how the police were perceived locally in Strathclyde in 1974 or 1975 and how they are perceived now. There is a difference in the way in which they talk. I remember that, when I was convener of Paisley South local area committee, the most exciting part of the evening was when the fire and rescue service and the police reported back—that was the part of the meeting that the public valued and wanted to have some form of interaction with. There needs to be more flexibility and engagement on how services are delivered throughout Scotland. We need to ensure that we take the public with us and that there is local accountability.

We have an opportunity to change for the better the present valued services. We have the potential to create dynamic organisations that can deliver for the whole country. It is important that we discuss the bill's proposals and arrive at a logical and workable conclusion. I welcome the committee's report and look forward to the continuation of the debate.

The Deputy Presiding Officer: We have used up almost all of the extra time that we had, so I must now confine members to their allotted time.

I call Roderick Campbell—you have six minutes.
Roderick Campbell (North East Fife) (SNP): As others have indicated, with a few exceptions, the argument that there should be a national force has been accepted. While Unison and the Lib Dems think that it is wrong in principle, others such as Reform Scotland think that the Scottish Government has not provided sufficient justification for running from the centre a service that, historically, has been delivered at a local level. Reform Scotland also argued—unconvincingly, I would say—that each local authority should be represented on the national police authority, regardless of whether it is the size of Clackmannanshire Council or Glasgow City Council, because that reflects the current structure of local authorities.

Unison’s concerns are, understandably, about the protection of jobs. In that context, even if we accept ACPOS’s figure that there will be 2,000 redundancies, those are to be achieved cumulatively by 2015-16. We are talking about voluntary redundancies being achieved over a period rather than all at once. Of course that will not be an easy task, but it is important to reflect on the evidence of Stephen Curran of Strathclyde police authority, who said that the ratio of police to support staff was 4:1 in Strathclyde, in contrast to Lothian and Borders, where it is closer to 60:40. Therefore, we face different problems in achieving voluntary redundancy in different parts of Scotland.

I am reassured by the comments of Chief Constable Smith on the issue, and Calum Steele’s remark that

“We must look at the jobs that we do and ask ourselves not who does them, but whether they need doing in the first place”—[Official Report, Justice Committee, 28 February 2012; c 1009.]

is highly pertinent.

As for the Lib Dems, despite the fact that they highlighted the issue at last year’s Holyrood elections and this year’s local elections, there is scant evidence that there is concern about it on the doorstep; there is a much greater concern about maintaining the number of police on the beat.

Alison McInnes: I agree that people are not concerned about the issue at the moment, but it might be the case that people are concerned about it once the horse has bolted and they see their local services being eroded.

Roderick Campbell: Time will give us the answer.

As the report makes clear, the committee was not hung up on the number of people who should be on the board. “Quality over quantity” must be the mantra. As has already been said, even though the committee has not reached a view on what form parliamentary scrutiny of the police and fire services should take, we saw the need for such scrutiny. We clearly need a strong democratic element to policing and, like Humza Yousaf, I believe that we need to take on board the Auditor General’s comments about the need for open, participative and transparent oversight.

The FBU favours the involvement of the Justice Committee. Although I accept that that would place a considerable strain on the existing structure, my inclination is more towards that approach or to a tweaking of the committee structure, rather than some form of police commission. However, as Graeme Pearson indicated, we must listen to all the arguments. Clearly, there is a need for post-legislative scrutiny of the move to single services. I would have thought that a timescale of at least five years would be sensible for drawing informed conclusions.

There was a lot of discussion about the interaction between the national police board and local commanders and local authorities. The results of the pathfinder project may impact on the issue, but it is clear that some flexibility in local arrangements is required. That need for flexibility must be right. Local police plans will be different—that is already the position between the Borders and Lothian, as was highlighted in the evidence to the committee.

In relation to the question of resources for local commanders, we need more clarity about what that might mean in practice.

There was a difference of view among the witnesses about forensic services. Some, such as HM inspectorate of constabulary, argued that the chief constable should have clear operational direction over forensic crime scene examination. That view was supported by most senior police representatives. Against that view was Andrea Quinn of the SPSA, who was an active supporter of what is inelegantly described as the “sterile corridor”. In the SPSA’s written submission, that arrangement was described more elegantly as “clear demonstrable impartiality”. However, the important points to stress are that Ms Quinn accepted that the chief constable and his command team should decide what crime scenes the SPSA should go to and when. Although senior police officers criticised the arrangement that has prevailed since 2007, neither Chief Constable Smith nor Chief Superintendent O’Connor, in response to questioning, was able to point to any examples where the arrangement had been detrimental to the interests of justice. I am therefore not persuaded that we should change the position outlined in the bill to make the forensic
service directly accountable to the Scottish police authority and not to the chief constable.

We all know that, under the Human Rights Act 1998, public authorities must act in a way that is compatible with the European convention on human rights. We are also aware how the related provisions affect the Scottish Parliament. However, there is a body of opinion, represented by the Scottish Human Rights Commission and Amnesty International, that believes that human rights considerations ought to be on the face of the bill. In that respect, I must declare an interest as a member of Amnesty International, but I share the view that there is a lot to be said for having explicit recognition of human rights in the bill and certainly for embedding that in any appropriate code of ethics and training.

Although we may not quite have the social and cultural history of Northern Ireland, it would be good if we, too, could ensure that human rights are at the core of policing. I therefore welcome the Scottish Government’s response that it will consider any appropriate amendments in that respect.

10:58

Hanzala Malik (Glasgow) (Lab): I am keen to ensure that the quality of service provided by the fire service and the police force locally in some areas is not only retained but rolled out across Scotland. Some fire brigades and police services have achieved very high-quality standards that I would not want to see eroded by some of the other services that perhaps have been lagging behind and are trying to catch up to that standard. It is important that the local authorities that have made huge investments and have been prudent and professional do not feel that they have lost a quality of service that has taken a long time to build. It is important that confidence remains in place.

I have had discussions with various people and I had the opportunity to sit on the Strathclyde police authority and the Strathclyde fire and rescue board. The amount of work and the diversity in the services is amazing. Policing is not only about attending to a fight in a back court or chasing a robber in the street. It is about everything from community safety to liaison and supporting communities.

Our officers are overstretched as it is. When an officer comes on duty, he or she has almost back-to-back inquiries. Because of the huge challenges that they face, officers do not really have the opportunity to mix with communities that they had in the past. However, the job is one that most officers enjoy and they do it well under difficult circumstances. Obviously, our job is to ensure that we protect that historic engagement with communities. I learned amazing things about what Strathclyde Fire and Rescue does for communities while I was on the board: fire alarms, community safety—things that were not done in the past. Those things have helped to save many lives. The credit for that goes to our officers in the field. That is why it is imperative that we continue to build on the standards that we have achieved historically in Scotland. I am pleased to say that I genuinely believe that our services are envied around the world because of those standards and the level of quality that we provide.

We have an opportunity to ensure that we can share that good practice by selling quality training to people around the world. We can do that by ensuring that our training facilities are in place. Strathclyde Fire and Rescue is building a purpose-built centre for training its own officers. That facility could also be used to deliver services to others. Tulliallan could also be used—it is a place that delivers the finest training opportunities. It has done so for people from overseas in the past. I want to see that service retained and built on so that our officers can share good practice around the world. That would not only support us here on a national level but promote our badge overseas as being a country that engages with people in a positive way. We used to do it, but that role changed over time and we need to rekindle that effort.

I also believe that there will be opportunities for our young people when we have a national service—we can be more focused on what we deliver for them. There is a lot of youth unemployment and we need to try to change that trend.

The Government promised another 1,000 officers on the beat. It has been suggested that most of them are working in back offices—yes, that happens, but it is not our job to micromanage. Our job in the Parliament is to ensure that we put the mechanism in place to deliver that service. It is up to the senior officers to ensure that they improve that service. If there are shortcomings, it is our job to support those officers so that they can overcome those difficulties. We need to be positive and focused and, when people bring shortcomings to our attention, we should deal with them. We should not be ashamed of doing that.

I wonder whether there is also an opportunity to enhance the service in terms of our ambulance services. Currently, the Scottish Ambulance Service board shares its medical director with the NHS 24 board. Why are we not doing something similar elsewhere? Is there any mileage in the proposed Scottish fire service being amalgamated and merged with the Scottish Ambulance Service,
or in the Scottish Ambulance Service merging with NHS 24?

At the end of the day, we are talking about our uniformed services and about services to our communities. We are talking about focusing our resources to ensure that we have the best of services on the street, so that our communities benefit from the most efficient services possible. Let us not restrict ourselves to the fire and police services—we should also examine the Ambulance Service. That would enhance the quality of the service that we already have. It would also allow us the opportunity to look at the Ambulance Service from a different perspective and to see what mileage there is to enhance that service’s quality as well, because that service is also overstretched. I believe that there is a job to be done there as well. I am keen to hear whether the minister will comment on that—

The Deputy Presiding Officer: You must close now, please.

Hanzala Malik: Finally, if I am allowed to, I was wondering—

The Deputy Presiding Officer: You must close now, please.

Hanzala Malik: Thank you.

11:04

Colin Keir (Edinburgh Western) (SNP): I am delighted to take part in the debate. My Justice Committee colleagues and I have heard from some of the country’s most eminent fire and rescue service and police officers. I thank my colleagues for the tone in which they discussed the issue and welcome the genuine support for the bill’s principles.

The reforms of these two services are being made not because of any major structural deficiencies but because of the Westminster Government’s swingeing cuts to the Scottish budget. I agree with George Adam that the necessity for change gives the Parliament the chance to modernise both services and ensure that the services are suitable as we move further into the 21st century. I am sure that most people—even Alison McInnes—accept the principle of change. After all, as Christine Grahame and Graeme Pearson have pointed out, even the Bow Street runner and local fire brigade models of the past had to change to keep up with the times.

As various speakers have made clear, the proposed changes centre on the governance of both services, how representative the national boards are and how accountable services are at a local level. There is also the matter of parliamentary scrutiny. I completely agree with those who have called for the chief constable, the chief fire officer and other members of the service to be appointed early. It is vital that the posts are filled as soon as possible and I am delighted that the recruitment process has been brought forward.

On the composition of the national governance boards, I am content with the idea that a majority of positions should be held by those with professional expertise. I suspect that the number of board members should be more than the 11 that the committee has suggested should be the minimum. There should, of course, be councillor representation, but it is simply not practical to follow Reform Scotland’s suggestion and include a councillor from every authority. The board would end up looking like a soviet-style politburo, which I do not think would be terribly effective.

It was suggested that the councillors should have some experience. However, as Chief Constable Kevin Smith of ACPOS pointed out to the Justice Committee, it is unlikely that current members of police boards across the country have been vetted to a degree that has allowed them to scrutinise sensitive aspects of policing. How much training will be required to ensure that elected members are not out of place on what will be a professional body?

There is also the question of how much time a councillor will be expected to give to the governance board if the workload is as heavy as has been suggested. How will the amount of extra time spent dealing with board issues, particularly in the early days when training will be a major factor, impact on elected members’ responsibilities to their constituents and council?

I believe that the bill’s proposals hold no dangers for local planning and accountability. As the cabinet secretary has said, the senior officers of both services will still be in dialogue with local authorities and communities through local commanders.

Now that I have stood down as a member of the City of Edinburgh Council, I have to say that I have often wondered just how effective police boards, in particular, have been because of the lack of vetting that I mentioned earlier. I would not want any elected member from any chamber to be involved in any operational interference and believe that local accountability could be streamlined without any detrimental effect on policing and fire and rescue service provision. Community planning should be just what it says.

I am glad that the committee decided not to recommend a uniform method of local accountability. Every area is different and one model might not fit all. We will need to take into consideration the results of the 16 pathfinder pilots once they are known.
With regard to the fire and rescue service, I was struck during the committee’s evidence-taking sessions by the closeness of the views of senior officers and the FBU on many of the issues under discussion. There appears to be a desire for reform, particularly in the areas of operational clarity and expectations of the service. Given certain high-profile incidents relating to local decision making on rescue, that kind of clarity must be welcomed.

In evidence, John Duffy of the FBU suggested that local fire boards had a problem similar to that which I highlighted earlier in relation to police boards. He said:

“A councillor’s understanding of what they are expected to scrutinise the chief on has been derived from information given to them by that chief. That falls straight away.”—[Official Report, Justice Committee, 13 March 2012; c 1154.]

I suggest that the present set-up for boards in both services needs to be reformed.

During the Justice Committee’s deliberations, it was fascinating to listen to the different views of those who were good enough to give evidence. I was particularly taken by the evidence from Sir Hugh Orde on the problems of setting up the Police Service of Northern Ireland and how he was held to account by the local authority, as my colleague Humza Yousaf mentioned. Although I do not believe that model to be totally right for Scotland, his evidence shows that problems can be overcome if the will is there. I encourage the Scottish Government to continue to discuss with Westminster the problems in relation to VAT, which do not exist in Northern Ireland.

After attending a conference some months ago at which representatives from many nations discussed the merits of a single national police service, I am convinced that the Scottish Government’s actions, which were introduced as a result of financial reality, are the right way forward, because they work in the real world. The desire to reform both services is strong. I am delighted to have been a member of the Justice Committee that produced the stage 1 report.

11:11

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): As other members have done, I will focus on the bill’s proposals for a single police force for Scotland. The proposals for the fire service are less contentious and appear to be a sensible efficiency measure. However, any restructuring of the fire service must involve the retention of a visible and effective firefighting presence. I hope that, by making savings, the bill will protect front-line fire services.
local police performance. The UK Government is introducing elected commissioners in England. Will the cabinet secretary consider improving the bill by including that policy to enhance local accountability?

The second and third conditions for the Scottish Conservatives’ support for the bill are that the Scottish Government has set out a business plan rather than a full business case. When the cabinet secretary made a statement to Parliament on police and fire reform back in September 2011, he said that a single police force could achieve £130 million of savings within a year and a total saving of £1.7 billion over 15 years. I asked him:

“What systems does the Government plan to put in place to ensure that those savings are delivered?”

His reply was remarkably vague. He said:

“Those matters will be dealt with.”—[Official Report, 8 September 2011; c 1562.]

The Scottish Conservatives’ support for the bill are that efficiency savings are delivered and—crucially—that they are delivered alongside the protection of front-line services. When the cabinet secretary made a statement to Parliament on police and fire reform back in September 2011, he said that a single police force could achieve £130 million of savings within a year and a total saving of £1.7 billion over 15 years. I asked him:

“What systems does the Government plan to put in place to ensure that those savings are delivered?”

His reply was remarkably vague. He said:

“Those matters will be dealt with.”—[Official Report, 8 September 2011; c 1562.]

The Government continues to provide little detail on how it plans to ensure that the oft-quoted savings are delivered. During the Justice Committee’s consideration of the bill, a number of witnesses expressed concerns—we have heard them repeated today—about how the savings would or could be delivered.

Humza Yousaf: John Lamont’s colleague David McLetchie mentioned that the single police force was in the Conservatives’ manifesto. On what projected savings was that based?

John Lamont: We came out in favour of a single police force before the SNP did. We believe that a single police force will provide not only efficiency savings but a better service to the people of Scotland. It is the Government that argues for the changes because they would make savings. That is the SNP’s principal argument for pursuing the reform. What are the savings and how will they be delivered? The SNP needs to produce a detailed business plan and the costing reasoning for how it will deliver the savings, not just for us here in the Parliament but for the taxpayer, who expects the savings to be delivered.

As we heard from my colleague David McLetchie, the savings that the Scottish Government has set out are based on simply an outline business plan rather than a full business case. I repeat the Justice Committee’s call for a full business case to be published as soon as possible, so that the Parliament and the wider Scottish public can understand better the savings and how they will be delivered. That such a case has not been produced ahead of the stage 1 debate is a serious oversight by the Scottish Government.

We believe that reform is necessary and that we should not be tied to historical structures that are no longer relevant to policing in modern Scotland. However, the Scottish Government must do more to persuade us that the bill as it stands will deliver local accountability and savings for the Scottish taxpayer.

11:17

Lewis Macdonald: The debate has been useful in highlighting the broad support for the bill’s general principles and in demonstrating the wide range of concerns that still need to be fully addressed. Graeme Pearson correctly stressed that the move from local to national police and fire services is important because it is a fundamental change in their character and not simply a modernising reform of the kind that might happen every 30 or 40 years. Therefore, it is all the more important that the Parliament and the Government get the detail of the change right.

Because the changes are profoundly significant, ministers need to think carefully—even at this stage—about the process and timing of change. They have conceded that, as was the view of many who gave evidence at stage 1, the establishment of single services on 1 April 2013 will not of itself create fully integrated, fully operational and fully effective services. There will be a transitional process—the question is simply about the point at which powers should be vested entirely in single national services rather than in the existing services.

David McLetchie was right to question why we have reached the end of stage 1 with only outline business cases, which have been subjected to significant criticism and which propose levels of savings that, as some have said, might not be achieved.

The VAT issue was not resolved before the bill was introduced. The fear is that the failure to resolve it will cancel out some of the savings that are meant to be made. Christine Grahame and John Finnie asked how the VAT issue could have been resolved. Of course, they were both signatories to the Justice Committee’s report, which called on ministers to look at giving local authorities the capacity to contribute to police and fire budgets.

On that basis, I commend to them a range of evidence on that question from witnesses at stage 1. Unison, which represents many of the civilian staff who will be affected, and COSLA, which represents local authorities and is the current third party in the tripartite arrangements, have made the case for structuring single services within the local government family. Jim Gallagher, a former head
of the Justice Department, gave a similar view in his written evidence.

Of course, to do that might dilute the historic change to which Graeme Pearson rightly referred, and ministers might reasonably argue that part of their purpose is to break the link with local government at the national level, but that is not what ministers have said and, as I understand it, not what they intend. Kenny MacAskill has been clear that the authority boards for each service should include elected members from local government and, during stage 1, a number of people have argued that more councillors should be involved at that level. It is not clear to me why ministers appear not to have worked through options for maintaining local government participation at the national level in the funding of the services, which might have addressed the VAT issue that ministers have not been able to resolve thus far. Given the fact that the price of failing to resolve it might be more than £20 million a year, it will be disappointing if ministers or members of their party say that it is for others to flesh out how that should be done. The Government is in its second term of office; surely fleshing out solutions to such problems is properly a matter for ministers.

The other reason for not turning away lightly from the input of local government to single services is the issue of accountability, which has been raised by a number of members. It was highlighted by Graeme Pearson, by Jenny Marra on behalf of the committee, and by other members from all parties. The power of ministers to appoint, direct and require removal, in the interests of efficiency, concentrates unprecedented authority over policing in the hands of central Government. As Roderick Campbell said, it is essential that the commitment of elected politicians to human rights, transparency and accountability is anchored in statute and underpinned by the bill so that single services are provided without an undue concentration of power at the centre.

A number of speakers emphasised the Justice Committee’s recommendations on local accountability, which I support. The case for allowing local authorities, which are being encouraged to take a direct role in the preparation of local policing and fire plans, to know what resources are available to the police and fire services in their area seems eminently sensible. I do not really understand why the Government has not accepted that recommendation in full. No doubt the minister will comment on that during her closing speech.

Graeme Pearson was right to say that this is not just about what resources are available on 1 April next year. I suspect that local authorities will be quite interested in taking on the responsibility to lay out in front of joint boards what resource was available to them at the beginning of the process as well as what will be available at the end of it.

Graeme Pearson also made a clear case for a parliamentary commission, and I was interested to hear some of the responses to that suggestion. Christine Grahame thought that there might not be time to do it properly, and Humza Yousaf suggested that we might not be able to afford it in such financially tough times. Perhaps those reservations strengthen the case for ministers to think carefully about the phasing of the change. I also dispute the suggestion that scrutiny should be limited by additional cost. If the Scottish Parliament can rightly support scrutiny of the Scotland Bill and of other UK legislation, and support commissions in other fields—all of which are appropriate—surely it can support the best available arrangements for scrutiny of a single national police force, which otherwise will be entirely under ministerial control.

I was interested to note that Roseanna Cunningham seemed to assure Alison McInnes that no fire stations would be closed as a result of the bill. I have no doubt that that is a commitment to which she will be held. If the minister wants to intervene on that point, she is very welcome to do so, or she could comment on it at the end of the debate. It would be in no one’s interests if the commitment that she gave was less than clear to all concerned.

I am also interested to hear the minister’s views on Christine Grahame’s comments about the wider rescue functions of the fire and rescue service, and on the Fire Brigades Union’s views on defining those functions in statute. Ministers, along with many members, met the FBU yesterday.

Christine Grahame: Does the member accept that the committee did not want the wider definition or guidance to be put in primary legislation as that would have been too constricting?

Lewis Macdonald: I absolutely accept Christine Grahame’s point of fact and the reasons that lie behind it. I am simply asking for ministers’ response to the FBU’s position and their explanation as to why they have chosen not to go down that road. What they have to say might well be along the lines that Christine Grahame has indicated, but I will be very interested to hear it.

Finally, I turn to an issue that a number of members have denied is the single biggest problem with the current process: the loss of civilian staff from the police service in particular and its inevitable consequence—police officers doing civilian jobs. It is not adequate simply to argue that, just because chief constables have given an assurance that that is not happening, it is not happening. Such evidence must be subjected
to greater scrutiny. When trade unions that represent staff and others tell us that the problems are real, we have to take what they say seriously not because we want to protect the positions of the civilian staff—but not the warranted officers or firefighters—who do a fantastic job in those services but because we do not want the Scottish Government’s pledge to maintain police numbers to result in more back-room bobbies rather than police officers out on the beat.

I am keen to hear the minister’s comments on those critical issues and look forward to stage 2 and further debate on many of the issues that we have discussed.

11:26

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I am grateful to all members for their speeches and their participation in the consideration of what is a very significant bill. We will reflect on all their contributions as we take the bill forward. After all, this is just stage 1 of the process and, as members know, a lot of discussion will take place from here on in.

Nevertheless, I think that we all agree on the need to reform, safeguard and improve police and fire and rescue services. I hope that even Alison McInnes will at least accept that, because the services are vital to the people of Scotland. Reform also offers a unique opportunity to sustain and strengthen Scotland’s services in the face of Westminster cuts. As members recognise, the services and the success of reform would be nothing without the skills and talents of all those who work in whatever capacity in our services. Indeed, that is why they will transfer on the same terms and conditions.

We and the services have been examining the issue of single services for more than two years now. A wealth of evidence demonstrates that single services deliver the most benefits. The services and stakeholders accept that and are working constructively with us to deliver that reform.

Understandably, the debate has centred principally on the police. However, I am also responsible for fire and rescue services and I hope that members will indulge me for a few minutes as I say something about them. It has become something of a joke that the new Scottish fire and rescue service should simply be called “and fire” because in the discussions on the bill everyone has talked about the police—“oh, and fire”. We need to emphasise how vital fire and rescue services are to every community in Scotland.

For a considerable time now, a great deal of work has been going on with different levels of the
However, we take the view that the boards should reflect all relevant experience, including that of local authorities. We want to ensure that that experience is represented at board level. We have heard the views of stakeholders and members on the size of the boards, but we have yet to take a final decision on that—we will do so after this debate. We understand the arguments about smaller versus larger. We all want to achieve an optimum number that provides the best way for the boards to develop.

I will mention some non-bill issues that have been raised. One of those is to do with resources and savings, which I say is a non-bill issue because it is not covered in the detail of the bill. We believe that the budgets for police and fire provide sufficient funding for the services to undertake their functions fully. Future budgets will be agreed following future negotiations on service requirements. The single police and fire and rescue services will, together, deliver estimated savings of £1.7 billion over 15 years, with annual recurring cash savings in excess of £130 million expected from 2016-17.

The CFOA is certain that savings can be made by removing duplication. ACPOS has assured us that it is committed to implementing the police reform programme within budget. Of course, budgets are an on-going issue to which all Governments at any time must have serious regard. The full business cases for the new police and fire and rescue services will influence and determine the detailed design of the new services, so their production is a matter for those services and not for the Scottish Government, although we expect them to be completed as soon as possible.

Lewis Macdonald: Does the minister not accept that the ability of Parliament to properly scrutinise the legislation would be greater if the Government produced full business cases before the conclusion of the legislative process?

Roseanna Cunningham: As Lewis Macdonald knows perfectly well, delivering legislation and delivering budgets are not the same. We wanted to involve people in the whole process and not simply to provide a fait accompli. That approach goes to the heart of how we have tried to manage the process all along.

On VAT, the purpose of undertaking the reform is to protect front-line services against Westminster budget cuts. It would be a travesty if some of the potential benefits of that reform were lost to the Exchequer in VAT, and officials continue to explore the options with the Treasury.

I reassure Lewis Macdonald that the outline business cases prepared by the Scottish Government assumed the worst-case scenario that VAT could not be recovered. If the new services are able to recover VAT, the annual savings deliverable from reform from 2016-17 would be £157 million, rather than £131 million. That is an outcome that we all wish to see.

I will deal with some of the specific issues that members raised. Lewis Macdonald talked about the timing of reform. We agree that the 1 April 2013 timescale is a challenge—the Cabinet Secretary for Justice and I have said that all along—but we wanted to reduce the period of uncertainty, so a judgment had to be made. However, we accept that work will be on-going after 1 April 2013.

Graeme Pearson made a very strong case for a particular scrutiny position that he wishes to see brought in. Indeed, I heard about that position in detail at last night’s reception. When he was outlining his case, I do not know whether he was aware that the issue is one for the Parliament to consider rather than the Government. I noticed the Presiding Officer carefully attending to the detail of his proposal, so who knows what conversations may yet take place on the back of his thoughtful contribution?

Alison McInnes was the one discordant voice in the debate. It is unfortunate that the Liberal Democrats have not yet taken the lesson that the electorate continues to deal out to them, particularly in relation to this issue. There are quite clear arrangements to enable local authorities to shape local service delivery, and it will be for local authorities to make the decisions on how to do that. That, in a sense, is also a response to some of the comments made by Hanzala Malik. We will see a variety of different models emerging. Local authorities are entitled to make decisions about how best to deliver local scrutiny and accountability, and it is only a matter of time before we will be able to ascertain which model turns out to be the most useful.

It is worth reiterating that what is being shaped in Scotland is a better, more streamlined and more efficient future for both services.

Lewis Macdonald: Will the member give way?

Roseanna Cunningham: I will carry on, as I am in my last minute.

I ask members to compare the position in Scotland with that south of the border. In England, the police are in uproar over the Winsor review, which is not being implemented in Scotland—20,000 police officers are out demonstrating—and there is effectively piecemeal privatisation of fire services. We have not wanted to take, and we will not take, either course of action in Scotland. What we are doing is in stark contrast to what is happening south of the border.
I thank every member for their contributions. A lot of points have been raised, but not all have been dealt with and we promise to follow-up on the specifics. Reform is vital if we are to protect and improve on the services that our communities receive. The bill provides the framework for that, and I ask members to support it.
12:00

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-02591, in the name of John Swinney, on the financial resolution to the Police and Fire Reform (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police and Fire Reform (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.—[John Swinney.]

The Presiding Officer: The question on the motion will be put at decision time.
Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are five questions to be put as a result of today’s business. The first question is, that motion S4M-02800, in the name of Kenny MacAskill, on the Police and Fire Reform (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
The Presiding Officer: The next question is, that motion S4M-02591, in the name of John Swinney, on the financial resolution for the Police and Fire Reform (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Bailie, Jackie (Dumbarton) (Lab)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (Scotland South) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghamhame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Ewing, Ferguson (Inverness and Nairn) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fee, Mary (West Scotland) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)

Against
Hume, Jim (South Scotland) (LD)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)

Abstentions
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Davidson, Ruth (Glasgow) (Con)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
McGrigor, Jamie (Highlands and Islands) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)

The Presiding Officer: The result of the division is: For 93, Against 5, Abstentions 13.

Motion agreed to,

That the Parliament agrees to the general principles of the Police and Fire Reform (Scotland) Bill.
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Shettleston) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Neil, Alex (Airdrie and Shotts) (SNP)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Hume, Jim (South Scotland) (LD)
McArthur, Liam (Orkney Islands) (LD)
McInnes, Alison (North East Scotland) (LD)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)

The Presiding Officer: The result of the division is: For 104, Against 5, Abstentions 0.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Police and Fire Reform (Scotland) Bill, agrees to any expenditure of a kind referred to in paragraph 3(b) of Rule 9.12 of the Parliament’s Standing Orders arising in consequence of the Act.
Police and Fire Reform (Scotland) Bill

1st Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Section 1
- Sections 2 to 28
- Sections 29 to 57
- Sections 58 to 95
- Sections 96 to 118
- Sections 119 to 123
- Sections 124 and 125
- Schedule 1
- Schedule 2
- Schedule 3
- Schedule 4
- Schedule 5
- Schedules 6 and 7
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Section 1

John Finnie

165 In section 1, page 1, line 8, after <Authority> insert <or, in Gaelic, Ùghdarras Poilis na h-Alba>

Schedule 1

Lewis Macdonald

177 In schedule 1, page 66, line 7, at end insert—

<( ) is to be regarded as if it is a local authority,>

Kenny MacAskill

1 In schedule 1, page 66, line 12, leave out from <not> to end of line 13 and insert—

<(a) a person appointed by the Scottish Ministers to chair the Authority (“the chairing member”), and
(b) not fewer than 6 nor more than 10 other members appointed by the Scottish Ministers.>

Alison McInnes

1A As an amendment to amendment 1, line 2, leave out <the Scottish Ministers> and insert <Her Majesty on the nomination of the Scottish Parliament>

Lewis Macdonald

1B As an amendment to amendment 1, line 4, leave out <6 nor more than 10> and insert <14>
David McLetchie

1C As an amendment to amendment 1, line 4, leave out <6> and insert <15>

David McLetchie

1D As an amendment to amendment 1, line 4, leave out <10> and insert <19>

Lewis Macdonald

178 In schedule 1, page 66, line 13, at end insert—

<( ) No fewer than half the members of the Authority, excluding the chairing member, must be members of local authorities.

( ) The Scottish Ministers must select the members of local authorities to be members of the Authority from nominations made by the Convention of Scottish Local Authorities.

( ) The number of members nominated by the Convention of Scottish Local Authorities must be no more than twice the number of positions to be filled.>

Lewis Macdonald

179 In schedule 1, page 66, line 15, at end insert—

<( ) In appointing members, the Scottish Ministers must have due regard to representation among members of the Authority of persons with knowledge of communities and policing in all regions of Scotland.>

Jenny Marra

180 In schedule 1, page 66, line 15, at end insert—

<( ) The proportion of both men and women appointed to the Authority must be at least 40 per cent of the membership.>

David McLetchie

181 In schedule 1, page 66, line 15, at end insert—

<( ) In appointing members, the Scottish Ministers must have regard to the desirability of ensuring that membership includes, but is not limited to, people who—

(a) are members of a local authority,

(b) as far as possible adequately represent the regions of Scotland,

(c) have no other current or previous direct connection to policing.>

Kenny MacAskill

2 In schedule 1, page 66, line 16, leave out <(1)> and insert <(1)(b)>

Kenny MacAskill

3 In schedule 1, page 66, line 18, at end insert—

<( ) Members of the Authority may elect from their number a member to act as deputy to the chairing member.>
Kenny MacAskill
4  In schedule 1, page 67, leave out lines 25 to 35

Kenny MacAskill
5  In schedule 1, page 68, leave out line 2

Lewis Macdonald
182 In schedule 1, page 68, line 31, leave out from beginning to <party> in line 32

Graeme Pearson
183 In schedule 1, page 70, line 7, at end insert—

< (1A) In considering its own procedure under sub-paragraph (1)(a), the Authority must have regard to the transparency of its proceedings, in particular it must—

(a) hold its meetings in public,
(b) publish its agendas and papers,
(c) publish any correspondence it has with local authorities, including the Convention of Scottish Local Authorities,
(d) publish any correspondence it has with, and any directions it receives from, the Scottish Ministers, and
(e) publish any reports it receives from the chief constable.

(1B) The Authority must publish a strategy setting out what steps it will take to ensure public engagement in its proceedings.

(1C) A strategy under sub-paragraph (1B) must be published within 6 months of the establishment of the Authority and must be reviewed at the end of every subsequent year.>

David McLetchie
184 In schedule 1, page 70, line 7, at end insert—

< (1A) Sub-paragraph (1) is subject to sub-paragraph (1B).

(1B) The Authority must, except in circumstances which it has specified in standing orders—

(a) hold its meetings in public, and
(b) publish the agenda and papers for its meetings.>

Lewis Macdonald
185 In schedule 1, page 70, line 16, after <determine> insert <, except its powers under section 14(1).>

Section 2

Lewis Macdonald
186 In section 2, page 1, line 18, leave out <try to>
David McLetchie

187 In section 2, page 1, line 19, after <transparent> insert <, involves local authorities wherever possible>

Section 4

Lewis Macdonald

188 In section 4, page 2, line 10, at end insert—

<( ) hold reserves,>

Jenny Marra

189 In section 4, page 2, line 14, at end insert—

<( ) Where the Authority intends to exercise the power in subsection (2)(a) to enter into a contract for the supply, maintenance or replacement of uniforms, it must reserve the right to participate to economic operators which operate supported businesses, supported employment programmes or supported factories within the meaning of Article 19 of Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.>

Lewis Macdonald

190 In section 4, page 2, line 15, leave out <(2)(b)> and insert <(2)(a), (b)>

Kenny MacAskill

6 In section 4, page 2, line 15, after <(2)(b)> insert <or (e)>

Lewis Macdonald

191 In section 4, page 2, line 30, at end insert—

<( ) In exercising the power to enter into a contract, the Authority must have regard to any guidance issued to local authorities by the Scottish Ministers under section 52 of the Local Government in Scotland Act 2003.>

Section 5

David McLetchie

192 In section 5, page 2, line 33, at end insert—

<( ) Before giving the first direction under this section the Scottish Ministers must draw up and publish a statement setting out the circumstances in which giving a direction may be regarded as being in respect of the matters specified in subsection (2).>

Alison McInnes

166 In section 5, page 3, line 4, at end insert—
Any direction given under this section with respect to the use by the Police Service of firearms, including electric shock dart guns (tasers), is to be made by order.

Section 6

John Finnie

167 In section 6, page 3, line 11, after <Scotland> insert <(or, in Gaelic, Seirbheis Phoilis na h-Alba)>

Section 7

Lewis Macdonald

193 In section 7, page 3, line 22, at end insert—

<( ) The first appointment of a chief constable under subsection (1)(a) must be made at least 6 months before the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6).>

Section 10

John Finnie

168 In section 10, page 4, line 6, after <impartiality> insert <and that I will uphold fundamental human rights and accord equal respect to all people.>

Section 11

Kenny MacAskill

7 In section 11, page 4, line 27, leave out <assistant>

Kenny MacAskill

8 In section 11, page 4, line 27, at end insert—

<( ) Regulations made under subsection (5) may make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate including (in particular) provision—

(a) creating or removing an office corresponding to the rank,
(b) relating to the functions of senior officers,
(c) modifying this or any other enactment.>

John Finnie

169 In section 11, page 4, line 31, leave out <representative committees> and insert <joint central committee>
Section 14

Kenny MacAskill
9 In section 14, page 5, line 15, after <to> insert <resign or, where appropriate.>

Kenny MacAskill
10 In section 14, page 5, line 16, at end insert <of the Police Service>

Kenny MacAskill
11 In section 14, page 5, line 17, after <to> insert <resign or>

Kenny MacAskill
12 In section 14, page 5, line 19, leave out <an> and insert <a written>

Kenny MacAskill
13 In section 14, page 5, line 20, after <to> insert <resign or>

Kenny MacAskill
14 In section 14, page 5, line 21, after <make> insert <written>

Kenny MacAskill
15 In section 14, page 5, line 22, after <any> insert <written>

Kenny MacAskill
16 In section 14, page 5, line 23, after second <to> insert <resign or>

Kenny MacAskill
17 In section 14, page 5, line 24, at end insert—
   <( ) Where—
   (a) a senior officer is called on to resign or retire, and
   (b) the officer has made written representations under subsection (2)(a)(ii),
   the Authority must provide the officer with written reasons for its decision.>

Kenny MacAskill
18 In section 14, page 5, line 25, after <to> insert <resign or>

Kenny MacAskill
19 In section 14, page 5, line 25, leave out second <retire> and insert <do so>
Kenny MacAskill
20 In section 14, page 5, line 26, after <to> insert <resign or>

Section 15

Kenny MacAskill
21 In section 15, page 5, line 31, leave out <in> and insert <on temporary>

Kenny MacAskill
22 In section 15, page 5, line 31, at end insert—

<( ) A constable on temporary service outwith the Police Service—

(a) is to continue to hold the office of constable, and
(b) except where contrary provision is made by regulations under subsection (2) or by or under any other enactment, is to continue to—

(i) have all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
(ii) have the powers and privileges of a constable throughout Scotland, and
(iii) be under the direction and control of the chief constable in relation to the constable’s performance of policing functions.>

Kenny MacAskill
23 In section 15, page 5, line 33, leave out from <service> to end of line 35 and insert <temporary service in respect of which a constable—

(i) may not be engaged in pursuance of subsection (1),
(ii) may be so engaged only with the consent of the Authority or the Scottish Ministers (or both),
(iii) is not to have any of the functions, powers or privileges of a constable,
(iv) is not to be under the direction and control of the chief constable, and>

Kenny MacAskill
24 In section 15, page 6, line 1, leave out subsection (3)

Kenny MacAskill
25 In section 15, page 6, line 7, leave out <applying> and insert <modifying>

Kenny MacAskill
26 In section 15, page 6, line 9, leave out <, with such modifications as are considered appropriate,>

Kenny MacAskill
27 In section 15, page 6, line 21, leave out from <or> to end of line 22
Section 17

Kenny MacAskill
28 In section 17, page 7, line 20, leave out <, annual police plans>

Kenny MacAskill
29 In section 17, page 7, line 21, leave out <36> and insert <34(3A)>

Kenny MacAskill
30 In section 17, page 7, line 21, at end insert—
   <( ) is to prepare annual police plans (see section 35),>

Kenny MacAskill
31 In section 17, page 8, line 11, leave out from beginning to <plan,>

Section 18

Kenny MacAskill
32 In section 18, page 8, line 25, leave out subsection (4)

Kenny MacAskill
33 In section 18, page 8, line 30, leave out <or, as the case may be, assistant chief constable>

Section 19

Kenny MacAskill
34 In section 19, page 8, line 36, leave out <An individual holding the office of> and insert <A>

Section 22

John Finnie
170 In section 22, page 10, line 2, leave out <5> and insert <2>

Section 26

Lewis Macdonald
194 In section 26, page 11, line 24, leave out <individuals> and insert <police staff>

Lewis Macdonald
195 In section 26, page 11, line 24, leave out <constables>
Lewis Macdonald

196  In section 26, page 11, line 26, leave out subsection (2)

Lewis Macdonald

197  In section 26, page 11, line 26, leave out <Individuals> and insert <Police staff>

Section 28

Lewis Macdonald

198* In section 28, page 12, line 6, leave out <assist constables by carrying> and insert <carry>

Section 29

Lewis Macdonald

199  In section 29, page 12, line 29, at end insert—

   <( ) Where a certificate is revoked under subsection (2), the chief constable must report such
   a decision to the Authority.>

Section 31

Kenny MacAskill

35  In section 31, page 13, line 6, after <Service,> insert <the Police Investigations and Review
    Commissioner and>

Kenny MacAskill

36  In section 31, page 13, line 7, leave out from <(and> to end of line 8

Section 33

Kenny MacAskill

37  In section 33, page 13, line 26, at end insert—

   <( ) the chief constable,>

Alison McInnes

171  In section 33, page 13, line 27, leave out from <such> to <authorities> and insert <each local
     authority>

Lewis Macdonald

200  In section 33, page 13, line 27, leave out from <such> to <authorities> and insert <the
     Convention of Scottish Local Authorities>
Alison McInnes
172 In section 33, page 13, line 28, at end insert—

<( ) As soon as reasonably practicable after completing consultation under subsection (3), the Scottish Ministers must make a statement to the Scottish Parliament setting out the reasons for any strategic police priorities they propose to determine.>

Kenny MacAskill
38 In section 33, page 13, line 32, at end insert—

<( ) The Scottish Ministers must lay a copy of the strategic police priorities before the Scottish Parliament.>

Section 34

Kenny MacAskill
39 In section 34, page 14, line 11, at end insert—

<(3A) The Authority must involve the chief constable in the preparation of a strategic police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.>

Section 35

Kenny MacAskill
40 In section 35, page 15, line 4, leave out <Authority> and insert <chief constable>

Kenny MacAskill
41 In section 35, page 15, leave out line 8

Kenny MacAskill
42 In section 35, page 15, line 11, after <objectives> insert <for the policing of Scotland>

Kenny MacAskill
43 In section 35, page 15, line 13, leave out from <the> to <Authority> in line 14 and insert <policing which the chief constable>

Kenny MacAskill
44 In section 35, page 15, line 14, at end insert—

<( ) When preparing an annual police plan, the chief constable must—

(a) send a copy of a draft plan to the Authority,

(b) invite the Authority to comment on the draft plan within such reasonable period as the chief constable may specify, and

(c) have regard to any comments received within that period.>
Kenny MacAskill
45 In section 35, page 15, line 15, leave out <Authority> and insert <chief constable>

Kenny MacAskill
46 In section 35, page 15, line 17, leave out <Authority> and insert <chief constable>

Kenny MacAskill
47 In section 35, page 15, line 18, leave out <Authority> and insert <chief constable>

Section 36

Kenny MacAskill
48 Leave out section 36

Section 40

Lewis Macdonald
201 In section 40, page 17, line 21, after <Scotland,> insert—

<( ) the average number of constables and police staff employed during the reporting year in the policing of Scotland.>

Kenny MacAskill
49 In section 40, page 17, line 24, after <contain> insert <—

(a)>

Kenny MacAskill
50 In section 40, page 17, line 29, at the beginning insert <an assessment of the performance by the Police Service during the reporting year>

Kenny MacAskill
51 In section 40, page 17, line 31, leave out subsection (4) and insert—

<(4) The chief constable must—

(a) within 3 months of the end of a reporting year, provide the Authority with a report setting out the chief constable’s assessment of the Police Service’s performance during that reporting year in the policing of Scotland, and

(b) provide the Authority with such other assistance as it may reasonably require in relation to the preparation of an annual report.

(4A) A report provided by the chief constable under subsection (4)(a) must, in particular, contain the chief constable’s assessment of the Police Service’s performance during the reporting year concerned—>
(a) in achieving, or in working towards achieving, the main objectives for the policing of Scotland set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and

(b) in implementing the proposed arrangements set out in the annual police plan for the reporting year concerned.>

Section 41

Kenny MacAskill

52 In section 41, page 18, line 16, leave out subsections (5) and (6)

After section 43

David McLetchie

202 After section 43, insert—

Audit of Police Service costs

(1) The Auditor General must, as soon as practicable after the day on which section 6 comes fully into force, examine the costs of the Police Service compared to the costs of the delivery of police services in Scotland prior to the coming into force of this Act.

(2) The Auditor General must—

(a) report the results to the Scottish Parliament and the Authority, and

(b) publish the results.>

Section 45

Graeme Pearson

203 In section 45, page 19, line 17, at end insert—

The chief constable must provide to each local authority as soon as reasonably practicable details of the resources allocated to policing in its area as at—

(a) 1 April 2012, and

(b) 1 April in each subsequent year.>

Section 46

Alison McInnes

173 In section 46, page 19, line 19, leave out subsection (1) and insert—

Priorities and objectives for the policing of each local authority area must be agreed between the local commander and the local authority.>

Jenny Marra

204 In section 46, page 19, line 20, at end insert—
If a local authority appoints a committee or other body to carry out any of its functions under this Part, the proportion of both men and women appointed to the committee or other body must be at least 40 per cent of the membership.

Kenny MacAskill

53 In section 46, page 19, line 25, at end insert—

A local authority may provide feedback by reference to any local police plan in force for the area.

Lewis Macdonald

205 In section 46, page 19, line 25, at end insert—

A local authority may raise concerns with the chief constable concerning—

(a) the performance or conduct of the local commander, or
(b) the policing of its area, where it has been unable to reach agreement with the local commander.

Kenny MacAskill

54 In section 46, page 19, line 32, at end insert—

A local commander may refer a requirement under subsection (3) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—

(a) the carrying out of any operation by the Police Service, or
(b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the chief constable.

Section 47

Kenny MacAskill

55 In section 47, page 19, line 37, leave out from beginning to end of line 2 on page 20 and insert—

(b) in paragraph (e), for “a police force” substitute “the Police Service of Scotland”.

(2) The chief constable must delegate the carrying out of the chief constable’s functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.

(3) Subsection (2) does not affect—

(a) the chief constable’s responsibility for the carrying out of the delegated functions,
(b) the chief constable’s ability to carry out the delegated functions.
Section 48

Kenny MacAskill

56 In section 48, page 20, line 4, at beginning insert <As soon as is reasonably practicable after the first strategic police plan is approved under section 34,>.

Lewis Macdonald

206 In section 48, page 20, line 12, at end insert—

<( ) includes costings and an explanation of budget provision for each section of the plan,
( ) sets out the number of constables and police staff expected to be deployed in the local authority’s area,>

Kenny MacAskill

57 In section 48, page 20, line 22, leave out <such> and insert <—

(i) the joint central committee of the Police Federation for Scotland,
(ii) such persons as appear to the local commander to be representative of senior officers,
(iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),
(iv) such persons as appear to the local commander to be representative of police staff, and
(v) such other>

David McLetchie

207 In section 48, page 20, line 24, at end insert—

<( ) If the local authority does not approve a local police plan submitted to it—
( a) the local authority must notify the Authority that it has not approved the plan, and
(b) the local commander may proceed to implement the plan.>

Kenny MacAskill

58 In section 48, page 20, line 26, leave out from <at> to end of line 28 and insert <if—

(a) a new strategic police plan is approved under section 34, or
(b) the plan is not replaced under subsection (5A) or modified under subsection (7) during the period of 3 years beginning with the date of publication of the plan.

(5A) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.

(5B) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.>
Kenny MacAskill

59 In section 48, page 20, line 31, leave out from <(after) to <appropriate)> in line 32

Kenny MacAskill

60 In section 48, page 20, line 32, at end insert—

<( ) Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.>

Kenny MacAskill

61 In section 48, page 20, line 33, leave out subsection (8)

David McLetchie

208 In section 48, page 20, line 35, at end insert—

<( ) Where, in the opinion of the local commander, there has been or is likely to be a material failure to achieve the main priorities and objectives for the policing of the local authority’s area, the local commander must report that to the local authority as soon as practicable.>

Section 53

Kenny MacAskill

62 In section 53, page 22, line 36, leave out from <or> to <unsatisfactory>

Kenny MacAskill

63 In section 53, page 23, line 1, leave out from <decide> to end of line 3 and insert <determine any case which relates to the standard of behaviour or performance of a senior officer.>

Section 55

Kenny MacAskill

64 In section 55, page 23, line 14, after <(c.16)> insert <(other than pensions)>

John Finnie

174 In section 55, page 23, line 22, leave out <representative committees> and insert <joint central committee>

Section 60

Kenny MacAskill

65 In section 60, page 25, line 19, leave out <on grounds of confidentiality>
Section 63

Kenny MacAskill
66 In section 63, page 27, line 2, leave out <a serious criminal> and insert <an>

Kenny MacAskill
67 In section 63, page 27, line 9, at beginning insert <where requested to do so by the Authority or the chief constable,>

Kenny MacAskill
68 In section 63, page 27, line 13, leave out from <and> to end of line 17

Kenny MacAskill
69 In section 63, page 27, leave out lines 18 to 22

Section 65

Kenny MacAskill
70 In section 65, page 28, leave out line 22

Kenny MacAskill
71 In section 65, page 28, line 23, leave out from <which> to <33A(1);> in line 24 and insert <—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;>

Kenny MacAskill
72 In section 65, page 28, line 25, after <investigated> insert <—

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii)>}

Section 66

Kenny MacAskill
73 In section 66, page 28, line 33, leave out from second <matter> to <police> in line 34 and insert <incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved>

Kenny MacAskill
74 In section 66, page 28, leave out line 35
Kenny MacAskill
75 In section 66, page 28, line 36, leave out from <which> to end of line 37 and insert <—
(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or
(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;>

Kenny MacAskill
76 In section 66, page 28, line 38, after <investigated> insert <—
(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or
(ii)>

Kenny MacAskill
77 In section 66, page 29, line 1, leave out <has been or is capable of being> and insert <or has been,>

Section 67

Kenny MacAskill
78 In section 67, page 29, leave out lines 21 to 23

Kenny MacAskill
79 In section 67, page 29, line 29, after <constable:> insert—

<( ) such persons as appear to them to be representatives of senior officers;
( ) such persons as appear to them to be representatives of superintendents (including chief superintendents);
( ) the joint central committee of the Police Federation for Scotland;>

Section 68

Kenny MacAskill
80 In section 68, page 30, line 1, leave out from <publish> to <report> in line 3 and insert <provide a copy of a report prepared under subsection (1)>

Kenny MacAskill
81 In section 68, page 30, line 6, at end insert <; and

<( ) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.>
Roderick Campbell

In section 68, page 30, line 13, at end insert—

<( ) If the Commissioner determines that it is necessary to disclose information of the type mentioned in subsection (3)(a) or (b), the Commissioner must give the person named or likely to be identified not less than seven days’ notice of the intention to do so.>

Section 69

Kenny MacAskill

In section 69, page 30, line 20, after first <in> insert <the carrying out of a complaint handling review or in>

Kenny MacAskill

In section 69, page 30, line 23, leave out <an> and insert <a review or>

Kenny MacAskill

In section 69, page 30, line 23, leave out <the investigation> and insert <it>

Section 70

Kenny MacAskill

In section 70, page 30, line 33, leave out from <by> to <public> in line 34

After section 70

Kenny MacAskill

Supported by: Alison McInnes

After section 70, insert—

<Protection from actions for defamation

After section 46 of the 2006 Act, insert—

“Protection from actions for defamation

(1) For the purposes of the law of defamation—

(a) any statement made by the Commissioner or any of the Commissioner’s staff—

(i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A(1);

(ii) in communicating with any person for the purposes of such a review or investigation;

(iii) in a report on such a review or investigation; or

(iv) in a report made under section 43,
has absolute privilege;
(b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A(1) has absolute privilege; and
(c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

David McLetchie

210 After section 70, insert—

<Appointment of staff

In schedule 4 of the 2006 Act (staff), in sub-paragraph 7(1), after “appropriate” insert “, but may not appoint a person who is a constable or a member of police staff”.

Section 74

Kenny MacAskill

87 In section 74, page 32, leave out line 5 and insert—

<(2) The inspectors of constabulary may make such other inquiries as they think fit about—>

After section 74

Kenny MacAskill

88 After section 74, insert—

<HMICS plan

(1) The inspectors of constabulary must prepare a plan setting out—
(a) priorities for inquiries to be carried out by them, and
(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The inspectors of constabulary—
(a) must keep the plan under review, and
(b) may from time to time revise the plan.

(3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.

(4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).>
Section 77

Kenny MacAskill

89 In section 77, page 32, line 27, leave out <or inspection>

Kenny MacAskill

90 In section 77, page 32, line 27, leave out <74> and insert <74(1) and any other information in relation to the report that the inspectors of constabulary think fit>

Kenny MacAskill

91 In section 77, page 32, line 28, leave out <or inspection>

Kenny MacAskill

92 In section 77, page 33, line 1, leave out subsection (4)>

After section 77

Kenny MacAskill

93 After section 77, insert—

<HMICS reports: other inquiries>

(1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.

(2) The inspectors of constabulary must—

(a) as soon as is reasonably practicable after giving the report under subsection (1)—

(i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and

(ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and

(b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.

(3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.>

Kenny MacAskill

94 After section 77, insert—
<Inquiry reports: consideration and action
In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 77 or (HMICS reports: other inquiries) and, having done so, must take such measures (if any) as they think fit in relation to the report.>

Section 78

Kenny MacAskill
95 In section 78, page 33, line 5, leave out <to the Scottish Ministers under section 77> and insert <by the inspectors of constabulary under section 77 or (HMICS reports: other inquiries)>.

Section 82

Kenny MacAskill
96 In section 82, page 35, line 18, leave out subsection (6).

Section 84

Kenny MacAskill
97 In section 84, page 36, line 15, after <persons> insert <, or types of person.>.

Kenny MacAskill
98 In section 84, page 36, line 24, after <persons> insert <, or types of person.>.

Kenny MacAskill
99 In section 84, page 36, line 35, leave out from <provides> to end of line 38 and insert <is required to provide in pursuance of section 31.>.

Section 87

Kenny MacAskill
100 In section 87, page 37, line 31, at end insert—

<(A1) It is an offence for a person to assault—
(a) a person (“A”) acting in a capacity mentioned in subsection (2), or
(b) a person assisting A while A is acting in such capacity.>

Kenny MacAskill
101 In section 87, page 37, line 32, leave out <assault,>

Kenny MacAskill
102 In section 87, page 38, line 8, after <subsection> insert <(A1) or>
Kenny MacAskill

103 In section 87, page 38, line 10, at end insert—

<(  ) A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (A1) and an offence under subsection (1).

(  ) Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.>

Schedule 4

Kenny MacAskill

104 In schedule 4, page 75, line 12, after <4(2).> insert <(4) and 7(4B).>

Kenny MacAskill

105 In schedule 4, page 75, line 31, leave out from <but,> to <and> in line 32 and insert <(and accordingly to hold the rank of deputy chief constable) but>

Kenny MacAskill

106 In schedule 4, page 76, line 2, leave out <deputy> and insert <assistant>

Kenny MacAskill

107 In schedule 4, page 76, line 3, leave out <but is> and insert <(and accordingly to hold the rank of assistant chief constable) but is otherwise>

Kenny MacAskill

108 In schedule 4, page 77, line 22, leave out <38(3)(a)> and insert <38A(3)(a)>

Kenny MacAskill

109 In schedule 4, page 77, line 23, at end insert—

<(4A) Sub-paragraph (4B) applies to an individual who—

(a) is to revert to the Police Service by virtue of sub-paragraph (4)(c),

(b) would have (but for this paragraph) reverted to the individual’s police force at the rank of deputy chief constable, and

(c) is not appointed to the office of deputy chief constable of the Police Service in accordance with section 7.

(4B) An individual to whom this sub-paragraph applies is, on and after the date that the individual reverts to the Police Service by virtue of sub-paragraph (4)(c), to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly is to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be a deputy chief constable of the police force which has ceased to exist.>
Kenny MacAskill

110 In schedule 4, page 77, line 25, leave out <deputy chief constable or>

Kenny MacAskill

111 In schedule 4, page 77, line 26, leave out from <corresponding> to end of line 31 and insert <of assistant chief constable of the Police Service in accordance with section 7.>

Kenny MacAskill

112 In schedule 4, page 81, line 3, at end insert—

<( ) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a police property transfer scheme.>

Kenny MacAskill

113 In schedule 4, page 81, line 16, at end insert—

<( ) A joint police board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.>

Section 96

Kenny MacAskill

114 Leave out section 96

Section 97

Kenny MacAskill

115 In section 97, page 43, line 21, at end insert—

<“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),

“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—

(a) the chief constable,
(b) other senior officers,
(c) any special constable, and
(d) any constable on temporary service outwith the Police Service,>

Kenny MacAskill

116 In section 97, page 43, line 23, at end insert—

<“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,>
Kenny MacAskil

117 In section 97, page 43, leave out lines 26 and 27 and insert—
(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union.

Kenny MacAskil

118 In section 97, page 43, line 37, at end insert—
("local commander" means a constable designated under section 45(2).)

John Finnie

175 In section 97, page 43, line 37, at end insert—
("joint central committee of the Police Federation for Scotland" means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee.

Kenny MacAskil

119 In section 97, page 44, line 3, at end insert—
("police custody and security officer" means an individual certified under section 28(1).)

Section 99

John Finnie

176 In section 99, page 45, line 8, after <Service> insert <or, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba>

Roseanna Cunningham

120 In section 99, page 45, line 22, leave out from <not> to end of line 23 and insert <—
(a) a person appointed by the Scottish Ministers to chair SFRS ("the chairing member"), and
(b) not fewer than 6 nor more than 10 other members appointed by the Scottish Ministers.

Roseanna Cunningham

121 In section 99, page 45, line 26, leave out <(1)> and insert <(1)(b)>

Roseanna Cunningham

122 In section 99, page 45, line 28, at end insert—
(" Members of SFRS may elect from their number a member to act as deputy to the chairing member.")
Roseanna Cunningham
123  In section 99, page 46, leave out lines 6 and 7 and insert—

<(  ) The Scottish Ministers may by order modify sub-paragraph (1).>

Roseanna Cunningham
124  In section 99, page 46, leave out lines 16 to 26

Roseanna Cunningham
125  In section 99, page 46, leave out line 30

Roseanna Cunningham
126  In section 99, page 48, line 26, at end insert—

<Governance and accountability
   SFRS must try to ensure that each of its members, when acting in the capacity
   of member—
   (a) acts consistently with any principle of good governance which appears to
       SFRS to constitute best practice, and
   (b) acts in a way which is as accountable and transparent as is reasonably
       practicable.>

Roseanna Cunningham
127  In section 99, page 49, line 1, after <(2)(b)> insert <or (e)>

Roseanna Cunningham
128  In section 99, page 50, leave out lines 11 and 12

Roseanna Cunningham
129  In section 99, page 50, leave out lines 15 and 16

Section 108

Roseanna Cunningham
130  In section 108, page 52, leave out lines 19 to 22

Section 113

Roseanna Cunningham
131  In section 113, page 57, line 20, leave out <such persons as SFRS thinks fit> and insert <—
   (i) such persons as SFRS considers represent employees of SFRS, and
   (ii) such other persons as SFRS considers appropriate.>
Roseanna Cunningham

132 In section 113, page 58, line 20, after <area> insert <(including reports given by reference to any local fire and rescue plan in force for the area)>.

Roseanna Cunningham

133 In section 113, page 58, line 27, at end insert—

<( ) SFRS’s function in relation to the provision of feedback to it under section 41K(1).>.

Roseanna Cunningham

134 In section 113, page 58, line 33, leave out from first <in> to end of line 34.

Roseanna Cunningham

135 In section 113, page 59, line 2, leave out from <keep> to end of line 13 and insert <monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority’s area and (in particular) may provide to SFRS—

(a) its views on any matter concerning or connected to the manner in which SFRS carries out those functions in the authority’s area,

(b) any recommendations for improvements in the manner in which SFRS carries out those functions in the authority’s area that it thinks fit.

(2) A local authority may provide feedback by reference to any local fire and rescue plan in force for its area.”.

Section 114

Roseanna Cunningham

136 In section 114, page 59, line 19, after <report> insert—

<( ) give a copy of the report to the Scottish Ministers.>

Section 117

Roseanna Cunningham

137 In section 117, page 63, line 35, leave out from beginning to end of line 2 on page 64.

Schedule 5

Roseanna Cunningham

138 In schedule 5, page 84, line 10, leave out <appointed> and insert <transfer>.

Roseanna Cunningham

139 In schedule 5, page 84, line 31, at end insert—
A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of an SFRS property transfer scheme.

Roseanna Cunningham

In schedule 5, page 85, line 3, at end insert—

A joint board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.

Section 120

Kenny MacAskill

In section 120, page 64, line 19, after <121> insert <or 122>

Schedule 6

Kenny MacAskill

In schedule 6, page 86, leave out lines 16 to 22

Kenny MacAskill

In schedule 6, page 90, line 13, leave out <15(4)> and insert <15(3)>

Kenny MacAskill

In schedule 6, page 90, line 33, at end insert—

in paragraph 6, for “Chief Inspector” substitute “Inspectors”,

Kenny MacAskill

In schedule 6, page 96, line 13, at end insert—

in subsection (3), after paragraph (b) insert “; and

c if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.”.

Kenny MacAskill

In schedule 6, page 96, line 19, at end insert—

In section 36—

(a) in subsection (1), after “subsection” insert “(1A) or”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a complaint handling review if—
(a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint—
   (i) has concluded its consideration of the complaint; and
   (ii) has communicated its findings to the complainer;
(b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and
(c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting the review.”.

Kenny MacAskill

147 In schedule 6, page 98, line 28, at end insert—

<(  ) In section 52(1) (application for football banning order)—
   (a) in the opening words, for “a police force” substitute “the Police Service of Scotland”,
   (b) paragraphs (a) and (b) are repealed.
(  ) In section 57(3) (variation of football banning order)—
   (a) in paragraph (b), for the words from “police” to “resides” substitute “Police Service of Scotland”,
   (b) paragraphs (c) and (d) are repealed.
(  ) In section 69(1) (interpretation), in the definition of “the football banning orders authority”, for the words from “police force” to “area” substitute “Police Service of Scotland”.

Kenny MacAskill

148 In schedule 6, page 99, line 7, at end insert—

<(  ) in paragraph 3—
   (i) in sub-paragraph (2)(a), for “3” substitute “5”,
   (ii) in sub-paragraph (2)(b), for “2” substitute “3”.

Kenny MacAskill

149 In schedule 6, page 100, line 7, leave out from <and> to end of line 9 and insert <or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).>

Kenny MacAskill

150 In schedule 6, page 101, line 12, at end insert—

<Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)
   (1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.
(2) In section 18 (police information etc.)—
   (a) in subsection (1)—
      (i) the words “of a police force or the Scottish Crime and Drug Enforcement Agency” are repealed,
      (ii) the words “or the Scottish Crime and Drug Enforcement Agency” (where second occurring) are repealed,
   (b) in subsection (2)—
      (i) for “A person” substitute “The chief constable”,
      (ii) for “person”, where second occurring, substitute “chief constable”,
   (c) in subsection (3), for “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(3) In section 38 (police access to lists of individuals barred from regulated work)—
   (a) in subsection (1), for the words from “chief” to “Agency” substitute “the chief constable”,
   (b) in subsection (2), for the words from “police” to “Agency” substitute “constables of the Police Service of Scotland”.

(4) In section 75 (sources of information)—
   (a) in subsection (2), for the words from “A” to “Agency” substitute “The chief constable”,
   (b) in subsection (3)—
      (i) for “A person” substitute “The chief constable”,
      (ii) for “person”, where second occurring, substitute “chief constable”,
   (c) in subsection (4), for the words “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(5) In section 76 (police access to scheme information)—
   (a) in subsection (1)—
      (i) in the opening words, for the words from “chief” to “Agency” substitute “the chief constable”,
      (ii) in paragraph (c), for the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”,
   (b) in subsection (2) the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”.

(6) In section 97 (interpretation)—
   (a) in the definition of “chief constable”, for “a police force in Scotland” substitute “the Police Service of Scotland”,
   (b) the definition of “police authority” is repealed.

Kenny MacAskill
151 In schedule 6, page 102, line 10, leave out <Service>
Kenny MacAskill
152 In schedule 6, page 102, leave out lines 33 to 38

Kenny MacAskill
153 In schedule 6, page 103, line 2, leave out from beginning to <(4)(a)> in line 3 and insert—

<(1) The Criminal Justice and Licensing (Scotland) Act 2010 is amended as follows.>

(2) In section 117(4)(a) (meaning of “investigating agency”)>.

Kenny MacAskill
154 In schedule 6, page 103, line 4, at end insert—

<(3) In section 164(3) (persons to have regard to code of practice on disclosure), for paragraph (a) substitute—>

“(a) constables of the Police Service of Scotland,”.

Roseanna Cunningham
155 In schedule 6, page 106, line 9, at end insert—

<Vehicle Excise and Registration Act 1994 (c.22)>

In Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt vehicles)—

(a) in paragraph 4(2)(b), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(b) in paragraph 5—

(i) for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(ii) for “authority’s” substitute “Scottish Fire and Rescue Service’s.”.

Roseanna Cunningham
156 In schedule 6, page 109, leave out lines 24 to 27 and insert—

<(  ) for subsection (6), substitute—>

“(6) Those persons are—

(a) SFRS,

(b) such persons as the Scottish Ministers consider represent employees of SFRS,

(c) such persons as the Scottish Ministers consider represent local authorities, and

(d) such other persons as the Scottish Ministers consider appropriate.”.

Roseanna Cunningham
157 In schedule 6, page 110, line 34, after <Act> insert—
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and “area” in relation to a local authority, means the local government area for which the authority is constituted,

Roseanna Cunningham

158 In schedule 6, page 111, line 8, at end insert—

<Corporate Manslaughter and Corporate Homicide Act 2007 (c.19)
In section 6(2) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care for certain organisations in emergencies), for paragraph (b) substitute—

“(b) the Scottish Fire and Rescue Service;”.

Schedule 7

Kenny MacAskill

159 In schedule 7, page 113, line 37, leave out <paragraph> and insert <paragraphs 1(b) and>

Kenny MacAskill

160 In schedule 7, page 113, line 40, leave out <Section 46.> and insert—

<In section 46(1), the words “or a joint police board”.
In section 46(3)(a), the words “or, as the case may be, board”.
In section 46(3)(b), the words “or board” and “or, as the case may be, board”.

Kenny MacAskill

161 In schedule 7, page 114, line 26, at end insert—

<In schedule 4, paragraph 2(1)(f).>

Kenny MacAskill

162 In schedule 7, page 114, line 28, after <for> insert <“constable”>,

Roseanna Cunningham

163 In schedule 7, page 115, line 40, at end insert—

<Section 16(5) and (6).>

Roseanna Cunningham

164 In schedule 7, page 116, line 8, at end insert—

<In section 79(1), the definition of “local authority”>
Section 124

David McLetchie

211 In section 124, page 65, line 9, at end insert—

<( ) Before making an order under subsection (2) the Scottish Ministers must publish a full business case for the implementation of the provisions of this Act.>
Police and Fire Reform (Scotland) Bill

1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

**Groupings of amendments**

**Gaelic names**
165, 167, 176

**Status of the Authority**
177

**Composition and governance of the Authority**
1, 1A, 1B, 1C, 1D, 178, 179, 181, 2, 3, 4, 5, 183, 184, 187

*Notes on amendments in this group*
Amendment 1B pre-empts amendments 1C and 1D

**Gender balance on policing bodies**
180, 204

**Staffing arrangements**
182, 196

*Notes on amendments in this group*
Amendment 196 pre-empts amendment 197 in the group Police staff

**Resignation and retirement of senior officers**
185, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

**Functions and powers of the Authority**
186, 188, 189, 190, 6, 191

**Directions**
192, 166

**Appointment of chief constable**
193
Constable’s declaration
168

Creation of new ranks
7, 8

Definitions
169, 34, 174, 114, 115, 116, 117, 118, 175, 119

Temporary service
21, 22, 23, 24, 25, 26, 27

Planning
28, 29, 30, 31, 37, 171, 200, 172, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

Notes on amendments in this group
Amendments 171 and 200 are direct alternatives

Delegation of chief constable functions
32, 33

Failure to perform duty: penalty on indictment
170

Police staff
194, 195, 197, 198, 199

Notes on amendments in this group
Amendment 197 is pre-empted by amendment 196 in the group Staffing arrangements

Forensic services
35, 36, 99

Reporting and audit
201, 49, 50, 51, 52, 202

Local authority role in policing
203, 173, 53, 205, 54, 55, 56, 206, 57, 207, 58, 59, 60, 61, 208

Regulations: conduct and performance
62, 63, 64

Police Appeals Tribunal
65

The Police Investigations and Review Commissioner
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 209, 82, 83, 84, 85, 86, 210, 145, 146, 148, 149

Disclosure
78, 96, 137
HMICS
87, 88, 89, 90, 91, 92, 93, 94, 95

Provision of goods and services
97, 98

Assaulting police
100, 101, 102, 103

Transfer of police staff etc.
104, 105, 106, 107, 108, 109, 110, 111, 112, 113

Composition and governance of SFRS
120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 136

Charging by SFRS
130, 163

Local fire and rescue plans
131, 132, 133, 134, 135

Transfer schemes: fire
138, 139, 140

Procedure for orders making transitional, transitory or saving provision
141

Minor and consequential amendments and repeals
142, 143, 144, 147, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 164

Full business case
211
JUSTICE COMMITTEE

EXTRACT FROM THE MINUTES

19th Meeting, 2012 (Session 4)

Tuesday 29 May 2012

Present:
Roderick Campbell
Christine Grahame (Convener)
Jenny Marra (Deputy Convener)
Margaret Mitchell (Committee Substitute)
Humza Yousaf

John Finnie
Colin Keir
Alison McInnes
Graeme Pearson

Also present: John Lamont and Lewis Macdonald.

Apologies were received from David McLetchie.

Police and Fire Reform (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 165, 1, 2, 3, 4, 5, 6, 167, 168, 7, 8, 169, 10, 12, 14, 15, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 170, 194, 195, 197, 198, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52.

The following amendments were agreed to (by division)—
9  (For 7, Against 2, Abstentions 0)
11  (For 7, Against 2, Abstentions 0)
13  (For 7, Against 2, Abstentions 0)
16  (For 7, Against 2, Abstentions 0)
17  (For 7, Against 2, Abstentions 0)
18  (For 7, Against 2, Abstentions 0)
20  (For 7, Against 2, Abstentions 0).

The following amendments were disagreed to (by division)—
1A  (For 4, Against 5, Abstentions 0)
1B  (For 3, Against 6, Abstentions 0)
1C  (For 4, Against 5, Abstentions 0)
1D  (For 4, Against 5, Abstentions 0)
178  (For 3, Against 6, Abstentions 0)
179  (For 4, Against 5, Abstentions 0)
180  (For 3, Against 6, Abstentions 0)
181  (For 4, Against 5, Abstentions 0)
182  (For 3, Against 6, Abstentions 0)
183  (For 3, Against 6, Abstentions 0)
185  (For 3, Against 6, Abstentions 0)
Amendment 177 was moved and, under Rule 9.10.15, withdrawn.

Amendment 184 was not moved.

The following provisions were agreed to without amendment: sections 2, 3, 5, 7, 8, 9, 12, 13, 16, 20, 21, 23, 24, 25 and 27, schedule 2 and sections 29, 30, 32, 42, 43 and 44.

The following provisions were agreed to as amended: section 1, schedule 1 and sections 4, 6, 10, 11, 14, 15, 17, 18, 19, 22, 26, 28, 31, 33, 34, 35, 37, 38, 39, 40 and 41.

John Finnie, Roderick Campbell and Jenny Marra declared, in relation to amendment 168, that they are members of Amnesty International.

The Committee ended consideration of the Bill for the day, section 44 having been agreed to.
The Convener: Item 3 is the Police and Fire Reform (Scotland) Bill. This is day 1 of two days of stage 2 proceedings on the bill. The target for today is to reach section 70—I am laughing at that already. Whether we will reach that section is yet to be seen, but we will definitely not go beyond it.

I welcome the Cabinet Secretary for Justice and the officials. The officials will not answer members’ questions; they are here only to assist the cabinet secretary, although I am sure that he rarely needs assistance.

Members have copies of the bill, the marshalled list and the groupings of amendments. Before we start our consideration of the amendments, I will say a wee bit for the newer members of the committee about how we operate at stage 2.

The running order is set by rules of precedence that govern the marshalled list. I will call all the amendments in strict order from the marshalled list. We cannot move backwards, so members should stay awake.

The amendments have been grouped to enable related amendments to be debated together, and there will be one debate on each group. I will call the member who lodged the first amendment in the group to speak to that amendment and all the other amendments in the group and to move the first amendment in the group. Every other member who has lodged an amendment in the group will be called to speak thereafter. Members who have not lodged amendments in the group but wish to speak should indicate that by catching my attention in the usual way.

The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up. I will usually give the cabinet secretary an opportunity to come in before that, in case he wants to respond to any points that have been raised in the general debate.

Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press it to a vote or withdraw it. If that member wishes to press it, I will put the question on the amendment. If the cabinet secretary moved the first amendment in the group, I will generally assume that he wishes to press it—although that might not always be the case—and I will not necessarily ask him to confirm that. If any member wishes to withdraw their amendment after they have moved it, they must seek the committee’s agreement to do so, and I
will ask the committee about that. If any committee member objects, I must put the question on the amendment to the committee, as the amendment will already have been moved.

If, after the debate, a member does not want to move their amendment when it is called from the marshalled list, they should simply say, “Not moved.” Any other MSP present will be entitled to move that amendment instead. If no member moves it, I will immediately call the next amendment on the marshalled list.

As I said before the meeting, only committee members or substitutes in attendance are allowed to vote. Voting is by show of hands, and it is important that members keep their hands clearly raised until the clerk has recorded the vote, whose result I will then read out.

I will start quite slowly, but we will rattle along once we have got the hang of it.

Section 1—The Scottish Police Authority

The Convener: Amendment 165, in the name of John Finnie, is grouped with amendments 167 and 176.

John Finnie (Highlands and Islands) (SNP): The amendments deal with Gaelic translation. They include in the bill the Gaelic names of the Scottish police authority, the police service of Scotland and the Scottish fire and rescue service—ùghdarras poilis na h-Alba, seirbheis poilis na h-Alba and seirbheis smàlaidh agus teasaighinn na h-Alba respectively.

Gaelic is an integral part of Scotland’s heritage, national identity and current cultural life. It is, therefore, appropriate that the services’ Gaelic names are included in the bill. I ask the committee to support the amendments.

I move amendment 165.

Lewis Macdonald (North East Scotland) (Lab): I welcome the amendments and congratulate John Finnie on lodging them. For those not blessed with knowledge of the Gaelic language, the amendments include the revelation of the source of the Scots word “polis”. Many less well-known Scots words have the same origin.

The Convener: I remember the Gaelic that you used in the Montrose debate. I thought that it was a curse on the Grahames, but I am not going to ask you for a translation.

The Cabinet Secretary for Justice (Kenny MacAskill): I agree whole-heartedly with John Finnie and Lewis Macdonald about the importance of Gaelic, and I therefore support the amendments.

Amendment 165 agreed to.

Section 1, as amended, agreed to.

Schedule 1

The Scottish Police Authority

The Convener: Amendment 177, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: With your indulgence, convener, I will speak to the amendment for a little longer than I will speak to some later amendments.

Amendment 177 is significant. It offers a possible solution to the problem of VAT, which is one more solution than the Scottish Government has so far proposed. I will be interested to hear what the cabinet secretary has to say on the amendment.

The amendment directs that the police authority is to be regarded in law as if it were a local authority. That might not be the only way to prevent £22 million a year from being transferred from the police authority to the United Kingdom Exchequer, but it is one valid way of doing that.

There has been discussion about whether there might be a Northern Ireland-style exemption for the police and fire services in Scotland. It is fair to say that there is a number of differences between the situation in Northern Ireland and the situation in Scotland. The population and territory of Northern Ireland are more like those of a region than those of Scotland are. In general, local authorities in Northern Ireland are smaller and have fewer powers than Scottish local authorities. Northern Ireland’s special status in Government derives more than anything else from circumstances in Northern Ireland in the 1970s, 1980s and 1990s, which, happily, did not happen here. Scotland does not have that history and, therefore, does not have that special status.

Ministers have said repeatedly that a solution will be found. Unfortunately, to date, there is no evidence of that. Treasury ministers have reasserted not only that the police and fire services will be liable to VAT but that ministers have known that from the outset.

The amendment is an attempt to offer a perhaps more radical solution that reflects the views that were put forward by the Convention of Scottish Local Authorities on behalf of local government, by Unison on behalf of staff in local government and the police service, and by others, such as Jim Gallagher, the former head of the Justice Department. Their view is that the way to avoid liability for VAT is for the services to operate and remain as part of the local government family. Regarding the police service as if it were a local authority is the first legislative requirement to meet the terms of the Local Government (Scotland) Act.
1973, which would allow the police authority to make a claim for the rebate of VAT.

Clearly, if the amendment were accepted by ministers, further amendments would have to follow. I am keen to hear what the cabinet secretary has to say about the proposal. I would like to know whether he will support the amendment and, if not, what he intends to do in advance of the bill completing its progress in order to remove the liability to VAT.

I move amendment 177.

Kenny MacAskill: I welcome Lewis Macdonald’s desire to avoid money needlessly going to the Treasury, and I reiterate this Government’s commitment to do all that is within our powers to ensure that the police authority and the fire and rescue service will be treated in the same way as their counterparts in England, Wales and Northern Ireland are and will be able to recover VAT.

Of course, as the committee will appreciate, the devolution settlement means that it is ultimately for the UK Government to decide which public bodies, including Scottish public bodies, may recover VAT. Therefore, my officials are proactively pursuing the matter with HM Treasury, and I remain optimistic that those constructive discussions will achieve a positive outcome. I assure Lewis Macdonald that we are working to that end.

I appreciate what Mr Macdonald is trying to achieve, but I do not believe that amendment 177 would resolve matters. As drafted, it would give rise to an absurd result. As it does not restrict the purposes for which the SPA would be regarded as a local authority, the SPA would be regarded as a local authority for all purposes, which would import to the SPA all the obligations that are placed on a local authority, including those that relate to schools, housing and so on. That cannot be Mr Macdonald’s intention.

In addition, amendment 177 does not take account of chapter 7 of part 1 of the bill, which deals specifically with the local authority role in local policing. Those arrangements would be nonsensical if the SPA was a local government body. For those reasons, I cannot support amendment 177.

Lewis Macdonald: I am disappointed by the cabinet secretary’s response. I did not expect Government support for my amendment, but I had hoped to get a clearer indication of what else might be done to resolve the matter. Simply to say that discussions will continue does not strike me as particularly encouraging. The issue has not sprung, newly formed, on to the cabinet secretary’s desk—he has faced it since the proposals were first put forward.

With the committee’s permission, I will seek to withdraw amendment 177, but it is clear that we will wish to return to the matter at stage 3 if the Government does not offer a more satisfactory response.

Amendment 177, by agreement, withdrawn.

The Convener: Amendment 1, in the name of the cabinet secretary, is grouped with amendments 1A to 1D, 178, 179, 181, 2 to 5, 183, 184 and 187. I point out that, if amendment 1B is agreed to, amendments 1C and 1D will be pre-empted.

Kenny MacAskill: I will speak initially to amendment 1, which deals with the membership of the Scottish police authority and the appointment of its chair.

Schedule 1 covers the status, structure and governance of the Scottish police authority. Paragraph 2 sets out provisions that relate to membership of the authority and enables the Scottish ministers to appoint seven to 11 members to it.

Amendment 1 draws a distinction between the appointment of the authority’s chair and the appointment of the other six to 10 members. The chair has specific and particular responsibilities over and above those of other authority members—for example, the chair has responsibility for strategic leadership and the conduct of authority business. Amendment 1 will enable the Scottish ministers to appoint the chair separately from other members, which will also support earlier appointment of the chair and, in turn, the chief constable.

Alison McInnes’s amendment 1A would make the Scottish Parliament, not the Scottish ministers, responsible for the appointment of the authority’s chair. It would result in the chair being appointed by Parliament and the other members of the authority by ministers.

Amendment 1A confuses lines of governance, accountability and scrutiny. It would let ministers off the hook for the chair’s performance and its impact on the governance of the police service, as ministers could not be held to account for an individual whom they had no role in appointing. Furthermore, Parliament’s ability to independently scrutinise the chair and the performance of the police authority and service would be diluted by its role in his or her appointment.

The Scottish police authority is not a parliamentary body such as the Scottish Public Services Ombudsman or the Auditor General for Scotland, so Parliament should not be involved in the appointment of the authority’s chair.
Amendments 1B, 1C and 1D seek to alter paragraph 2 of schedule 1, which states:

“The Authority is to consist of not fewer than 7 and no more than 11 members.”

During the bill’s progress, there has been much discussion about the right number of members for the authority and the basis on which they should be appointed. Lewis Macdonald’s amendment 1B would oblige the authority to have a chair and exactly 14 members. Defining an absolute number of members rather than a range would limit the authority’s flexibility to deal with changes in its membership and in the skills and expertise that it needs over time. It would also mean that as soon as one member left another one would have to be appointed, rather than perhaps two or three members being appointed at the same time.

David McLetchie’s amendments 1C and 1D would oblige the authority to have a chair and 15 to 19 members. The Auditor General’s 2010 report “The role of boards” was clear that, although it is difficult to specify the ideal number of board members, there has to be a balance between having sufficient skills and expertise and not having so many members that decision making and collective responsibility become difficult. The committee concluded that the quality and the experience of members are more important than numbers. It is the Government’s view that 15 to 19 members plus the chair would be too many—that number would not facilitate the strategic and collective decision making that the authority requires.

Therefore, the Government cannot accept amendments 1B, 1C or 1D, but it is willing to reflect further before stage 3.

Lewis Macdonald’s amendment 178 seeks to ensure that at least half the authority’s members are local authority members and that those members are nominated by COSLA to be appointed by ministers. The committee was not convinced that the bill should specify a set number of lay or local authority members. The Government agrees and has been clear throughout that members should be appointed solely on the basis of their skills and expertise, through an open and fair public appointments process.

We recognise that local authority members have a valuable contribution to make to the authority and we expect a number of people with local government skills and expertise to be appointed to it. However, it is not clear how members could act together in the service’s interests while at the same time representing a particular area. The Auditor General noted that such conflicts have created difficulties for the Scottish Police Services Authority and other bodies.

It is important that all board members have equal status. That will not be the case if some are nominated and some are there because they have been through a rigorous and open appointment process that is focused on their skills and expertise.

Lewis Macdonald’s amendment 179 and David McLetchie’s amendment 181 seek to ensure that, in appointing members of the authority, ministers have due regard to the need to cover various areas and interests, such as being

“members of a local authority”;

representing or having

“knowledge of communities and policing in all regions of Scotland”;

and having

“no ... direct connection to policing.”

We expect a wide range of individuals to put themselves forward to become members of the authority. However, the authority is not a representative body, not least because the primary purpose of its members is to act collectively in the best interests of policing for the whole of Scotland and not for particular areas or interests. The authority must have the maximum flexibility possible to ensure that it has the skills and expertise that it needs to govern the service and hold the chief constable to account. Amendments 179 and 181 would limit that flexibility, so I cannot support them.

It is my pleasure now to speak to amendments 2 to 5, which are in my name. Paragraph 2(4) of schedule 1 enables the Scottish ministers to modify

“the minimum or maximum number of members”

of the authority by order. Amendment 2 does not change that, but it updates the bill to reflect the distinction between the chair and members made by amendment 1.

Paragraph 5(4) of schedule 1 obliges members of the authority to

“elect ... a member to act as deputy to the chairing member.”

In line with the approach to how members of the authority organise themselves, amendment 3 enables rather than obliges them to elect a member to act as deputy to the chairing member.

As a result of amendments 1 to 3, paragraph 5 of schedule 1, which relates to the chairing member and deputy, will no longer be required. Amendment 4 therefore removes paragraph 5.
Amendment 5 is a technical amendment. Paragraph 6 of schedule 1 sets out the circumstances in which the Scottish ministers may remove a member of the SPA from office. Paragraph 6(1)(b), which enables the Scottish ministers to remove a member from office if that member is incapacitated by physical or mental illness, is not required, as paragraph 6(1)(g) already enables the Scottish ministers to remove a member of the authority from office if they “consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.” Amendment 5 therefore removes paragraph 6(1)(b) from the bill.

The committee concluded that the SPA must hold its meetings in public and publish its papers, and Graeme Pearson’s amendment 183 and David McLetchie’s amendment 184 seek to make various provisions in that respect. Section 2(3) already states that the authority “must try to carry out its functions” in a transparent way, which will include meeting in public and publishing its agendas and reports. Although the Government recognises that both amendments seek to make that explicit, we cannot accept amendment 183, as it has no safeguards for sensitive information. Similarly, the Government cannot support the provisions in amendment 183 that would compel the authority to publish its correspondence with local authorities, COSLA and the Scottish ministers and “any reports it receives from the chief constable.” All those parties must be able to engage in correspondence and dialogue in a free and frank manner and will, of course, be subject to freedom of information legislation.

The proposed new paragraphs 11(1B) and 11(1C) of schedule 1 in my colleague Graeme Pearson’s amendment 183 would oblige the authority to publish a strategy setting out what steps it will take to ensure public engagement in its proceedings and would require that strategy to be published within 6 months of the establishment of the Authority and ... reviewed at the end of every subsequent year.” Section 2(3) already states that the authority “must try to carry out its functions” in an “accountable and transparent” way and in line with “good governance” practice. Although that would include engaging stakeholders and the public, we do not consider it appropriate to prescribe how the authority should do that or to burden it with producing and reviewing strategies and the associated costs. Unfortunately, for that reason, I cannot support amendment 183.

John Lamont will speak to David McLetchie’s amendment 184, which sensibly recognises that in certain circumstances, such as the discussion of sensitive police issues, it will not be appropriate for meetings to be held in public or for papers to be published. Although I am sympathetic to the amendment, I want to ensure that the drafting does not unduly restrict the authority’s freedom to determine for itself the best way of going about its business. I cannot support amendment 184 in its current form, but I am prepared to work with Mr McLetchie with a view to lodging a revised amendment at stage 3.

Amendment 187, in the name of David McLetchie, would oblige the authority to try to carry out its functions in a way that involved “local authorities wherever possible”. As the bill already provides a range of formal mechanisms for involving local authorities in policing in Scotland through, for example, the strategic police plan and the agreement of local police plans, and as the policing principles encourage the police service to work in collaboration with others, including local authorities, when appropriate, the amendment is not necessary and, as such, I cannot support it.

I ask the committee to support amendments 1 to 5 in my name and I move amendment 1.

The Convener: Before I call Alison McInnes to speak to and move amendment 1A, I welcome to the committee Margaret Mitchell, who has had a long journey and will be the voting member for the Conservatives. Do you have any relevant interests to declare?

Margaret Mitchell (Central Scotland) (Con): No, I do not, convener.

The Convener: Thank you very much. I call Alison McInnes to speak to and move amendment 1A and to speak to other amendments in the group.

Alison McInnes (North East Scotland) (LD): Amendment 1A seeks to require that the chairing member of the new authority be appointed separately from other members through the Crown appointments process. I realise that that process is more usually reserved for positions such as Auditor General for Scotland, but I think that the nature of the beast that the Government is creating is far from usual. As the Scottish police authority will be responsible for a budget of
£1 billion or so—not to mention for protection of our communities—I think it only right for the public to demand reassurances about its running. In my view, one of the best ways in which we, as a Parliament, can provide such reassurances is to ensure that the process of appointing the SPA is as open and transparent as possible.

Of course, the public appointments process is a well-regulated mechanism, but the appearance of partiality and political influence remains a possibility. By contrast, the Crown appointments procedure is more robust and demands an extra level of scrutiny, a cross-party appointments panel and ultimately the whole Parliament’s agreement.

I do not believe that there is any inherent inconsistency in appointing the chair through one process and the rest of the board through another; rather, that would represent the best compromise. As the cabinet secretary pointed out, the chairing member will be largely responsible for the direction that the authority takes, and the spotlight for decision making will, ultimately, fall on the chair. By ensuring that the appointment is completely independent, we will from day 1 instil among the public greater confidence in the authority of the Scottish police authority.

Amendment 1A focuses on establishing the principle of using the Crown appointment process. If the Government was open to it—the Government has said that it is not—a few more technical amendments would be needed at stage 3, and I would be happy to work with the Government to produce those amendments. Alternatively, of course, I reserve the right to come back with a fully developed set of amendments.

I will touch on other amendments in the group. I certainly share the view that the authority should be larger than is currently specified and I tend towards Lewis Macdonald’s amendment 1B, because it is less prescriptive. However, I am not convinced by amendment 178. There is a strong case for including local authority representation, but it would not be wise to prescribe the precise number of such representatives or the manner in which they will be appointed. As the committee has pointed out, it might well be beneficial to have more local authority representation in the short term to help with the transition, but that need might lessen as the authority matures.

I agree fully with the amendments on transparency and I favour Graeme Pearson’s amendment 183 over David McLetchie’s amendment 184, because it is slightly more robust.

I move amendment 1A.

Lewis Macdonald: We welcome the broad approach in the Government’s amendments to separate the appointment of the chair and we recognise that that could help to bring forward the chief constable’s appointment, which would be a desirable outcome. However, it is again disappointing that the Government has not taken the opportunity to relax the tight limits that it has imposed on the board’s size.

I will respond to what the cabinet secretary said. Amendment 1B in my name specifies not a fixed number of board members but a minimum number. He implied that we are suggesting a fixed number of 14 plus the chair, but we seek a minimum of 14 plus the chair, and to have the flexibility that Alison McInnes was correct to describe as being part of our approach. What we propose would be the best way forward. The setting of a minimum number of board members would be adequate to allow appropriate appointments to be made.

As for the board’s make-up, we want the bill to specify local government representation on the authority not merely as a transitional arrangement—as Alison McInnes suggested—but as an on-going feature of the service in order to retain a division of political power and authority in policing and to retain a statutory basis for local authority representation. The cabinet secretary said that he expects a significant number of councillors to be members of the authority, but no statutory provision requires that. We seek to address that.

Concern has been expressed in parts of Scotland that the creation of a single force will result in the centralisation of resources and of decision making. Amendment 179 in my name would require ministers to “have due regard to representation ... of persons with knowledge of communities and policing” in local areas. That is intended to guarantee to communities that centralisation will not occur and to ensure not only that the new authority’s members have expertise and knowledge, which are important, but that the expertise and knowledge are of the whole country and not only of the central belt, for example. As a signal to communities that the single force is not a threat to local policing, it would be wise for the Government to support amendment 179.

I know that Graeme Pearson will speak to his amendment 183. As for the offer that Mr MacAskill made on the point of principle, all that I will say is that if he thinks that either amendment on transparency needs to be reinforced, there is no reason why the Government cannot accept amendments 183 and 184 then lodge further amendments at stage 3 to make the appropriate exceptions.
The Scottish Conservatives support the principle of having a single police force—indeed, we included a policy on that in our 2011 election manifesto—but we have concerns that the bill will not protect sufficiently the local accountability of policing. Communities must be able to hold local police to account when things go wrong, and our view is that elected police commissioners are the best way to protect local accountability. However, our objective at stage 2 is to improve the Scottish Government’s bill rather than simply to try to rewrite it to include elected police commissioners. Therefore, we have lodged amendments that work within the Government’s proposed structure of local police commanders and local policing plans, but it remains our party policy that elected police commissioners are the best way to enhance local accountability.

On amendments 1C and 1D, as we have already heard the bill currently sets the number of members of the Scottish police authority at between seven and 11. There is concern that those numbers may not be sufficient to provide for regional cover and the necessary expertise on the national board. As a comparison, under the recently passed National Library of Scotland Bill, the National Library of Scotland board is set at between eight and 13. As we have also already heard, the Scottish Government has lodged an amendment in the name of Kenny MacAskill that states that the Scottish ministers must appoint a chair of the authority and “not fewer than 6 nor more than 10 other members”.

Our amendments would set a minimum of 15 and a maximum of 19 board members. Our view is that 15 is the minimum that will be required to cover adequately Scotland’s eight current police boards. That also follows a suggestion from COSLA, which has argued that restricting the board to 11 may inhibit the ability of the SPA to hold the police service to account.

On amendment 181, in the name of David McLetchie, the committee’s stage 1 report noted that the bill does not expressly outline the type of expertise that should be included on the authority. Paragraph 2(3) of schedule 1 states:

“The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority”,

but the bill does not point towards the type of skills that will be required, and there is no mention of regional representation on the board. Our amendment does not seek to list explicitly the types of expertise that should be represented on the board or the regions that should be covered, but instead seeks to expand on paragraph 2(3) of schedule 1.

The Justice Committee’s stage 1 report raised concerns surrounding the transparency of the SPA. In its response, the Scottish Government asserted that the board would hold meetings in public and publish all papers, but that requirement is not included in the bill. Section 2(3) requires the authority to “try to carry out its functions in a way which is proportionate, accountable and transparent”.

Our amendment 184 seeks to compel the board to hold meetings in public and to publish the agendas and papers for those meetings. It includes exceptions that are specified in the standing orders—it is expected that there could be an exception when security or other reasons do not permit a meeting or part of a meeting to be held in public. I am pleased that the cabinet secretary has acknowledged that point, and we would be happy to work with him to improve the drafting. It is important to cover that point.

The bill is sparse on the relationship between the national police authority and local authorities. That is being developed by the Scottish Government’s pathfinder projects, but the committee’s stage 1 report noted that the bill will not establish formal mechanisms between the SPA and councils. Our amendment 187, in the name of David McLetchie, would alter the main function of the authority by adding a requirement to involve “local authorities wherever possible”. That was suggested to us as a high-level statement of intent that would apply broadly to any of the authority’s actions. No other amendment seeks to insert a similar provision. Labour amendments attempt to tidy up the relationship between the authority and local councils, but we believe that amendment 187 would clarify things slightly more.

Graeme Pearson (South Scotland) (Lab): I will speak to amendment 183, but first I associate myself with Lewis Macdonald’s views on other amendments in the group. Given the importance of the SPA, I ask the cabinet secretary to reconsider his approach to setting out the qualities
of the individuals who would be selected for membership.

I think that everyone in Scotland would acknowledge that the move to a single police force will bring about significant change in the service’s relationship with communities throughout the country. There will be a shift from the long-standing tripartite arrangement, which involves local authorities and enables local police authorities, which are populated by people who are selected from the local community, to call to account a chief constable and report back directly to the communities on the nature and health of local policing.

There is no doubt that that arrangement, which was suitable for the 19th century and for a substantial part of the 20th century, needs to be amended. In the lead-up to the most recent election, Labour demonstrated its commitment to a single police service. That principle is well accepted. However, in creating a national board we must take account of aspects of the local arrangements that have been effective. I ask the cabinet secretary to reconsider what might be regarded as unnecessary secrecy or the impression of secrecy. If we are to have policing by consent, it is important that the public know what is happening in the board and know about the communications between key players in the board’s arrangements.

Amendment 183 would require that certain matters be made public knowledge, so that the public—having gained access to the information—could be confident that policing was happening with their informed consent. Sensitive information, or information that has regard to national security, could be exempted, perhaps through freedom of information provisions or through the security environment around the information. I hope that the cabinet secretary will consider that.

Amendment 183 would require the authority to hold its meetings in public, which seems to be an entirely healthy thing for such a public organisation to do. The authority would also be required to publish its agendas and papers—in the 21st century, people increasingly expect to be able to read such documents—and its correspondence with local authorities and COSLA, which I expect the public will want to be able to read, given that such correspondence should be conducted in the public interest and to support public need. The same goes for directions from the Scottish ministers, and it almost goes without saying that people should be able to read reports that the authority receives from the chief constable.

Amendment 183 would also require the authority to “publish a strategy setting out what steps it will take to ensure public engagement in its proceedings.”

That would inform the public about how they might influence what happens with the new single police service. If there is no plan, how can the public feed into public authorities? I doubt that any member has not experienced frustration when attempting to make contact with public bodies without knowing what processes are available to enable them to do so.

If the Government agrees to amendment 183, it can provide appropriate safeguards to protect sensitive information. I ask the Government to consider the amendment seriously, because the arrangement to which we agree is likely to be in place for many years. It is important that everyone who is concerned with the policing of Scotland thinks that policing is happening in their name and that they can influence how policing moves forward.

Roderick Campbell (North East Fife) (SNP): I have a brief point regarding the composition of the authority, to which Lewis Macdonald’s amendment 178 refers. I fully support what Alison McInnes said in that regard. The committee anticipated that the first authority would include substantial representation from local authorities because they have appropriate expertise. However, we feel that in general it is not right to be prescriptive about that, and that the position may in any event change over time.

The Convener: Before I ask the cabinet secretary to wind up, I note that Alison McInnes will be the final member to speak because she is seeking to amend an amendment.

Kenny MacAskill: In response to Alison McInnes’s point, I understand the importance of the chair of the board. However, there will be plenty of opportunities for Parliament to scrutinise policing—for example, when the strategic plan is laid before Parliament and when matters are raised with the committee.

With regard to the amendments that relate to the size of the board, I am happy to reflect on that further and to enter into discussions on the precise number. I believe that there is an optimum size, as has been mentioned.

On amendments in the names of Graeme Pearson, David McLetchie and Lewis Macdonald, it is important that we recognise—as Roderick Campbell mentioned—that the board will evolve over time to reflect the skills and expertise that will be required at particular points. That might require the specification of a certain number of local authority members or other members, but we must allow the board to evolve. The skills that are needed immediately—to which Alison McInnes and Roderick Campbell referred—are probably
held already by people who are currently serving on boards. If those people apply, they will doubtless be considered favourably.

On the point about the number of members, paragraph 2(4) of schedule 1 enables ministers to change by order the number of members of the authority if it becomes apparent that more or fewer are required for the authority to perform its function. That requires flexibility. Audit Scotland has found that the average size of public boards in Scotland is 14, and that FTSE 100 companies have an average board size of 11. For that reason, we have been veering towards somewhere between 11 and 15, but we are happy to discuss that. Local authorities can involve others through committees and sub-committees when they deal with particular matters.

On amendment 187, the SPA is already required to consult local authorities in setting strategic priorities nationally. Amendment 187 would at best duplicate that requirement, but could also blur the clear mechanisms that the bill contains.

On the question of secrecy, I have indicated that we are happy to work with David McLetchie to see whether we can get the precise wording right. There is a general desire to address that issue in the bill.

I acknowledge the view of Graeme Pearson and other members that there should be as much openness as possible, given the nature of the organisation. That is a matter of balance, because there are some aspects in which secrecy will be necessary for the security of those involved. I am happy to review the matter and to enter discussions. We feel that we currently have the appropriate balance, given FOI provisions, but we can reflect on that. At present, we think that the amendments in question would be detrimental, but we are happy to consider the issue and to work with David McLetchie on whether we can resolve that specific issue.

Alison McInnes: The establishment of the SPA will remove decision making from local areas and will concentrate power in the hands of ministers. The intention of amendment 1A is that, from the outset, the appointment of the chair will be, and will be seen to be, completely impartial.

I will press amendment 1A.

The Convener: The question is, that amendment 1A be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: I ask members to shout clearly, or I may miss them and we will move on. We do not retrace our steps here.

The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1A disagreed to.

10:45

Amendment 1B moved—[Lewis Macdonald].

The Convener: The question is, that amendment 1B be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 1B disagreed to.

Amendment 1C moved—[John Lamont].

The Convener: The question is, that amendment 1C be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)
The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1C disagreed to.

Amendment 1D moved—[John Lamont].

The Convener: The question is, that amendment 1D be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 1D disagreed to.

Amendment 1 agreed to.

Amendment 178 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 178 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 178 disagreed to.

The Convener: Amendment 180, in the name of Jenny Marra, is grouped with amendment 204.

Jenny Marra (North East Scotland) (Lab): The amendments would introduce a quota system for the local and national police and fire boards and ensure that representation on the boards was, as a minimum, 40 per cent women and 40 per cent men, with the remaining 20 per cent being flexible. That system is based on one that has been proven to work in Finland, Norway, Denmark and Iceland and which has been considered for use in Ireland and Canada and, indeed, at UK Government level. The quotas have proven effective in increasing female representation on government and public limited company boards, where they are used.

There is a clear necessity to redress the current gender imbalance in the decision-making structures of our police and fire boards. Until the most recent local elections, nearly 18.5 per cent of police board members in Scotland were female, which is lower than the percentage figure for female councillors. For example, Central Scotland joint police board had 11 members, but not one was female.

I believe that it is unacceptable for a force that serves an area in which women make up over 50 per cent of the population to have no female representation in its decision-making structure. When the police deal every day with gender issues such as domestic violence and prostitution, I feel that it is even more incumbent on a police board to have equal gender representation.

The recent Angiolini report makes clear that the justice system not only affects women uniquely, but has failed women substantially. The report calls for improvements in many areas, including policing. I believe that voting for amendment 180 will help to give the guidance to our police force to make the changes that Angiolini envisages and which have cross-party support in the Parliament.

I emphasise that we are creating police and fire services for the future and decision-making bodies that will last for generations. As politicians, we have a responsibility to get it right, not just for 1 April next year, but for 1 April 2023 and 2033. Harnessing the progressive opinion that exists on
gender equality now will ensure that, in 20 years, we can look back safe in the knowledge that we took every opportunity to make our policing system fair and accountable to the people whom it serves.

Such provisions are in force and working throughout Europe. They are necessary to redress a systemic imbalance of representation at board level in our current police and fire services. Amendment 180 would help to ensure that the changes that we need for women entering the justice system are carried out effectively on 1 April 2013 and into the future. More equal societies tend to be fairer societies. Amendment 180 is a big step towards achieving that.

I move amendment 180.

Alison McInnes: I congratulate Jenny Marra on lodging amendment 180 and on the way in which she spoke to it. I support the intention behind the amendment. Until now, I have been reluctant to argue for quotas, but I must say that voluntary action does not seem to be working and I am getting older and impatient. From the outset of the new service, let us make it clear that we respect equally women in our society. If policing is about keeping communities safe, the setting of strategies and priorities by the board should take account of women in our communities. It would be a good signal to include women in boards in the suggested way from the outset.

Lewis Macdonald: I support amendments 180 and 204. The first group of amendments that the committee considered was on the official status of the Gaelic language. Such amendments would not have been considered in relation to such a public body a generation ago. Likewise, amendments 180 and 204 would not have been proposed a generation ago, but they are a sign of our changing society and of our changing expectations of the public bodies that serve us. The amendments will move the police service and public service in Scotland in the right direction.

Roderick Campbell: Although I have sympathy with the intention to ensure that the police authority represents both sexes in society, obviously, the gender issue is not the only line in society. The Equality Act 2010 proceeds on the basis of a far wider view of equality than just that of the gender balance. The amendments raise a much wider issue that is best tackled through separate legislation, rather than by simply adding specific provisions to the bill. I was rather concerned when I heard Miss Marra on the radio this morning referring to the conveners of police boards who gave evidence to us as “quite old”, which must have come as a bit of a shock to Stephen Curran, aged 39. If we want a provision for women, why do we not have an authority that reflects the age balance in society?

The amendments raise a big issue that the Parliament perhaps needs to tackle, but inserting the provision in amendment 180 into the bill is not the way to do it.

Margaret Mitchell: I have tremendous sympathy with the intention behind amendment 180, but it is too prescriptive and we would need to consider various equalities issues that the board should reflect; singling out the gender issue would give the wrong signal. Therefore, although I have tremendous sympathy with the amendment, it is not the way to tackle the issue.

The Convener: How did you manage to slip that in?

Kenny MacAskill: Jenny Marra has raised an important issue, but it is not an issue that is simply for police and fire service boards; it transcends that and is important throughout society. The matter should be addressed, but I do not think that this is the right way of doing that. I concur with Jenny Marra’s support for the small independent nations that do so well in the area of gender balance and in a variety of other ways. I am a big admirer of Finland, Norway, Denmark and Iceland and I wish that Scotland had the powers to emulate what they do.

The Convener: How did you manage to slip that in?

Kenny MacAskill: There is an issue to address, but whether the bill is the right place to address it
is another matter. If Ms Mitchell was not here as a substitute for Mr McLetchie, the Justice Committee would not meet the quota, notwithstanding the convener’s gender. The committee should reflect on that.

The issue should be addressed not just through the make-up of police and fire service boards but in public life and, indeed, on private company boards. Indeed, the matter has been resolved in other countries. However, I have made it clear that appointments to the Scottish police authority should be made on the basis of skills and expertise and they should reflect Scottish society, including ensuring a gender balance. However, it is not necessary to be prescriptive about that in the bill.

I agree that, where possible, local authority committees should have a good gender balance but it might not be possible to achieve that because of the make-up of individual councils. Trying to make the change through the bill without making wider changes in local authorities might cause difficulties for individual local authorities, never mind the fact that I do not think that COSLA would welcome us trying to use the bill to micromanage local government by dictating how it should discharge its functions.

In those circumstances, and although I recognise the issue and sympathise with the reasons for the amendment, the solution does not lie in the bill. I accept that a solution must be found and I look longingly at the nations to which Ms Marra referred that are doing so much better.

**Jenny Marra:** I thank committee colleagues for their contributions on amendments 180 and 204. Some of the points that have been raised are very interesting.

I put it to the cabinet secretary that we can look to those other nations that have made strides in equal representation, but our Parliament has the required powers already. We do not need subsequent powers to take a step in the right direction.

Colleagues have said that the bill is not the right place to take that step. I listened with interest to Roderick Campbell, who said that there are wider issues of equality and representation to be considered; I wonder whether that will lead us to a future Scottish National Party bill on the representation of gender and ethnic minorities on all public bodies. I will watch with interest to see if that happens.

My reason for lodging the amendments is that I believe they would signal a real step in the right direction, and we have the power to take that step. In addition, we have particular gender issues with policing. When Scottish police forces deal with gender issues such as domestic violence and prostitution, and are then scrutinised by a board that is composed solely of men, as was Central Scotland’s, our whole community is not being sufficiently represented, especially considering the fact that women make up 52 per cent of our population.

As a result, I will press amendment 180 and move amendment 204 at the appropriate time. I simply do not think that a do-nothing approach is good enough.

11:00

**The Convener:** The question is, that amendment 180 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For

- Marra, Jenny (North East Scotland) (Lab)
- McInnes, Alison (North East Scotland) (LD)
- Pearson, Graeme (South Scotland) (Lab)

Against

- Campbell, Roderick (North East Fife) (SNP)
- Finnie, John (Highlands and Islands) (SNP)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Keir, Colin (Edinburgh Western) (SNP)
- Mitchell, Margaret (Central Scotland) (Con)
- Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 180 disagreed to.

Amendment 181 moved—[John Lamont].

The Convener: The question is, that amendment 181 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For

- Marra, Jenny (North East Scotland) (Lab)
- McInnes, Alison (North East Scotland) (LD)
- Mitchell, Margaret (Central Scotland) (Con)
- Pearson, Graeme (South Scotland) (Lab)

Against

- Campbell, Roderick (North East Fife) (SNP)
- Finnie, John (Highlands and Islands) (SNP)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Keir, Colin (Edinburgh Western) (SNP)
- Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 181 disagreed to.

Amendments 2 to 5 moved—[Kenny MacAskill]—and agreed to.
The Convener: Amendment 182, in the name of Lewis Macdonald, is grouped with amendment 196. If amendment 196 is agreed to, amendment 197 in the later group on police staff will be pre-empted.

Lewis Macdonald: Amendment 182, which relates to Scottish police authority staff, and amendment 196, which relates to staff of the Scottish police service, seek to remove the statutory provision by which police and authority staff could be brought in under third-party arrangements. The background to and purpose of the amendments will be clear to colleagues from the stage 1 debate in the chamber and the subsequent parliamentary debate on concerns that have been expressed by police staff about their future prospects in the service. At the end of one of those debates, the cabinet secretary stated emphatically that the kind of privatisation that is being inflicted on forensic services in England would not happen here.

The amendments seek to secure Kenny MacAskill’s commitment that privatisation will not happen on his watch by building it into law and by removing the provision—and the risk attached—that gives this or any other Government the freedom to contract out services that are currently provided in-house by staff who are employed by the police service.

The term “contracting out” can be a disguise for privatisation and can certainly cover the removal of posts. Some of the debate around the bill has reflected those concerns and the fact that, given their scale, the cuts and savings required from the authority cannot readily be met without significant reductions in police staffing. As was discussed at the recent Association of Scottish Police Superintendents conference, others who are responsible for the management of the service will be tempted to consider contracting out as a possible way of squaring the circle and making these economies. Amendments 182 and 196 are intended to remove such an option.

I move amendment 182.

Kenny MacAskill: The Government is committed to the police service; indeed, Lewis Macdonald quoted my statement that there will be no privatisation of policing under its watch. Not only are we not following the direction of travel that the coalition Government south of the border is taking on forensic services, but in the previous session this Government rolled back what would have been the privatisation of Low Moss prison to ensure that it remained in the public sector. As a result, that particular commitment was stated not just in 2012 but in 2007 when we rolled back what I believe to be flawed plans to privatise that aspect of the prison service.

Nevertheless, the effect of amendments 182 and 196 would be that the SPA could not appoint staff to carry out its functions or to carry out police functions under the chief constable’s direction and control under contract from a third party. Although we have no intention for the provisions to be used for wholesale replacement of police staff, there might well be occasions when the authority needs additional specialist skills or additional capacity on a short-term basis, for example to cover maternity leave or to help implement a new policy or procedure. The provision is needed to allow the authority to retain the flexibility to obtain extra staff when it is not necessary to employ someone permanently. I reiterate our opposition to privatisation, but must oppose amendments 182 and 196 in Mr Macdonald’s name.

Lewis Macdonald: The cabinet secretary reminds us of Low Moss; however, I remind him of another privatisation—that of the Forestry Commission—that had been proposed by Mike Russell but which was withdrawn by the present Government. As Mr MacAskill will recall, ministers denied that that was privatisation, even though it clearly was. Ministers might use different words to describe it, but the consequence is either that the service is provided in-house by public employees working for a public employer or that it is provided in a different way that primarily involves a private company.

As a result, I intend to press amendment 182. Both it and amendment 196 make the choice clear. As with a previous amendment, the cabinet secretary has said that certain exceptions need to be taken into account; if amendment 182 were to be agreed to, it would be open to the Government to lodge at stage 3 an amendment setting out exceptions. If the cabinet secretary genuinely believes that the amendments jeopardise, say, maternity cover, I am sure that it is not beyond the wit of the civil service to devise a way of reinstating that particular aspect.

The Convener: The question is, that amendment 182 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)
The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 182 disagreed to.

Amendment 183 moved—[Graeme Pearson].

The Convener: The question is, that amendment 183 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 183 disagreed to.

Amendment 184 not moved.

The Convener: Amendment 185, in the name of Lewis Macdonald, is grouped with amendments 9 to 20. Mr Macdonald, I ask you to move amendment 185 and speak to all the other amendments in the group, if you so wish.

Lewis Macdonald: Thank you, convener. That is most helpful.

The amendments take us to the heart of concerns about the concentration of powers in the hands of ministers. Although I have mentioned my disappointment at one or two developments this morning, I am particularly disappointed that in this case ministers have responded to concerns not by looking for new ways of sharing powers with others but by proposing to increase their hiring-and-firing powers with regard to the operational leadership of a national police force. It does not seem that Government has heeded the concerns raised in evidence that the accrual of more power over the police might be unhealthy in a democratic society.

Amendment 185 seeks not to remove the powers that ministers wish to give the authority that they appoint to require the chief constable to retire in the interests of efficiency and effectiveness—although there must be concern at the way in which ministers are seeking to centralise such power in the hands of their appointees for the first time—but to ensure that such power is not used lightly by prohibiting the authority from delegating that power to a sub-committee or staff member. Although the proposal is perhaps more modest than we would have wished, I hope that it is modest enough to attract broad support. In their amendments, ministers propose to add to the power to require retirement a new power for the authority to require resignation, again in the interests of the force’s effectiveness and efficiency. That is a step in the wrong direction; in effect, it is a power of dismissal and should, accordingly, be resisted.

I move amendment 185.

Kenny MacAskill: I have listened to Lewis Macdonald and I would like to speak to his amendment 185 and the amendments in the group in my name, all of which deal with the retirement of senior officers in the interests of efficiency and effectiveness.

Section 14 gives the Scottish police authority the power to call on a senior officer to retire from office in the interests of the efficiency or effectiveness of the service. That is intended to carry forward provision in the Police (Scotland) Act 1967, which provides for a final decision. I ask the committee to support amendments 9 to 20.

Amendments 9 and 11 clarify that the power enables the authority to call on a senior officer to resign from the police service if they are not yet eligible to receive a pension. Also, in the interests of providing clarity, amendment 10 puts it beyond doubt that the test for efficiency or effectiveness relates to the efficiency and effectiveness of the police service, rather than the individual.

I believe that there is scope for strengthening and adding further transparency to the process that the Scottish police authority must follow if it wishes to call on a senior officer to retire in that way. My amendments 12 and 14 achieve that aim by requiring the authority to give the senior officer a written explanation of its reasons for proposing to call on them to retire, and to give them an opportunity to make written representations to the authority. Furthermore, amendment 15 places a statutory duty on the authority to take any such representations into consideration before reaching a final decision. Finally, if written representations are made, amendment 17 requires the authority to provide the officer with written reasons for its final decision. I ask the committee to support amendments 9 to 20.

Unfortunately, I cannot support amendment 185. If Mr Macdonald’s intention is to ensure that section 14 is not used without a robust process, I reassure him that section 14, together with our proposed amendments to it, provides for a robust, fair, open and transparent process that must be followed by the authority in the exercise of the
power. Further, I consider it appropriate to give the authority general powers to delegate its functions to its committees or staff, and it is rightly for the authority to decide which of its functions to delegate and to what extent.

The bill takes an enabling rather than a prescriptive approach to the authority’s business. In that context, we do not consider it appropriate to single out specific powers that must be treated differently.

Graeme Pearson: I concur with the views that were expressed by Lewis Macdonald. Obviously, within the context of what we are trying to do in centralising the services into a single police service, the powers that the cabinet secretary outlines in this part of the bill are extensive and punitive, when applied to an individual, even though it might be suggested that they would be used only in limited circumstances, with all of the safeguards that the cabinet secretary has outlined.

Given the nature of the board that the cabinet secretary has proposed and the fact that he has acknowledged that he is not minded to accept the openness that we suggested earlier when we were discussing amendment 183, the conduct of the board in relation to how the matter is dealt with would have deep implications for how any external party might view the justice or otherwise of the discussions. I therefore ask the cabinet secretary to reconsider his approach to Lewis Macdonald’s amendment 185.

John Finnie: I do not recall Graeme Pearson or his former colleagues ever displaying the same interest in similar regulations that applied to junior ranks, without any of the protection that this regulation will afford. The regulation is a measured response to the concerns that have been raised with the committee, and I support it.

The Convener: Do you want to respond, Graeme?

Graeme Pearson: Merely to say that it is unfortunate to personalise the matter in the way that John Finnie has done. I am trying to ensure that whoever holds the post receives due justice. I ask the committee and the cabinet secretary to consider the details and make a measured judgment. There was no need for the comment that was just made.

The Convener: I do not think—[Interruption.] Gentlemen! I am having to hold ex-police to account. This is great.

I will let John Finnie respond and say his bit, then we will get on with the business at hand.

John Finnie: If Graeme Pearson took any personal offence, I apologise unreservedly. The Association of Chief Police Officers in Scotland—

The Convener: That is fine. You have kissed and made up. Stop while the going is good.

Graeme Pearson: I am grateful for the comment.

The Convener: Oh heavens, we are needing our tea break. I invite Lewis Macdonald to wind up.

11:15

Lewis Macdonald: I did not hear in Mr MacAskill’s comments a clear explanation of why the Government has seen fit to lodge amendments requiring resignation in those circumstances, in addition to the requirement on retirement that is already in the bill. The lack of a clear explanation only adds to my concern.

The cabinet secretary asked whether we were seeking a robust process. That is what we are seeking. We will support Government amendments in the group that add to that; there are some amendments that we will oppose because they detract from it. When we come to those amendments, members may wish to consider that.

The Convener: The question is, that amendment 185 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 185 disagreed to.

Schedule 1, as amended, agreed to.

The Convener: I am going to go on for a little bit, but I think members are needing a cup of tea. Just to let you begin to feel happy about things, when I get to amendment 187, I will call a little break—you are going to get out of your chairs.

Section 2—Functions of the Authority

The Convener: Amendment 186, in the name of Lewis Macdonald, is grouped with amendments 188 to 190, 6 and 191.
Lewis Macdonald: Amendment 186, which relates to the functions and responsibilities of the authority, speaks for itself. “Try to do the best you can” is all very well and good for a school report at the end of term but it surely will not do for the law of the land.

If the statutory requirement on a public body is to “try to” do something, all that it has to do to defend itself is to show that it tried. If, on the other hand, the law says that the authority must carry out its functions in a given way, trying and failing will not meet the statutory requirement.

Amendment 186 makes proportionate, accountable and transparent governance a must-do rather than a nice-to-have. I hope that, on that basis, it commands broad support.

Amendment 188 touches on the wider issue of what kind of public body the bill will create. The ability to hold reserves is one of the features of local government and other public bodies, for example, and protects them from simply being under the control of ministers of whatever party is in government. Giving the new authorities the power to hold reserves would not be the end of the world for public sector accounting in Scotland; instead, it would allow ministers to demonstrate that the measure is a sensible and well-balanced reform rather than a power grab by central Government. Accordingly, I hope that ministers can support it.

However, it is appropriate for ministers to exercise some supervision in any area where the authority might be drawn into commercial contracts. As I said, we are particularly concerned about any step to contract out, either on a one-off basis or as entire services, jobs that are currently carried out by police staff. We therefore support Mr MacAskill’s amendment 6, which will require ministerial consent for the forming of companies by the authority. We want, through amendment 190, to extend that to cover the letting of contracts to third parties. That is in line with amendment 196, which we debated earlier and which seeks to drop provision for police staff to be provided by a third party. Amendment 190 can still go forward if amendment 196 is not agreed to.

If amendment 190 is agreed to, it will not directly prevent contracting out in the police service but it will ensure that that can happen only with Government support. Privatising jobs must never be treated as an operational matter or as a matter that is for the commercial judgment of the authority. It is a political choice, and responsibility for making that choice must lie with the Government of the day.

Likewise, amendment 191 does not seek to prevent the authority from entering into a contract; rather, it requires the authority to do so subject to the duty to secure best value and therefore to follow guidance issued by ministers. I hope that that is seen as a sensible safeguard of the public interest that the Government and other members can support.

I move amendment 186.

Jenny Marra: Amendment 189 makes use of article 19 of the European Union’s public procurement directive to put in place a preference for supported workplaces to make police and firefighters’ uniforms for the new services. Article 19 allows Governments to bypass competition regulations so that they can contract services directly from supported workplaces—Remploy and Blindcraft, for example.

Article 19 exists because the dignity of work that supported workplaces offer is irreplaceable for the many staff who work in them. In Scotland, we have supported workplaces with an excellent history of creating specialist and high-spec workwear uniforms, including police and fire service uniforms. The future of those factories is at risk. For example, in Dundee, Remploy recently held contracts to make firefighters’ uniforms for the London Fire Brigade. It would be nice if, under amendment 189, we could make uniforms for Scottish firefighters in Scotland. If the amendment were to be agreed to, contracts of more than £1 million could be made available to supported workplaces. The UK Government is withdrawing support for Remploy, but the Scottish Government, through article 19, has the power in its hands to sustain it.

Our firefighters’ uniforms are made south of the border. I am sure that the cabinet secretary will be unable to resist the opportunity to easily bring that work and those jobs to Scotland. The amendment has the support of the Fire Brigades Union, which would like the Government to use the moral power to have firefighters’ uniforms made in their communities by disabled workers. The amendment offers a neat solution, and I urge members to support it.

Roderick Campbell: I have some sympathy with amendment 186, in the name of Lewis Macdonald. Will the cabinet secretary clarify the use of the words “try to”, and whether slightly better wording might be used in the bill?

Kenny MacAskill: There has been an interesting and wide-ranging discussion about the functions and powers of the SPA. Amendment 6, which is in my name, makes it clear that the SPA can exercise its power to form or promote companies only with the consent of the Scottish ministers. That will ensure that the SPA establishes a company only if there is good reason to do so, and that the purposes and activities of any such company are consistent with those of the
SPA and do not detract from core service provision.

I agree with Lewis Macdonald that the SPA should operate in a transparent and accountable manner. Plenty of other statutory requirements are placed on the authority, such as those under the Freedom of Information (Scotland) Act 2002 and the Ethical Standards in Public Life etc (Scotland) Act 2000, and it is subject to statutory audit and inspection by Her Majesty's inspectorate of constabulary for Scotland and the Auditor General. The provision aims to complement those measures so that the authority goes beyond just taking those as statutory boxes to be ticked. Section 2 seeks to achieve that, but the effect of amendment 186 would be to place the SPA under a statutory duty that would be onerous and potentially unenforceable. I therefore cannot support the amendment.

I appreciate that the eight current police authorities and joint boards, as local authority bodies, can hold reserves, which are used to help manage particular peaks in demand. As a nationally governed organisation, the SPA will be required to operate within a financial regime that is set by HM Treasury and which does not allow the holding of reserves locally. Large parts of the public sector in Scotland operate effectively and efficiently in that way, including the national health service, which also has to deal with unexpected peaks and flows in demand. We are confident that the SPA, with a large, single annual budget of around £1.4 billion, will be able to do the same. I am therefore unable to support amendment 188.

Section 52 of the Local Government in Scotland Act 2003 applies to current services by virtue of their being part of the local government family. Local government is subject to a specific statutory requirement because the Scottish public finance manual has no application to it. Applying guidance intended for local government to the SPA does not make sense. The SPA will be subject to the guidance in the Scottish public finance manual, which is issued by the Scottish ministers; it will also be subject to inspection and audit by the Auditor General.

I assure members that the police service of Scotland will not be privatised. The bill protects the status of the police as a public service and we have no plans to change that. I therefore cannot support amendment 191.

Amendment 190 would require the SPA to seek Scottish ministers’ consent before entering into any contract, however small. I do not believe that Mr Macdonald really thinks that it is necessary for the Scottish ministers to consent to contracts for the purchase of every paper clip or police car. Surely such things should be for the chief constable and the SPA to determine.

I turn to Ms Marra’s amendment 189. The Scottish Government recognises that supported businesses play a valuable role in assisting people with disabilities to integrate into the labour market and in helping to improve their overall independence and wellbeing, which is crucial in building a healthier and fairer Scotland. The procurement of new uniforms will be a matter for the Scottish police authority to take forward. We do not expect that it will replace all uniforms on day one. Instead, it will replace them as and when required. I am sure that, in its drive to deliver quality and best value for money, the SPA will carefully consider all the available options, including supported businesses such as Remploy. In any event, the amendment would not allow the SPA to enter into contracts with other suppliers, should no supported business be available to deliver a contract for the supply of uniforms. Accordingly, I cannot support amendment 189.

Jenny Marra: I will respond to that point. We would be delighted to lodge an amendment at stage 3 that would allow other companies to bid if no supported workplaces were available to provide the contract.

The cabinet secretary is right to say that the SPA will not replace all uniforms on day one. However, fire officers’ uniforms have a limited lifespan. They have barcodes on them and are used only 30 times before they are discarded. There are 6,000 firefighters in Scotland and they have two uniforms each. That means that there are 12,000 uniforms in circulation that need to be constantly replenished and renewed.

Another issue is the insignia that will need to be changed on day one. That contract alone would allow the people who work in Remploy factories in Dundee and across Scotland to maintain their jobs and their dignity. I urge the cabinet secretary to think seriously about my amendment.

The Convener: Do you want to respond to that, cabinet secretary?

Kenny MacAskill: I am happy to reflect on that point. We have to look at the opportunity for the police authority and indeed the fire authority to consider what they are bound to do in terms of procurement. We can seek to ensure that organisations such as Remploy are given the opportunity to tender, but we must also ensure that the uniforms and other items that are required are available.

At the end of the day, the primary duty is to ensure that those who serve are adequately provided for in terms of uniforms. As I said, we have to balance that with trying to ensure that we cater for other organisations that do equally important work in our society. The primary duty is to protect the interests of those who serve, but we...
are happy to look at the issue that Ms Marra has raised.

Lewis Macdonald: I listened carefully to what the cabinet secretary had to say on the issues—

The Convener: I beg your pardon. Roderick Campbell asked the cabinet secretary to clarify the use of the words “try to”, which would be removed by Lewis Macdonald’s amendment 186. Did the cabinet secretary respond to that?

Kenny MacAskill: I think that it was covered.

Lewis Macdonald: I can confirm that the cabinet secretary did indeed respond to it.

The Convener: Thank you. Rescue me, Lewis.

Lewis Macdonald: However, I am afraid that it was not the response that I hoped to hear, and I suspect that Roderick Campbell shares my sentiments. The defence was that requiring the authority to carry out its functions in a way that is consistent with good governance would be onerous and unsustainable. That begs the question of why on earth the provision is in the bill in the first place. If it is onerous and unsustainable, why impose it? If the Government is going to impose it, which I assume is its intention, it should do so in such a way that it will work, and it should remove the conditional term “try to”. In my view, a requirement to try to do your best is not good enough for the law of the land. I will therefore press my amendment 186.

The cabinet secretary implied in his comments on some of the other amendments in the group that no legislative provision is required. For example, he said that we should not require ministerial approval of contracts for paper clips and police cars. That is a fair point but, as in the case of article 19, it is perfectly open to the Government to accept amendment 190 today and lodge a further amendment—or discuss with colleagues their doing that—at stage 3. I do not think that what the cabinet secretary said is an argument against the amendment.

I finish by commenting on Jenny Marra’s amendment 189. I recall a previous minister giving a clear assurance in the previous session of Parliament that every public body in Scotland would be expected to secure at least one order under article 19. Sadly, that has not happened. With the creation of a new public body, we have an opportunity to take that from an expectation to a requirement. The committee would do well to support amendment 189.

11:30

The Convener: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahaime, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 186 disagreed to.

Amendment 187 moved—[John Lamont].

The Convener: The question is, that amendment 187 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahaime, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 187 disagreed to.

Sections 2 and 3 agreed to.

The Convener: We will take a short break and come back at 11.40. Do not stretch it—11.40, okay? Thank you.

11:31

Meeting suspended.

11:40

On resuming—

The Convener: I make it plain to everyone that the cabinet secretary will stay with us for stage 2 until 12.45, when we will move on to a short matter—I do not know how I have picked up the word “matter”; it must be contagious—of subordinate legislation, for which he will also be present.
Section 4—General powers of the Authority

Amendment 188 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 188 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 188 disagreed to.

Amendment 189 moved—[Jenny Marra].

The Convener: The question is, that amendment 189 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 189 disagreed to.

Amendment 190 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 190 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 190 disagreed to.

Amendment 191 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 191 disagreed to.

Section 4, as amended, agreed to.

Section 5—Directions

Amendment 192, in the name of David McLetchie, is grouped with amendment 166.

John Lamont: The Scottish Government has repeatedly asserted that the ministerial power that section 5 provides for will rarely be used and will apply to non-operational matters only. The power will enable ministers to direct the authority on any non-operational matter. The rationale behind the power is that it is required “to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary.”

However, a number of organisations and individuals, including Professor Jim Gallagher, COSLA and the Scottish Police Federation, have expressed concern that the power creates the risk of political interference with the police force.

Amendment 192 accepts that a ministerial power may be necessary but seeks to force the minister to justify its use by issuing a statement that sets out the circumstances in which such a
direction could or would be given; it seeks to put pressure on the minister to explain the circumstances in which the Government might want to use the power.

I move amendment 192.

Alison McInnes: Throughout our consideration of the bill, I have listened carefully to the Government’s explanation of the power of direction. I emphasise to the cabinet secretary that I fully recognise that the intention behind the provision is not to enable the Government to abuse the power, but the fact remains that there is a great deal of uneasiness surrounding its all-encompassing nature, which is why I support David McLetchie’s amendment 192.

My amendment 166 provides a specific limitation relating to any directions that are given regarding the use of firearms, including Tasers. I am advised that it would be fairly unusual to require a ministerial direction to be carried out by way of order, but I hope that the cabinet secretary will agree that it is well worth having extra safeguards in this area. Although I recognise that the present Government almost certainly has no intention of doing this, section 5 as it stands could, for instance, permit ministers to direct that all police officers carry firearms. That is an unlikely scenario, but it would clearly be an unwelcome development.

11:45

I am firmly of the opinion that, when it comes to the use of firearms, it is wise to have an extra level of assurances. Requiring directions regarding firearms to be made by order would give Parliament the chance to ensure that the new power was not being misused on such a critical issue. I therefore hope that the cabinet secretary will be open to amendment 166. I stress that I am not suggesting that the current Government has any sinister intentions whatsoever. However, when we are scrutinising proposed legislation, we must consider what a less benign Government might do with it in years to come. We must guard against being blinded by good intentions and be clear about what the power of direction might allow future Governments to do.

The Convener: It is good to hear that the cabinet secretary is not sinister.

Graeme Pearson: I will comment on the nature of direction from the Scottish ministers to chief officers. Obviously, a Government minister would seek to instruct a chief officer only in very unusual circumstances. Kenny MacAskill’s earlier response about the operation of the board and relative relationships gives an indication that the public generally will not be aware of the various interactions between ministers and chief constables. Therefore, although it will be onerous, and, I am sure, inconvenient from the point of view of how the statement might set out circumstances, it is important that, at the beginning of the establishment of a single police force, an attempt should be made to outline the nature of the circumstances in which a Government minister—a politician—would issue a direction to a chief officer, particularly in relation to policing duties. I ask the cabinet secretary to consider the implications of not publishing such a document.

Roderick Campbell: I understand the basis for amendments 192 and 166, but I have concerns about their being too prescriptive. Section 5(3) requires ministers to lay a copy of any direction before the Parliament, which would no doubt give rise to a debate if there was controversy. I am instinctively against things that are too prescriptive.

Margaret Mitchell: I feel strongly that we should agree to amendment 192. The public should be notified when ministers give any direction to the chief constable of the single police force. That would put in place the necessary checks and balances. David McLetchie’s amendment 192 and Alison McInnes’s amendment 166 are prerequisites and should be agreed to.

Kenny MacAskill: I make it clear that the Government cannot instruct or direct a chief officer, as the bill does not allow that—only the SPA can do that. We have been clear that ministers cannot make directions relating to specific operations or the carrying out of those operations. We also recognise the need for parliamentary scrutiny, which is why the bill provides for openness and transparency by requiring that any direction must be published and laid before the Scottish Parliament.

Ms McInnes’s amendment 166 would mean that any direction in relation to firearms would be subject to parliamentary order and so could not take effect for at least 28 days after it was laid. I cannot support that amendment. The power of direction would be exercised rarely and only when necessary. For example, it might be used to ensure that the authority takes action on recommendations arising from parliamentary committees or public inquiries. There might also be circumstances in which a direction is necessary to exercise the will of Parliament. In any case, any direction—whatever the subject matter—will be made openly and transparently, with opportunity for subsequent parliamentary scrutiny and debate. Directions should be capable of taking effect as soon as they are required, without the unnecessary 28-day delay that amendment 166 would impose.

Mr McLetchie’s amendment 192 would require the Scottish ministers to publish a statement, prior
to the exercise of the power, about what the Scottish ministers consider to be a specific operation and so may not make directions about.

The bill clearly defines the respective roles and responsibilities of the chief constable, the authority and the Scottish ministers. It is absolutely clear that the only person who can direct and control constables is the chief constable. We are not persuaded that a statement by the Scottish ministers as proposed by Mr McLetchie in amendment 192 would add to that clarity.

As Mr McLetchie would surely recognise, policing, society and crime are continually evolving and the future of policing cannot be predicted. It is not reasonable for the member to propose that Scottish ministers address all possible eventualities.

John Lamont: I acknowledge the point that the cabinet secretary has made, but there is widespread concern in a number of organisations, such as COSLA and the Scottish Police Federation, about how the power could be used. Although I hear what the cabinet secretary is saying, it would be appropriate for the bill to include something that sets out more clearly when the power could be used, so there could be no doubt in the mind of the public or the police about when the Government might decide to take action along the lines described.

The Convener: The question is, that amendment 192 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 192 disagreed to.

Section 5 agreed to.

Section 6—The Police Service of Scotland

Amendment 167 moved—[John Finnie]—and agreed to.

Section 6, as amended, agreed to.

Section 7—Senior officers

The Convener: Amendment 193, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: One of the key recommendations that was made by the Justice Committee at stage 1 was that ministers should bring forward the appointment of the chief constable, to give him or her the time and opportunity to manage the transition from eight forces to a single force in an effective and efficient manner.

The police service is a command-led service, which means that, when officers are required by Government to have the new structure in place in time, they will do their level best to achieve that. However, members of the committee all know that some people who are involved in the transition believe that delivering the new service in time could come at a heavy price in terms of half-formed structures, false economies and missed opportunities, unless the effective leadership of the force is in place in good time before the transition.

Ministers have accepted that there is a case for a better-managed transition. They have said that they will enable the early appointment of chief officers of the police and the fire and rescue services, and that is welcome. This amendment invites them to put flesh on the bones of that commitment. In the stage 1 debate, it was rightly observed that Governments of all parties can commit to making things happen according to a vague timetable and then let that timetable slip gradually until it has all but disappeared. That should not happen in this case.

We suggest that six months is a reasonable period for the new chief constable to be in place
before the new service comes fully into being. That can be done, if ministers wish. They might argue that four or five months would be adequate, and colleagues would wish to listen to that argument. They might say that an adequate period of office for the new chief constable can be achieved only by some kind of transitional arrangement beyond 1 April, and I do not think that we would resist that approach. However, I do not think that they can credibly argue that they accept the committee’s recommendation but dare not have it included in the bill in case they should fail.

As I said in an earlier debate, it is not good enough for ministers to try and not to succeed. A commitment to appoint the new chief constable in good time must deliver what it promises. This amendment is designed to ensure that that happens.

I move amendment 193.

Kenny MacAskill: We understand that the amendment is intended to ensure an appropriate lead-in time for the chief constable to plan and prepare for the establishment of the police service. We do not disagree with the underlying principle, but we consider the amendment to be unnecessary and potentially unhelpful. Therefore, we cannot support it.

We have listened to the views of stakeholders and agree that the new chief constable should be appointed at the earliest possible date. We are, therefore, lodging amendments that will deliver that early appointment. First, an amendment that has already been debated this morning will enable the early appointment of the SPA chair separately from other members. Secondly, we will lodge amendments for agreement on 12 June that will enable the early appointment of the chief constable and other senior officers. I am confident that we are on course for the appointment of the new chief constable to be made in the autumn.

I have also made clear the Government’s intention that the new police service will become operational on 1 April 2013. That will allow the chief constable a period of around six months to plan and prepare for the establishment of the police service, building on the excellent work that is already being undertaken in the services.

Amendment 193 is, therefore, unnecessary to achieve an appointment at the earliest possible date. On the other hand, what is proposed could give rise to a legislative absurdity by giving the authority the power to do something only if something else happens six months down the line. Mr Macdonald will appreciate that such a legal duty cannot sensibly operate in practice.

I hope that my comments provide some reassurance to Mr Macdonald and to the committee that the Government is committed to enabling the chief constable to be appointed at the earliest possible date. Although we are sympathetic to what Mr Macdonald is seeking to achieve, we are unable to support his amendment.

The Convener: I will let Graeme Pearson in because I am a nice person.

Graeme Pearson: Given all that you have said, cabinet secretary, you will realise how important the lead-in to the go-live date for a single police service is. Can you give us any more detail of your plans behind the scenes to deliver the appointment of such a person?

Kenny MacAskill: As I say, we must act according to the various rules of the Office of the Commissioner for Public Appointments in Scotland. We are seeking to appoint the SPA chair and steps are being taken to ensure that others, who must be cleared with the public appointments commissioner, come in to carry out the selection process. I give an absolute assurance that the appointment will be dealt with in an open and transparent manner and not by me or by any other Government minister.

The Convener: Lewis Macdonald has not summed up yet. We want to know whether you have been reassured.

Lewis Macdonald: Sadly, I have not heard much additional reassurance from the cabinet secretary. Graeme Pearson’s question invited an indication of a more precise date in the autumn, as we discussed in the stage 1 debate, but the cabinet secretary has not given much reassurance about the timetable. I am inclined to press the amendment and test the Government’s resolve on the matter.

The Convener: The question is, that amendment 193 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 193 disagreed to.

Section 7 agreed to.
Sections 8 and 9 agreed to.

Section 10—Constable’s declaration

The Convener: Amendment 168, in the name of John Finnie, is in a group on its own.

John Finnie: Amendment 168 deals with the oath that is taken by constables. Constables are public authorities for the purposes of the Human Rights Act 1998 and, as such, are already required to act in accordance with convention rights. Following representations from stakeholders—notably Amnesty International, of which I declare my membership—I propose that the oath should be amended to contain a specific reference to upholding fundamental human rights and according equal respect to all people.

I move amendment 168.

Roderick Campbell: I declare an interest as a member of Amnesty International and I record my agreement with John Finnie’s amendment, which is a positive step forward.

Jenny Marra: I associate myself with John Finnie’s and Roderick Campbell’s comments and declare an interest as a member of Amnesty International. We heard some powerful evidence from Hugh Orde on the importance of human rights, and it is an important amendment within the police service.

Kenny MacAskill: I welcome John Finnie’s amendment 168, which will put human rights and equal respect for all people at the heart of the oath that constables take. In considering the issue, we must remember that, although the police are at the forefront of protecting the human rights of others, they are sometimes required to use force and/or to limit individuals’ right to liberty and security.

I am aware that the committee listened with interest to the evidence from the Police Service of Northern Ireland on how it has embedded human rights in its policy and practice. Scotland starts from a different place, but putting human rights at the heart of the oath will send out an important message about how we expect each and every constable to go about their difficult work.

Some stakeholders have argued for a more prescriptive approach to human rights in the bill. That would not be the right way forward, but amendment 168 will send an important signal to the authority and the police service. I trust that that will be reflected in how they go about their business, in how the authority holds the chief constable to account and in the training and support for officers and staff. I am happy to support the amendment.

Amendment 168 agreed to.

Section 10, as amended, agreed to.

Section 11—Ranks

The Convener: I am entertained by the next group, which is on the creation of new ranks, because we heard that rank does not matter. We will find out whether that is the case. Amendment 7, in the name of the cabinet secretary, is grouped with amendment 8.

Kenny MacAskill: Amendments 7 and 8 deal with senior officers’ ranks. Section 11 makes provision about the rank structure of the police service of Scotland. The bill currently enables ministers to add or delete ranks below the rank of assistant chief constable only. Following representations from stakeholders, I have decided that that power should be extended to all ranks below that of chief constable. Amendment 7 allows that to happen. I expect the power to be used to add or delete senior ranks only when the SPA and the police service make a good case.

The bill sets out the senior officer structure, which may require to be changed to reflect any future addition or removal of senior ranks. Amendment 8 widens the regulation-making power in section 11(5) to enable the Scottish ministers to change the senior officer structure by modifying relevant provisions of the bill. Regulations that are made under that section will be subject to the affirmative procedure, which will enable the Parliament to scrutinise any proposed use of the power.

I invite the committee to support the amendments and I move amendment 7.

Margaret Mitchell: I welcome the cabinet secretary’s comments, but my reservation is that the power to remove ranks will extend to a very senior rank. Will he assure the committee that an equally senior rank will be in place, given that we will have only one chief constable and that having appropriate checks and balances in the bill is essential?

Kenny MacAskill: I assure Margaret Mitchell that we currently have no plans for changes. It has simply been put to us—especially by various officers—that there should be the opportunity to make changes. I expect that any proposal would be more likely to involve inserting an additional rank than removing a current rank.

At present, we are not minded to make changes. However, as the service evolves, those who are dealing with it should have the opportunity to address issues. The amendments will just ensure that we have the flexibility to deal with situations that might evolve as the police service beds in.
Graeme Pearson: I do not disagree in principle with what the cabinet secretary said. Will he share with us which stakeholder proposed the amendments?

Kenny MacAskill: It was ACPOS.

Amendment 7 agreed to.

Amendment 8 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 169, in the name of John Finnie, is grouped with amendments 34, 174, 114 to 118, 175 and 119.

John Finnie: Amendments 169, 174 and 175 deal with the requirement to consult the Scottish Police Federation. Section 11(5) gives the Scottish ministers the power to amend by regulations the ranks that a constable may hold. Section 49 requires the Scottish ministers to make regulations on the governance, administration and conditions of service of constables and police cadets.

The bill requires the Scottish ministers to consult the three central committees of the Scottish Police Federation before making those regulations, except when they relate to matters that require full Police Negotiating Board consultation.

However, the federation has raised concerns that consultation with its constituent parts could result in separate responses from each, with no one clear view being provided. The amendments will require the Scottish ministers, prior to making regulations under sections 11 or 49 of the bill, to consult with the three central committees of the Scottish Police Federation sitting together as one joint central committee. Consultation with the SPF through a joint central committee will ensure that we get a single shared view from its members before any regulations are made. I therefore invite the committee to support amendments 169, 174 and 175 in my name.

I move amendment 169.

Kenny MacAskill: Amendments 169, 174 and 175 in the name of John Finnie make a sensible change to the requirements for consultation with the Scottish Police Federation prior to regulations being made. That responds directly to concerns that were raised by the SPF that consultation with its constituent parts could result in separate responses from each, with no one clear view being provided. I agree that it is more appropriate to consult a body that represents all federated ranks through the joint central committee, because that would enable the SPF to take a collective, coherent view prior to regulations being made, thus providing a strong voice for police officers in Scotland. I thank John Finnie for lodging the amendments and I hope that the committee will support them.

My amendments in this group are technical amendments to various definitions in the bill.

Amendments 34 and 115 clarify that all references to a constable within the bill will apply only to constables of the police service of Scotland, and will include constables who are on temporary service outwith the police service of Scotland.

At present, “Key police definitions” are set out in section 96 of the bill, and the “Meaning of other words and expressions used in Part 1” is in section 97. Amendment 114 will delete section 96 and amendments 115, 116, 118 and 119 will insert the necessary definitions into section 97. That simply reflects a change in our proposed approach to amending other legislation that might need to refer to those definitions.

The definitions of “Police Service of Scotland” and “Scottish Police Authority” will not be transferred to section 97, because they are defined in sections 1 and 6 of the bill respectively. Likewise we consider that the general translation for the term “chief officer of a police force” in other enactments, which is provided in section 96(2), is no longer required, as those references will now be dealt with individually.

Amendment 117 will alter the definition of “international joint investigation team”. It will replace the reference to a specific European Council framework decision under which those teams are currently formed with a reference to the powers under which that decision was made and the article of the Treaty on the Functioning of the European Union under which any future measures will be agreed. That will ensure that the protections afforded by the bill to members of international joint investigation teams will continue to have effect if the current framework decision is replaced. The future adoption of any measures will be subject to parliamentary scrutiny as a result of the UK’s opt-out on matters relating to justice and home affairs.

Amendment 169 agreed to.

Section 11, as amended, agreed to.

Sections 12 and 13 agreed to.

Section 14—Senior officers: retirement for efficiency or effectiveness

Amendment 9 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 9 agreed to.

Amendment 10 moved—[Kenny MacAskill]—and agreed to.

Amendment 11 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 10 agreed to.

Amendments 14 and 15 moved—[Kenny MacAskill]—and agreed to.

Amendment 16 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 16 agreed to.

Amendment 17 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 17 agreed to.

Amendment 18 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 18 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 18 agreed to.

Amendment 19 moved—[Kenny MacAskill]—and agreed to.

Amendment 20 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 20 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 20 agreed to.

Section 14, as amended, agreed to.

Section 15—Constables: service outwith the Police Service of Scotland

The Convener: Amendment 21, in the name of the cabinet secretary, is grouped with amendments 22 to 27.

Kenny MacAskill: Amendments 21 to 27 deal with constables’ service outwith the police service of Scotland.

Section 15 of the bill makes provision to allow the chief constable to make arrangements for constables to serve with other forces or organisations outwith the police service of Scotland. The amendments clarify how temporary service outwith the police service will operate. In particular, they ensure that the status of constables who are on temporary service is clear, and enable the Scottish ministers to make regulations that set out the types of temporary service on which constables will not retain the default status that is set out in amendment 22, or on which constables may not be engaged.

I invite the committee to support amendments 21 to 27 and I move amendment 21.

Amendment 21 agreed to.

Amendments 22 to 27 moved—[Kenny MacAskill]—and agreed to.

Section 15, as amended, agreed to.

Section 16 agreed to.

Section 17—Chief constable’s responsibility for the policing of Scotland

The Convener: Amendment 28, in the name of the cabinet secretary, is grouped with amendments 29 to 31, 37, 171, 200, 172 and 38 to 48. Amendments 171 and 200 are direct alternatives, so if members agree to amendment 171 and then to amendment 200, the latter decision will stand.

This is getting more complicated. I think that I understand what I am doing, but perhaps not.

Kenny MacAskill: Amendment 28 and the other amendments that you mentioned, convener, deal with police priorities and plans. The bill provides a coherent and integrated planning framework at a local and national level. Chapter 4 of part 1 of the bill sets out a range of provisions relating to principles, priorities, objectives and plans in respect of the roles of the Scottish police authority and chief constables in their preparation. Sections 34 and 35 of the bill will place responsibility for the preparation of the strategic plan and annual plan with the Scottish police authority, and stipulate that each plan should cover the functions of the authority and the policing of Scotland.

12:15

Section 36 obliges the authority to involve the chief constable in the preparation of those plans and obliges the chief constable to assist the authority in preparing them.

The amendments in my name in this group make no change to the Scottish Government’s responsibility for setting the very high-level strategic policing priorities. They also make no change to the authority’s role in providing strategic direction for the policing of Scotland through its preparation, with the involvement of the chief constable, of the strategic police plan. However, the chief constable is responsible for directing and controlling the police service and for the allocation and deployment of resources received from the authority. It is therefore right that the chief constable should have responsibility for the
preparation of the annual police plan, with its much greater focus on delivery. Amendment 40 makes that change, and the other amendments in my name adjust other provisions to fit.

Section 33 of the bill enables the Scottish ministers to determine strategic police priorities for the authority relating to the policing of Scotland or the authority’s functions. Those are high-level, strategic priorities that are intended to set the strategic direction for Scotland, not individual local areas, over the medium to long term. Section 33 also lists the persons that the Scottish ministers must consult before determining the strategic priorities. That, of course, includes such persons as appear to them to be representative of local authorities. I therefore cannot support amendment 200, not because we do not value COSLA, but simply because the legislation needs to be future proofed.

Amendment 38 places an obligation on the Scottish ministers to lay a copy of the strategic police priorities before the Scottish Parliament, which will provide the Parliament with an opportunity to scrutinise the priorities. Alison McInnes’s amendment 172 would mean that the Scottish ministers would have to make a statement to the Parliament setting out the reasons for any strategic police priorities that they proposed to determine. The bill already provides for a range of opportunities for the Parliament to scrutinise policing, and amendment 38 enhances that. Therefore, I cannot support amendment 172.

I move amendment 28.

**Alison McInnes:** First, with regard to the Government’s amendments in the group, I agree with the principle that it should be the responsibility of the chief constable rather than the Scottish police authority to prepare the annual police plans.

My amendment 171 is a reflection of my concern about the vagueness of the current list of consultees for the authority’s strategic priorities. Lewis Macdonald’s amendment 200 would formalise who would be recognised as being representative of local authorities, but I do not believe that that would be a better approach.

It is right that each individual local authority should be afforded the right to have its own input into the preparation of the strategic priorities. It is clear that policing needs will be very different in each of Scotland’s local authority areas, and it is vital that those needs are not confined to the local plans, but are appropriately reflected in the overarching priorities. A similar requirement already exists for consultation on the fire service’s strategic plan in part 2 of the bill.

My amendment 172 would require ministers to make a statement to the Parliament on the setting of the strategic priorities following the consultation period. I am concerned that, with the removal of locally elected members from their police oversight role, responsibility must fall more on the shoulders of MSPs to play an active role in monitoring the function of Scotland’s police. The requirement would allow a simple mechanism for ensuring
transparency in the setting of priorities. I note that a similar requirement on the Government is in place in the Climate Change (Scotland) Act 2009 and that it has already proved to be an effective tool for parliamentary scrutiny.

Lewis Macdonald: I agree with the broad thrust of the involvement of ministers in consultation to determine strategic priorities, and agree broadly with the role of the chief constable as laid out in the Government’s amendments. However, we see no reason to be less specific on how the Government should consult with others than our amendment proposes.

Amendment 200 suggests that we should specify the Convention of Scottish Local Authorities as the appropriate body for representing local government. In response to Alison McInnes’s proposal, the cabinet secretary said that COSLA is able to represent a more strategic view of local government than 32 or any other number of individual local authorities could. We agree with that and see no great difficulty in naming COSLA in the bill. The cabinet secretary said that it is inappropriate to name some bodies and not others. Amendments that relate to the Scottish Police Federation have just been agreed to, and there are provisions in the bill as introduced that refer to specific bodies. Therefore, there is no difficulty in that respect that would not be readily dealt with. We think that that approach would be helpful.

As the convener said, amendment 200 is an alternative to amendment 171. We think that amendment 200 should be supported.

We support Alison McInnes’s amendment 172, as it would strengthen the requirement for parliamentary scrutiny of and accountability on strategic plans and priorities by requiring a statement to be made. Again, I see no particular reason why ministers would find that difficult. The notion that a change in the police service’s strategic priorities might be a matter of interest to the Parliament as a whole seems to me to be perfectly reasonable, and I hope that committee members will support it.

Kenny MacAskill: The reason why the Scottish Police Federation is treated differently is that it already exists and is mentioned in statute. That does not apply to COSLA. There is a clear and significant difference between the Scottish Police Federation and COSLA and the ASPS.

On the other issues, there are sufficient ways in which the Parliament will be kept informed.

On that basis, I will press amendment 28.

Amendment 28 agreed to.

Amendments 29 to 31 moved—[Kenny MacAskill]—and agreed to.

Section 17, as amended, agreed to.

Section 18—Delegation of chief constable’s functions

The Convener: Amendment 32, in the name of the cabinet secretary, is grouped with amendment 33.

Kenny MacAskill: Amendments 32 and 33 deal with the delegation of functions within senior ranks in the police service of Scotland.

Section 18(4) requires the authority to designate an assistant chief constable to carry out the chief constable’s functions in certain circumstances. Following discussion with the services, we consider that to be unnecessary. In the new service, it is likely that there will be more than one deputy chief constable, so there should never be a situation in which there is no available deputy chief constable to step in for the chief constable. If that unlikely scenario arose, it could be dealt with operationally—for example, by the temporary promotion of an assistant chief constable to deputy chief constable.

Amendment 32 will remove section 18(4). Therefore, there will be no requirement for the authority to designate an assistant chief constable to carry out the chief constable’s functions when there is no available deputy chief constable to do so. Amendment 33 makes a minor consequential change to section 18(5) to reflect that. I invite the committee to support the amendments.

I move amendment 32.

Amendment 32 agreed to.

Amendment 33 moved—[Kenny MacAskill]—and agreed to.

Section 18, as amended, agreed to.

Section 19—Constables: functions and jurisdiction

Amendment 34 moved—[Kenny MacAskill]—and agreed to.

Section 19, as amended, agreed to.

Sections 20 and 21 agreed to.

Section 22—Failure to perform duty

The Convener: Amendment 170, in the name of John Finnie, is in a group on its own.

John Finnie: Amendment 170 deals with the maximum penalty for the offence of neglect or violation of duty. The bill will increase the maximum penalty for the offence from 60 days’ to five years’ imprisonment. Some stakeholders, including the Scottish Police Federation, expressed concern about that, suggesting that the
proposed new penalty is disproportionate and that serious offences can more appropriately be dealt with by using common-law charges.

It is important that firm action is taken against the very small minority of officers who fail to uphold the constable’s duty, to protect the police service’s reputation. It is therefore right that there should be a statutory offence and appropriate penalties. However, in light of the concerns that were expressed in evidence, I propose that the maximum sentence should be two years, rather than the proposed five years. It will still be possible to deal with more serious offences, for example under a charge of perverting the course of justice, which carries a penalty of up to life imprisonment.

I move amendment 170.

**Kenny MacAskill:** I am aware of the concerns. I am grateful to Mr Finnie for lodging amendment 170, which I am happy to support.

**Amendment 170 agreed to.**

**Section 22, as amended, agreed to.**

**Sections 23 to 25 agreed to.**

### Section 26—Police staff

**The Convener:** We are rattling along. Amendment 194, in the name of Lewis Macdonald, is grouped with amendments 195 and 197 to 199. If amendment 196, which was debated with amendment 182, is agreed to, I cannot call amendment 197, which will have been preempted. I know that you all remembered that—if you are still alive out there.

**Lewis Macdonald:** The amendments in the group are all to do with recognising the valuable roles that police staff and police custody and security officers play in our modern police service. Staff are no longer there simply to assist constables directly, although of course some of them do that in important ways. Many roles that are performed in the police service by non-warranted civilian staff are specialised roles, which support the service in general rather than individual constables. Amendments 195 and 198 would simply update the wording of the bill to reflect that modern reality.

Amendments 194 and 197 would clarify that the people who are appointed to carry out such functions should be members of police staff rather than, for example, individuals who have been appointed by contractors on a more or less casual basis to come into the service, carry out a contract and then go away.

Amendment 196, which we have debated, would remove altogether the reference to who might do those jobs, thereby requiring that they should be police staff appointments. Amendment 197 offers a softer version of the same thing, so members who cannot support amendment 196 might want to support amendment 197.

Amendment 199 would provide additional protection for people with certification as a police custody and security officer. If the chief constable sees fit to remove certification from an individual, he or she should report the decision to the authority and, by implication, be prepared to defend it if challenged. The approach is designed to protect individuals in the context of their relationship with their employer and to ensure that there can be no removal of certificates on a wider scale for reasons other than the conduct of an individual member of staff.

I move amendment 194.

**Graeme Pearson:** The cabinet secretary will be aware that there is enormous worry among support staff about how their valuable work will continue in the new single service. Lewis Macdonald’s amendments would go a long way towards calming their fears about the future and ensuring that on 1 April we have a unified service that will provide Scotland with excellent policing. I hope that the cabinet secretary can find a way of engaging with the amendments as Lewis Macdonald has suggested.

**The Convener:** Cabinet secretary, are you going to engage with the wooing of Lewis?

12:30

**Kenny MacAskill:** Absolutely, convener. I am happy to acknowledge the key role that is played by police staff, who carry out many vital functions in the service. They not only take on backroom tasks to free up officers for front-line policing but have their own specialist skills and specific functions, without which constables cannot effectively carry out their duties.

Amendments 194, 195, 197 and 198 seek to make it clear that police staff and police custody and security officers have their own role in policing and do not just assist constables. I agree that such a change will underscore the value of those staff and, accordingly, I support those amendments.

Unfortunately, I cannot support amendment 199, as I do not agree that it will achieve anything useful. The certification of police custody and security officers and the deployment of police staff generally are operational matters for the chief constable and I see no reason for involving the authority, by statute, in one very specific aspect of that.

**Lewis Macdonald:** I am grateful to the cabinet secretary for supporting amendments 194, 195, 197 and 198. However, I will press amendment 199 at the appropriate time because it is important
to give custody and security officers extra reassurance in the event that certification is removed and their livelihood is impacted on.

Amendment 194 agreed to.

Amendment 195 moved—[Lewis Macdonald]—and agreed to.

Amendment 196 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 196 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 196 disagreed to.

Amendment 197 moved—[Lewis Macdonald]—and agreed to.

Section 26, as amended, agreed to.

Section 27 agreed to.

Section 28—Police custody and security officers

Amendment 198 moved—[Lewis Macdonald]—and agreed to.

Section 28, as amended, agreed to.

Schedule 2 agreed to.

Section 29—Certification of police custody and security officers

Amendment 199 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 199 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
McInnes, Alison (North East Scotland) (LD)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 199 disagreed to.

Section 29 agreed to.

Section 30 agreed to.

Section 31—Forensic services

The Convener: Amendment 35, in the name of Kenny MacAskill, is grouped with amendments 36 and 99.

Kenny MacAskill: Amendments 35, 36 and 99 deal with forensic services.

Section 31 requires the Scottish police authority to provide forensic services to the police service, the Lord Advocate and procurators fiscal. Amendment 35 seeks to make it explicit that the authority is also required to provide forensic services to the new police investigations and review commissioner, as we expect that the commissioner will require those services in their investigatory role.

Section 31 also allows the authority to provide forensic services “to such other persons as it thinks fit”.

However, that is out of step with the provision of other goods and services that the authority can provide to public bodies, office-holders or anyone else specified by Scottish ministers by order. As we see no difference between the provision of forensics and any other goods or services that the authority might wish to provide, amendment 36 seeks to place the authority’s provision of forensic services to persons other than those mentioned in section 31—and its ability to charge for such services—on a similar footing to all other goods and services that the authority may provide.

Section 31 also allows the authority to provide forensic services to other organisations and individuals and to make arrangements for the police service of Scotland to do the same. Amendment 99 will have two effects on section 84, the first of which is to clarify that the organisations to which forensic services must be provided, namely the police service, the PIRC, the Lord Advocate and procurators fiscal, will not be charged for them.

Secondly, amendment 99 seeks to remove the constraint that any charging for the provision of goods and services must be limited to recovering
the cost of providing them. In other words, it will in some instances be possible for the authority to generate a profit from the provision of goods and services. Stakeholders support amendment 99 as it will have positive effects, notably in increasing flexibility in the provision of goods and services and creating appropriate and reasonable opportunities for the authority and the service to generate income.

I invite the committee to support amendments 35, 36 and 99.

I move amendment 35.

Amendment 35 agreed to.

Amendment 36 moved—[Kenny MacAskill] and agreed to.

Section 31, as amended, agreed to.

Section 32 agreed to.

Section 33—Strategic police priorities

Amendment 37 moved—[Kenny MacAskill] and agreed to.

The Convener: Amendment 171, in the name of Alison McInnes, has already been debated with amendment 28. I know that you will have remembered but, nevertheless, I remind the committee that amendments 171 and 200 are direct alternatives.

Amendment 171 moved—[Alison McInnes].

The Convener: The question is, that amendment 171 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)

The Convener: The result of the division is: For 2 Against 7, Abstentions 0.

Amendment 171 disagreed to.

Amendment 200 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 200 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 3 Against 6, Abstentions 0.

Amendment 200 disagreed to.

Amendment 172 moved—[Alison McInnes].

The Convener: The question is, that amendment 172 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4 Against 5, Abstentions 0.

Amendment 172 disagreed to.

Amendment 38 moved—[Kenny MacAskill] and agreed to.

Section 33, as amended, agreed to.

Section 34—Strategic police plan

Amendment 39 moved—[Kenny MacAsskill] and agreed to.

Section 34, as amended, agreed to.

Section 35—Annual police plans

Amendments 40 to 47 moved—[Kenny MacAskill] and agreed to.

Section 35, as amended, agreed to.

Section 36—Planning: role of chief constable etc

Amendment 48 moved—[Kenny MacAskill] and agreed to.

Sections 37 to 39 agreed to.
The Convener: Amendment 201, in the name of Lewis Macdonald, is grouped with amendments 49 to 52 and 202. I warn the committee that I intend to stop today's consideration of the bill at the question on section 44, which will come after the question on amendment 202, in the name of David McLetchie. That should take us up to time.

Lewis Macdonald: The issue of reporting and audit impacts on two areas that have been discussed this morning and at stage 1. One is the need to ensure that there is as much transparency as the proper functioning of the service will allow. The second concerns staffing: the need to ensure that those who work for the police service are reassured that their employment is affected by their utility for the service rather than by any other considerations, and that communities are reassured that police staffing will not be cut simply as a way to economise at the expense of the service itself.

Amendment 201 is straightforward and simply requires annual reports to include the number of police officers and the number of police staff who are employed in any one year. We also support amendment 202, in the name of David McLetchie, in terms of its impact on improving transparency and the audit trail for the police service.

I move amendment 201.

Kenny MacAskill: These amendments deal with reporting and audit. We have already debated a number of amendments that place responsibility for preparing an annual police plan on the chief constable. Amendments 49 to 52 are, in effect, consequential on those changes and give responsibility to the chief constable to prepare an annual report to the SPA on the performance against that plan.

The information that amendment 201, in the name of Lewis Macdonald, would oblige the authority to include in the annual report is available now and will continue to be so. There is no need to include that as a requirement for the annual report, although the authority may choose to include such information in its assessment of the performance of the police authority and the police service. I therefore cannot support amendment 201.

On amendment 202, in the name of David McLetchie, the bill already enables the Auditor General for Scotland to initiate examinations into the economy, efficiency and effectiveness of the police authority and the police service, and the arrangements that they make in respect of best value. Those provisions give the Auditor General full scope to undertake the type of activity that the amendment suggests.

It is my view, following discussions with stakeholders in the Scottish Commission for Public Audit, that the Auditor General is best placed to determine how and when to examine the economy, efficiency and effectiveness of the service. On that basis, I cannot support amendment 202.

John Lamont: The Scottish Government has made much of the savings that will be made by bringing the forces together. It is estimated that a single police force will result in £130 million-worth of savings a year and £1.7 billion-worth of savings over 15 years. However, those figures and the financial memorandum are based on an outline business case that was produced in July 2011.

The financial memorandum states that it "does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets".

Chief Constable Smith of ACPOS said that the outline business case was "never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings."—[Official Report, Justice Committee, 28 February 2012, c 971.]

Our amendment seeks to compel the Auditor General to review the savings made by the creation of a single police force. That must be done "as soon as practicable" after the creation of the single force and the report must be laid before the Scottish Parliament. We decided against the inclusion of a time period, on the basis that that might restrict the Auditor General or the information available to him or her.

We also support amendment 201.

Graeme Pearson: The cabinet secretary will remember that, earlier in the bill process, there was an indication from ACPOS that it was working on the full business case and that that would be ready within the month. That period has passed. Can the cabinet secretary confirm that he has a full business case and that it puts him in a more confident position in dealing with the amendments that we are discussing?

Kenny MacAskill: We are currently in a confident place with regard to robustness on that specific matter. I will need to check it and return to you, but there is nothing that we are unduly concerned about. We will press on, and we have decided that 1 April 2013 is perfectly realisable.

Graeme Pearson: So you will let us know about the full business case—

Kenny MacAskill: I will come back with the information.
Graeme Pearson: Whether you have it or otherwise.

Kenny MacAskill: I will make inquiries; I cannot confirm that at the moment.

Graeme Pearson: I am grateful.

The Convener: Just for clarity, are we talking about providing that information for or before stage 3?

Kenny MacAskill: I will come back as soon as I can with a written response—I assume that it will be before stage 3.

12:45

The Convener: Members are just clarifying what the position will be with regard to amendments. That is the push here with regard to that timeline, so it would be helpful to know when we will get the response.

Lewis Macdonald: I am intrigued by the last exchange, because my understanding was that the cabinet secretary said in the stage 1 debate that there was not a full business case and that there was no intention to have a full business case in advance of the establishment of the services. Can the cabinet secretary offer further clarification on that point? If his reply to Graeme Pearson on the full business case is that it requires a detailed response, that suggests a different position from the one that I understood from the stage 1 debate. If the cabinet secretary wishes to respond to that, I am happy to give way to him.

The Convener: Please direct your remarks through the chair.

Lewis Macdonald: Of course.

The Convener: I have a small part to play here—it is very small.

Kenny MacAskill: My response to Mr Pearson was that I would get back to him on his specific query as soon as I could. That is what I intend to do. Some of the written response might be pre-empted by what I am saying, which is that work on the full business case is being led by the services. It will be ready at the earliest possible opportunity. That presumably answers Mr Pearson’s question about whether the full business case has reached me, so I do not need to come back to him on that point.

The services are working on arrangements for delivery of the new service. A whole range of projects are being worked on and delivered by partners and stakeholders.

Lewis Macdonald: I am grateful to the cabinet secretary for that clarification—“the earliest possible opportunity” presumably is some time in the autumn.

In relation to the other amendments, I was not much taken with the cabinet secretary’s response to amendment 201. The average number of constables and police staff is a matter of public record. The cabinet secretary said that there is no need to include that in the annual report. I think that it would be quite extraordinary if the police authority chose not to include that number in the annual report. To make it a statutory requirement seems to impose no unnecessary burden on anyone but simply to achieve in statute the level of transparency that I think that everyone here would expect in any case. I am disappointed that the Government will not support amendment 201.

Likewise there seems to be no good reason for the Government not to support amendment 202. The Auditor General has existing powers—amendment 202 proposes that the Auditor General should report on the difference between the cost and funding of the existing police service and the cost and funding of the reformed police service. Again, I see no difficulty with that and no reason for the Government to resist that amendment.

The Convener: The question is, that amendment 201 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 201 disagreed to.

Amendments 49 to 51 moved—[Kenny MacAskill]—and agreed to.

Section 40, as amended, agreed to.

Section 41—Accounts
Amendment 52 moved—[John Lamont].
The Convener: The question is, that amendment 202 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Convener: The result of the division is: For 4, Against 5, Abstentions 0.

Amendment 202 disagreed to.

Section 44 agreed to.

The Convener: Members will be delighted to know that I am going to suspend the meeting for two or three minutes. We will continue considering the amendments to the bill at our next meeting on 12 June. We will see how our next meeting goes, but we will probably need an extra meeting—possibly over a Wednesday lunch time—to conclude. We may have to meet on 13 June as well.
Police and Fire Reform (Scotland) Bill

2nd Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

- Section 1 Schedule 1
- Sections 2 to 28 Schedule 2
- Sections 29 to 57 Schedule 3
- Sections 58 to 95 Schedule 4
- Sections 96 to 118 Schedule 5
- Sections 119 to 123 Schedules 6 and 7
- Sections 124 and 125 Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

*Note: The line numbering on page 113 of the Bill is incorrect from line 25 onwards. Amendment 240 affects the line that should be line 26, rather than the line numbered 31 in the Bill.*

Section 45

Graeme Pearson

203 In section 45, page 19, line 17, at end insert—

< ( ) The chief constable must provide to each local authority as soon as reasonably practicable details of the resources allocated to policing in its area as at—

(a) 1 April 2012, and
(b) 1 April in each subsequent year.>

Section 46

Alison McInnes

173 In section 46, page 19, line 19, leave out subsection (1) and insert—

< ( ) Priorities and objectives for the policing of each local authority area must be agreed between the local commander and the local authority.>

Jenny Marra

204 In section 46, page 19, line 20, at end insert—

< ( ) If a local authority appoints a committee or other body to carry out any of its functions under this Part, the proportion of both men and women appointed to the committee or other body must be at least 40 per cent of the membership.>

Kenny MacAskill

53 In section 46, page 19, line 25, at end insert—
A local authority may provide feedback by reference to any local police plan in force for the area.

Lewis Macdonald

In section 46, page 19, line 25, at end insert—

A local authority may raise concerns with the chief constable concerning—

(a) the performance or conduct of the local commander, or
(b) the policing of its area, where it has been unable to reach agreement with the local commander.

Kenny MacAskill

In section 46, page 19, line 32, at end insert—

(4) A local commander may refer a requirement under subsection (3) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—

(a) the carrying out of any operation by the Police Service, or
(b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the chief constable.

Section 47

Kenny MacAskill

In section 47, page 19, line 37, leave out from beginning to end of line 2 on page 20 and insert—

(b) in paragraph (e), for “a police force” substitute “the Police Service of Scotland”.

(2) The chief constable must delegate the carrying out of the chief constable’s functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.

(3) Subsection (2) does not affect—

(a) the chief constable’s responsibility for the carrying out of the delegated functions,
(b) the chief constable’s ability to carry out the delegated functions.

Section 48

Kenny MacAskill

In section 48, page 20, line 4, at beginning insert <As soon as is reasonably practicable after the first strategic police plan is approved under section 34,>

Lewis Macdonald

In section 48, page 20, line 12, at end insert—
includes costings and an explanation of budget provision for each section of the plan,

sets out the number of constables and police staff expected to be deployed in the local authority’s area.

Kenny MacAskill

57 In section 48, page 20, line 22, leave out <such> and insert —

(i) the joint central committee of the Police Federation for Scotland,
(ii) such persons as appear to the local commander to be representative of senior officers,
(iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),
(iv) such persons as appear to the local commander to be representative of police staff, and
(v) such other

David McLetchie

207 In section 48, page 20, line 24, at end insert —

If the local authority does not approve a local police plan submitted to it—

(a) the local authority must notify the Authority that it has not approved the plan, and
(b) the local commander may proceed to implement the plan.

Kenny MacAskill

58 In section 48, page 20, line 26, leave out from <at> to end of line 28 and insert <if—

(a) a new strategic police plan is approved under section 34, or
(b) the plan is not replaced under subsection (5A) or modified under subsection (7) during the period of 3 years beginning with the date of publication of the plan.

(5A) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.

(5B) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.

Kenny MacAskill

59 In section 48, page 20, line 31, leave out from <(after)> to <appropriate)> in line 32

Kenny MacAskill

60 In section 48, page 20, line 32, at end insert —

Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.
Kenny MacAskill

61 In section 48, page 20, line 33, leave out subsection (8)

David McLetchie

208 In section 48, page 20, line 35, at end insert—
<( ) Where, in the opinion of the local commander, there has been or is likely to be a material failure to achieve the main priorities and objectives for the policing of the local authority’s area, the local commander must report that to the local authority as soon as practicable.>

Section 53

Kenny MacAskill

62 In section 53, page 22, line 36, leave out from <or> to <unsatisfactory>

Kenny MacAskill

63 In section 53, page 23, line 1, leave out from <decide> to end of line 3 and insert <determine any case which relates to the standard of behaviour or performance of a senior officer.>

Section 55

Kenny MacAskill

64 In section 55, page 23, line 14, after <(c.16)> insert <(other than pensions)>

John Finnie

174 In section 55, page 23, line 22, leave out <representative committees> and insert <joint central committee>

Section 60

Kenny MacAskill

65 In section 60, page 25, line 19, leave out <on grounds of confidentiality>

Section 63

Kenny MacAskill

66 In section 63, page 27, line 2, leave out <a serious criminal> and insert <an>

Kenny MacAskill

67 In section 63, page 27, line 9, at beginning insert <where requested to do so by the Authority or the chief constable,>
Kenny MacAskill

68 In section 63, page 27, line 13, leave out from <and> to end of line 17

Kenny MacAskill

69 In section 63, page 27, leave out lines 18 to 22

Section 65

Kenny MacAskill

70 In section 65, page 28, leave out line 22

Kenny MacAskill

71 In section 65, page 28, line 23, leave out from <which> to <33A(1)> in line 24 and insert <—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;>

Kenny MacAskill

72 In section 65, page 28, line 25, after <investigated> insert <—

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii)>

Section 66

Kenny MacAskill

73 In section 66, page 28, line 33, leave out from second <matter> to <police> in line 34 and insert <incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved> 

Kenny MacAskill

74 In section 66, page 28, leave out line 35

Kenny MacAskill

75 In section 66, page 28, line 36, leave out from <which> to end of line 37 and insert <—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;>
In section 66, page 28, line 38, after <investigated> insert —

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii)>

In section 66, page 29, line 1, leave out <has been or is capable of being> and insert <or has been,>

In section 67, page 29, leave out lines 21 to 23

In section 67, page 29, line 29, after <constable;> insert—

< ( ) such persons as appear to them to be representatives of senior officers;
( ) such persons as appear to them to be representatives of superintendents (including chief superintendents);
( ) the joint central committee of the Police Federation for Scotland;>

In section 68, page 30, line 1, leave out from <publish> to <report> in line 3 and insert <provide a copy of a report prepared under subsection (1)>

In section 68, page 30, line 6, at end insert <; and

( ) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.>

In section 68, page 30, line 13, at end insert—

<( ) If the Commissioner determines that it is necessary to disclose information of the type mentioned in subsection (3)(a) or (b), the Commissioner must give the person named or likely to be identified not less than seven days’ notice of the intention to do so.>
Section 69

Kenny MacAskill

82 In section 69, page 30, line 20, after first <in> insert <the carrying out of a complaint handling review or in>

Kenny MacAskill

83 In section 69, page 30, line 23, leave out <an> and insert <a review or>

Kenny MacAskill

84 In section 69, page 30, line 23, leave out <the investigation> and insert <it>

Section 70

Kenny MacAskill

85 In section 70, page 30, line 33, leave out from <by> to <public> in line 34

After section 70

Kenny MacAskill

Supported by: Alison McInnes

86 After section 70, insert—

Protection from actions for defamation

After section 46 of the 2006 Act, insert—

“Protection from actions for defamation

(1) For the purposes of the law of defamation—

(a) any statement made by the Commissioner or any of the Commissioner’s staff—

(i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A(1);

(ii) in communicating with any person for the purposes of such a review or investigation;

(iii) in a report on such a review or investigation; or

(iv) in a report made under section 43,

has absolute privilege;

(b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A(1) has absolute privilege; and

(c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.
(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

David McLetchie

210 After section 70, insert—

<Appointment of staff>

In schedule 4 of the 2006 Act (staff), in sub-paragraph 7(1), after “appropriate” insert “, but may not appoint a person who is a constable or a member of police staff”.

Section 74

Kenny MacAskill

87 In section 74, page 32, leave out line 5 and insert—

<(2) The inspectors of constabulary may make such other inquiries as they think fit about—>

Graeme Pearson

247 In section 74, page 32, line 9, at end insert—

<( ) Inquiries under subsection (1)(a) may, in particular, be made about the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic police priorities and local police plans are met.>

After section 74

Kenny MacAskill

88 After section 74, insert—

<HMICS plan>

(1) The inspectors of constabulary must prepare a plan setting out—

(a) priorities for inquiries to be carried out by them, and

(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The inspectors of constabulary—

(a) must keep the plan under review, and

(b) may from time to time revise the plan.

(3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.

(4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).>
Section 77

Kenny MacAskill

89 In section 77, page 32, line 27, leave out <or inspection>

Kenny MacAskill

90 In section 77, page 32, line 27, leave out <74> and insert <74(1) and any other information in relation to the report that the inspectors of constabulary think fit>

Kenny MacAskill

91 In section 77, page 32, line 28, leave out <or inspection>

Kenny MacAskill

92 In section 77, page 33, line 1, leave out subsection (4)

After section 77

Kenny MacAskill

93 After section 77, insert—

<HMICS reports: other inquiries>

(1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.

(2) The inspectors of constabulary must—

(a) as soon as is reasonably practicable after giving the report under subsection (1)—

(i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and

(ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and

(b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.

(3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.>

Kenny MacAskill

94 After section 77, insert—
<Inquiry reports: consideration and action

In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 77 or (HMICS reports: other inquiries) and, having done so, must take such measures (if any) as they think fit in relation to the report.>

Section 78

Kenny MacAskill
95 In section 78, page 33, line 5, leave out <to the Scottish Ministers under section 77> and insert <by the inspectors of constabulary under section 77 or (HMICS reports: other inquiries)>

Section 82

Kenny MacAskill
96 In section 82, page 35, line 18, leave out subsection (6)

Section 84

Kenny MacAskill
97 In section 84, page 36, line 15, after <persons> insert <, or types of person,>

Kenny MacAskill
98 In section 84, page 36, line 24, after <persons> insert <, or types of person,>

Kenny MacAskill
99 In section 84, page 36, line 35, leave out from <provides> to end of line 38 and insert <is required to provide in pursuance of section 31.>

Section 87

Kenny MacAskill
100 In section 87, page 37, line 31, at end insert—
(A1) It is an offence for a person to assault—
(a) a person (“A”) acting in a capacity mentioned in subsection (2), or
(b) a person assisting A while A is acting in such capacity.

Kenny MacAskill
101 In section 87, page 37, line 32, leave out <assault,>

Kenny MacAskill
102 In section 87, page 38, line 8, after <subsection> insert <(A1) or>
Kenny MacAskill

103 In section 87, page 38, line 10, at end insert—

<(  ) A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (A1) and an offence under subsection (1).

(  ) Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.>

Section 90

Lewis Macdonald

248 Leave out section 90

Section 91

Lewis Macdonald

249 In section 91, page 40, line 15, leave out from <where> to end of line 21 and insert <—

(  ) where there are urgent and compelling grounds of public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit, and

(  ) the Scottish Ministers have notified the Authority that such grounds exist and that access should accordingly be refused.>

Lewis Macdonald

250 Leave out section 91

Section 92

Lewis Macdonald

251 Leave out section 92

Section 93

Lewis Macdonald

252 Leave out section 93

After section 93

Graeme Pearson

242* After section 93, insert—
Scottish Policing Commission

(1) There is to be a body to be known as the Scottish Policing Commission ("the Commission").

(2) The Commission is to consist of—

(a) the member of the Parliament who is for the time being convener of the Justice Committee or such other committee whose remit includes responsibility for scrutiny of the Scottish Minister or Junior Scottish Minister responsible for policing, and

(b) 4 other members of the Parliament appointed in accordance with standing orders.

(3) The functions of the Commission are—

(a) to keep the arrangements for policing established in this Act under review, and

(b) to report to the Parliament as it considers appropriate on the operation of those arrangements.

(4) A report under subsection (3)(b) may include recommendations as to the effective operation of those arrangements.

(5) In carrying out its functions, the Commission—

(a) must have regard to the policing principles set out in section 32, and

(b) may require any person or body exercising functions under this Act to provide it with such documents, information and explanations about the exercise of those functions as the Commission reasonably considers necessary in connection with the discharge of its functions.

(6) Schedule (Scottish Policing Commission) makes further provision about the Commission.

After schedule 3

Graeme Pearson

243 After schedule 3, insert—

*SCHEDULE*

*(introduced by section (Scottish Policing Commission))*

Scottish Policing Commission

1 The member of the Scottish Policing Commission ("the Commission") holding office under section (Scottish Policing Commission)(2)(a) on a dissolution of the Parliament continues to hold office until a convener of the Justice Committee, or such other committee whose remit includes responsibility for scrutiny of the Scottish Minister or Junior Scottish Minister responsible for policing, is appointed following a general election.
A member of the Commission appointed under section *(Scottish Policing Commission)* (2)(b) holds office until the Parliament is dissolved unless the member previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

The validity of any act of the Commission is not affected by any vacancy in its membership or by any defect in the appointment, or qualification for membership, of any member.

The Commission may—
(a) determine its own procedure,
(b) appoint one of its members to preside at its meetings.

The parliamentary corporation is to provide the Commission, or ensure that the Commission is provided, with the property, staff and services required for its purposes.

The Commission may give directions to the corporation for the purpose of or in connection with the exercise of the corporation’s functions in relation to the Commission.

Any expenses incurred by the Commission in the exercise of its functions are to be paid by the corporation.

For the purposes of the law of defamation, the following are absolutely privileged—
(a) any statement made in proceedings of the Commission,
(b) the publication under the authority of the Commission of any statement, and
(c) any report to the Parliament under section *(Scottish Policing Commission)* (3)(b).

In paragraph 8, “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

### Section 95

**Kenny MacAskill**

212 In section 95, page 42, line 28, at end insert—

<(1) Schedule *(Period before establishment of Police Service)* makes provision about the period before the Police Service is established.>

### After schedule 3

**Kenny MacAskill**

213 After schedule 3, insert—

<SCHEDULE

*(introduced by section 95(1))*

PERIOD BEFORE ESTABLISHMENT OF POLICE SERVICE

1 This schedule applies during the period before the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6).
An appointment under section 7 has effect only where the individual has made the declaration set out in section 10 before a sheriff or justice of the peace.

An individual appointed under section 7—
(a) holds the office of constable,
(b) is to hold and vacate office on such terms and conditions as the Scottish Ministers may determine,
(c) has power to do anything that the individual considers appropriate in anticipation of—
   (i) the establishment of the Police Service, or
   (ii) the coming into force of any provision of this Act, and
(d) in the case of the chief constable, is accountable to the Authority.

Sections 18, 19, 21(1) and (2), 22 and 23 apply in relation to an individual who is so appointed as if those sections were in force.

Despite paragraph 2(1) of schedule 1, the Authority may consist of—
(a) the chairing member, or
(b) the chairing member and fewer than 6 other members.

It is for the Authority to hold the chief constable to account for the performance of senior officers’ functions.

The Authority may—
(a) pay remuneration and allowances to, and reimburse expenses reasonably incurred by, senior officers, and
(b) provide and maintain anything necessary or desirable in connection with the functions of senior officers.

The reference in section 4(1) to the Authority’s functions includes a reference to any functions which the Authority anticipates having by virtue of the coming into force of any provision of this Act.

Schedule 4

Kenny MacAskill
214 In schedule 4, page 75, line 4, after <Act> insert <(including any individual who, immediately before that day, is engaged in service which is “relevant service” for the purposes of section 38A of the 1967 Act)>
Kenny MacAskill

216 In schedule 4, page 75, line 21, at end insert—

<Senior officers appointed under section 7

An individual who, immediately before the appointed day, holds the office of chief constable, deputy chief constable or assistant chief constable by virtue of appointment in accordance with section 7 is, on and after the appointed day, to serve as a constable of the Police Service.>

Kenny MacAskill

105 In schedule 4, page 75, line 31, leave out from <but,> to <and> in line 32 and insert <(and accordingly to hold the rank of deputy chief constable) but>

Kenny MacAskill

106 In schedule 4, page 76, line 2, leave out <deputy> and insert <assistant>

Kenny MacAskill

107 In schedule 4, page 76, line 3, leave out <but is> and insert <(and accordingly to hold the rank of assistant chief constable) but is otherwise>

Kenny MacAskill

108 In schedule 4, page 77, line 22, leave out <38(3)(a)> and insert <38A(3)(a)>

Kenny MacAskill

109 In schedule 4, page 77, line 23, at end insert—

<(4A) Sub-paragraph (4B) applies to an individual who—

(a) is to revert to the Police Service by virtue of sub-paragraph (4)(c),

(b) would have (but for this paragraph) reverted to the individual’s police force at the rank of deputy chief constable, and

(c) is not appointed to the office of deputy chief constable of the Police Service in accordance with section 7.

(4B) An individual to whom this sub-paragraph applies is, on and after the date that the individual reverts to the Police Service by virtue of sub-paragraph (4)(c), to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly is to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be a deputy chief constable of the police force which has ceased to exist.>

Kenny MacAskill

110 In schedule 4, page 77, line 25, leave out <deputy chief constable or>
Kenny MacAskill

111 In schedule 4, page 77, line 26, leave out from <corresponding> to end of line 31 and insert <of assistant chief constable of the Police Service in accordance with section 7.>

Lewis Macdonald

253 In schedule 4, page 78, leave out lines 20 to 25

John Lamont

217 In schedule 4, page 78, line 20, leave out <ceases to> and insert <does not>

John Lamont

218 In schedule 4, page 78, line 20, leave out <to a constable> and insert—

<(a)>

John Lamont

219 In schedule 4, page 78, leave out line 23

John Lamont

220 In schedule 4, page 78, line 25, at end insert—

<(b) where the necessity of a constable moving home arises in direct consequence of that constable being promoted to a higher rank on or after the appointed day.>

Lewis Macdonald

254 In schedule 4, page 78, line 38, at end insert—

<( ) The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246) apply to the transfer of police functions under this Act, whether or not they would so apply apart from this sub-paragraph.>

Kenny MacAskill

112 In schedule 4, page 81, line 3, at end insert—

<( ) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a police property transfer scheme.>

Kenny MacAskill

113 In schedule 4, page 81, line 16, at end insert—

<( ) A joint police board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.>
Section 96

Kenny MacAskill

114 Leave out section 96

Section 97

Kenny MacAskill

115 In section 97, page 43, line 21, at end insert—

<“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),

“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—

(a) the chief constable,
(b) other senior officers,
(c) any special constable, and
(d) any constable on temporary service outwith the Police Service,>

Kenny MacAskill

116 In section 97, page 43, line 23, at end insert—

<“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,>

Kenny MacAskill

117 In section 97, page 43, leave out lines 26 and 27 and insert—

<(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union,>

Kenny MacAskill

118 In section 97, page 43, line 37, at end insert—

<“local commander” means a constable designated under section 45(2),>

John Finnie

175 In section 97, page 43, line 37, at end insert—

<“joint central committee of the Police Federation for Scotland” means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee,>
Kenny MacAskill
119 In section 97, page 44, line 3, at end insert—

<“police custody and security officer” means an individual certified under section 28(1),>

Section 99

John Finnie
176 In section 99, page 45, line 8, after <Service> insert <or, in Gaelic, Seirbheis Smàlaidh agus Teasaìrginn na h-Alba>

Lewis Macdonald
255 In section 99, page 45, line 17, at end insert—

<(  ) is to be regarded as if it is a local authority,>

Roseanna Cunningham
120 In section 99, page 45, line 22, leave out from <not> to end of line 23 and insert <-

(a) a person appointed by the Scottish Ministers to chair SFRS (“the chairing member”), and
(b) not fewer than 6 nor more than 10 other members appointed by the Scottish Ministers.>

Lewis Macdonald
256 In section 99, page 45, line 25, at end insert—

<(  ) No fewer than half the members of SFRS, excluding the chairing member, must be members of local authorities.
(  ) The Scottish Ministers must select the members of local authorities to be members of SFRS from nominations made by the Convention of Scottish Local Authorities.
(  ) The number of members nominated by the Convention of Scottish Local Authorities must be no more than twice the number of positions to be filled.>

Lewis Macdonald
257 In section 99, page 45, line 25, at end insert—

<(  ) In appointing members, the Scottish Ministers must have due regard to representation among members of SFRS of persons with knowledge of communities and fire and rescue services in all regions of Scotland.>

Jenny Marra
258 In section 99, page 45, line 25, at end insert—

<(  ) The Scottish Ministers must appoint to SFRS at least 1 person from persons nominated from among members of staff of SFRS.>
Jenny Marra

259 In section 99, page 45, line 25, at end insert—

<(  ) The proportion of both men and women appointed to SFRS must be at least 40 per cent of the membership.>

Roseanna Cunningham

121 In section 99, page 45, line 26, leave out <(1)> and insert <(1)(b)>

Roseanna Cunningham

122 In section 99, page 45, line 28, at end insert—

<(  ) Members of SFRS may elect from their number a member to act as deputy to the chairing member.>

Jenny Marra

260 In section 99, page 45, leave out line 32

Roseanna Cunningham

123 In section 99, page 46, leave out lines 6 and 7 and insert—

<(  ) The Scottish Ministers may by order modify sub-paragraph (1).>

Roseanna Cunningham

124 In section 99, page 46, leave out lines 16 to 26

Roseanna Cunningham

125 In section 99, page 46, leave out line 30

Lewis Macdonald

261 In section 99, page 47, line 25, at end insert—

<(  ) As soon as reasonably practicable after determining terms and conditions under sub-paragraph (3), the Scottish Ministers must make a statement to the Scottish Parliament setting out the reasons for the determination.>

Graeme Pearson

262 In section 99, page 48, line 22, at end insert—

<(1A) In considering its own procedure under sub-paragraph (1)(a), SFRS must have regard to the transparency of its proceedings, in particular it must—

(a) hold its meetings in public,

(b) publish its agendas and papers,

(c) publish any correspondence it has with local authorities, including the Convention of Scottish Local Authorities,
(d) publish any correspondence it has with, and any directions it receives from, the Scottish Ministers, and
(e) publish any reports it receives from the Chief Officer.

(1B) SFRS must publish a strategy setting out what steps it will take to ensure public engagement in its proceedings.

(1C) A strategy under sub-paragraph (1B) must be published within 6 months of the establishment of SFRS and must be reviewed at the end of every subsequent year.

Roseanna Cunningham

126 In section 99, page 48, line 26, at end insert—

<Governance and accountability

SFRS must try to ensure that each of its members, when acting in the capacity of member—

(a) acts consistently with any principle of good governance which appears to SFRS to constitute best practice, and
(b) acts in a way which is as accountable and transparent as is reasonably practicable.>

Jenny Marra

263 In section 99, page 48, line 37, at end insert—

<( ) Where SFRS intends to exercise the power in subparagraph (2)(a) to enter into a contract for the supply, maintenance or replacement of uniforms it must reserve the right to participate to economic operators which operate supported businesses, supported employment programmes or supported factories within the meaning of Article 19 of Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.>

Lewis Macdonald

264 In section 99, page 49, line 1, leave out <(2)(b)> and insert <(2)(a), (b)>

Roseanna Cunningham

127 In section 99, page 49, line 1, after <(2)(b)> insert <or (e)>

Roseanna Cunningham

128 In section 99, page 50, leave out lines 11 and 12

Roseanna Cunningham

129 In section 99, page 50, leave out lines 15 and 16
Before section 100

Jenny Marra

265 Before section 100, insert—

<General functions of SFRS

Before section 8 of the 2005 Act (fire safety), insert—

“7A General functions of SFRS

The general functions of SFRS are to include—

(a) saving life;
(b) protecting property; and
(c) rendering humanitarian services.”.>

Section 108

Roseanna Cunningham

130 In section 108, page 52, leave out lines 19 to 22

Section 109

Lewis Macdonald

266 Leave out section 109

Section 110

Lewis Macdonald

267 Leave out section 110

Section 112

Roseanna Cunningham

221 In section 112, page 55, leave out lines 5 to 7 and insert—

<( ) Before preparing the strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.

( ) When preparing the strategic plan, SFRS must—

(a) have regard to the framework document,
(b) send a copy of a draft plan to the persons mentioned in subsection (4),
(c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and
(d) have regard to any comments received within that period.>
Roseanna Cunningham

222 In section 112, page 56, leave out lines 5 to 7 and insert—

<( ) Before preparing a new strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.

( ) When preparing a new strategic plan, SFRS must—

(a) have regard to the framework document,

(b) send a copy of a draft plan to the persons mentioned in section 41A(4),

(c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and

(d) have regard to any comments received within that period.>

Section 113

Alison McInnes

244 In section 113, page 56, leave out lines 34 to 36 and insert—

<( ) Priorities and objectives for SFRS in connection with the carrying out of its functions in each local authority area must be agreed between SFRS and the relevant local authority.>

Lewis Macdonald

268 In section 113, page 56, line 36, at end insert—

<( ) The Chief Officer must provide to each local authority as soon as reasonably practicable details of the resources allocated to fire and rescue services in its area as at—

(a) 1 April 2012, and

(b) 1 April in each subsequent year.>

Lewis Macdonald

269 In section 113, page 57, line 9, at end insert—

<( ) the number of members of staff of SFRS expected to be deployed in the local authority’s area,>

Roseanna Cunningham

131 In section 113, page 57, line 20, leave out <such persons as SFRS thinks fit> and insert <—

(i) such persons as SFRS considers represent employees of SFRS, and

(ii) such other persons as SFRS considers appropriate.>

Roseanna Cunningham

132 In section 113, page 58, line 20, after <area> insert <(including reports given by reference to any local fire and rescue plan in force for the area)>
In section 113, page 58, line 27, at end insert—

\(<( ) \) SFRS’s function in relation to the provision of feedback to it under section 41K(1).>  

In section 113, page 58, line 33, leave out from first <in> to end of line 34

In section 113, page 59, line 2, leave out from <keep> to end of line 13 and insert <monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority’s area and (in particular) may provide to SFRS—

(a) its views on any matter concerning or connected to the manner in which SFRS carries out those functions in the authority’s area,

(b) any recommendations for improvements in the manner in which SFRS carries out those functions in the authority’s area that it thinks fit.

(2) A local authority may provide feedback by reference to any local fire and rescue plan in force for its area.”.>

In section 113, page 59, line 13, at end insert—

\<(3) \> A local authority may raise concerns with SFRS regarding the performance or conduct of the Local Senior Officer for the authority’s area.>

In section 114, page 59, line 19, after <report> insert—

\<( ) \> give a copy of the report to the Scottish Ministers,>

In section 114, page 59, line 23, at end insert—

\<( ) \> the average number of members of staff of SFRS during the reporting year,>

In section 117, page 63, line 1, leave out from <If> to <(b),>

In section 117, page 63, line 35, leave out from beginning to end of line 2 on page 64
After section 117

John Lamont

245 After section 117, insert—

<Prohibition on employment of police
In section 51 of the 2005 Act (prohibition on employment of police), after “constable”
insert “, other than a special constable appointed under section 9 of the Police and Fire
Reform (Scotland) Act 2012 (asp 00),”.
>

Schedule 5

Lewis Macdonald

273 In schedule 5, page 82, line 34, at end insert—

<Transfer of fire and rescue functions
The Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I.
2006/246) apply to the transfer of fire and rescue functions under this Act, whether or
not they would so apply apart from this paragraph.
>

Roseanna Cunningham

138 In schedule 5, page 84, line 10, leave out <appointed> and insert <transfer>

Roseanna Cunningham

139 In schedule 5, page 84, line 31, at end insert—

<( ) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers
with such information or assistance as they may reasonably require for the purposes of
or in connection with the making of an SFRS property transfer scheme.
>

Roseanna Cunningham

140 In schedule 5, page 85, line 3, at end insert—

<( ) A joint board must provide the Scottish Ministers with such information or assistance as
they may reasonably require for the purposes of or in connection with the making of a
local authority property transfer scheme.
>

After section 118

Roseanna Cunningham

223 After section 118, insert—

<Membership of SFRS: transitory provision
(1) Subsection (2) applies until the coming into force of section 99(1) for the purpose of
inserting section 1A(2) into the 2005 Act.

(2) Despite paragraph 2(1) of schedule 1A to the 2005 Act, SFRS may consist of—
(a) the chairing member, or
(b) the chairing member and fewer than 6 other members.>

Section 120

Kenny MacAskill

141 In section 120, page 64, line 19, after <121> insert <or 122>

Roseanna Cunningham

246 In section 120, page 64, line 23, leave out <or paragraph 2(1)(b) of schedule 4> and insert <, paragraph 2(1)(b) of schedule 4 or paragraph 1 of schedule 5>

Schedule 6

Kenny MacAskill

224 In schedule 6, page 86, line 15, at end insert—

<Health and Safety at Work etc. Act 1974 (c.37)

In section 51A of the Health and Safety at Work etc. Act 1974 (application of Part to police)—

(a) in subsection (2E), for paragraph (a) substitute—

“(a) section 24 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”

(b) in subsection (3)(b), for “each chief officer of police in Scotland” substitute “the chief constable of the Police Service of Scotland”.

Rehabilitation of Offenders Act 1974 (c.53)

In section 9B of the Rehabilitation of Offenders Act 1974 (unauthorised disclosure of spent alternatives to prosecution: Scotland), in subsection (1)(a)(ii), after “court,” insert “the Police Service of Scotland or another”.

Kenny MacAskill

142 In schedule 6, page 86, leave out lines 16 to 22

Kenny MacAskill

225 In schedule 6, page 86, line 22, at end insert—

<Slaughter of Animals (Scotland) Act 1980 (c.13)

In section 22 of the Slaughter of Animals (Scotland) Act 1980 (interpretation), in the definition of “constable” for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)

In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part I, in Group B—
(a) after paragraph (f) insert—

“(fa) members and staff of the Scottish Police Authority;”,

(b) for paragraph (i) substitute—

“(i) constables of the Police Service of Scotland (including constables engaged on temporary service within the meaning of section 15 of the Police and Fire Reform (Scotland) Act 2012 (asp 00));”,

(c) for paragraph (n) substitute—

“(n) persons appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012;”,

(d) after paragraph (w) insert—

“(wza) persons who, at any time within the 5 years immediately preceding the date at which the eligibility, in terms of section 1 of this Act, for jury service is being considered, were members or employees of the Scottish Police Services Authority;”.

Civic Government (Scotland) Act 1982 (c.45)

(1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 8 (interpretation of Parts 1 and 2)—

(a) for paragraph (a) of the definition of “authorised civilian employee” substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00); and”,

(b) for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;”.

(3) In section 61(2) (protection of insecure premises), for “police authority” substitute “Scottish Police Authority”.

(4) In section 62(12) (notification of processions), for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland; and”.

(5) In section 77(1) (financial provisions relating to lost or abandoned property) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(6) In section 79 (interpretation of Part 4), for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;”.

(7) In section 85(1) (financial provisions: property of persons in custody) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(8) In section 86(1) (interpretation of Part 7 etc.) for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.
(9) In section 86D (duty of care etc.), for “the proviso to section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”.

(10) In section 86F (retention of relevant property by police authority)—

(a) in subsection (1)—

(i) for “a chief constable” substitute “the chief constable”,

(ii) for “police authority” substitute “Scottish Police Authority”,

(b) the title of the section becomes “Retention of relevant property by Scottish Police Authority”.

(11) In section 86J (references in Part 7A to “chief constable”), for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.

(12) In paragraph 3 of Schedule 2 (definitions)—

(a) in the definition of “authorised civilian employee”, for paragraph (a) substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00), and”,

(b) for the definition of “chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland;”.

(13) In Schedule 2A (retention and disposal of certain property)—

(a) in paragraph 3, for the words “the proviso in section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”,

(b) in paragraph 8, for the definition of “chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland;”.

Roads (Scotland) Act 1984 (c.54)

(1) The Roads (Scotland) Act 1984 is amended as follows.

(2) In section 33(2) (snow gates), in the entry beginning with “constable” for the words from “sections” to “(interpretation)” substitute “section 97 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(3) In section 37(1)(a) (consultation and local inquiries as regards road humps), for the words from “officer” to “situated” substitute “constable of the Police Service of Scotland”.

(4) In section 59(5) (control of obstructions in roads), for “police authority” substitute “Scottish Police Authority”.

(5) In section 86 (removal of builders’ skips causing danger or obstruction)—

(a) in subsection (4), for “police authority” substitute “Scottish Police Authority”,

(b) in subsection (5), for “police authority” (in both places where it occurs) substitute “Scottish Police Authority”,

(c) in subsection (6), for “police authority” substitute “Scottish Police Authority”.

27
(6) In section 98 (control of stray and other animals on roads)—
   (a) in subsection (2), for “police authority” substitute “Scottish Police Authority”,
   (b) in subsection (3), for “police authority” substitute “Scottish Police Authority”,
   (c) in subsection (4), for “police authority” substitute “Scottish Police Authority”.

(7) After section 120, insert—

   “120A Delegation by the Scottish Police Authority
   (1) The Scottish Police Authority may delegate to the chief constable of the Police Service of Scotland any of its functions under the sections mentioned in subsection (2).
   (2) The sections are—
       (a) section 59;
       (b) section 86; and
       (c) section 98.”.

Prisons (Scotland) Act 1989 (c.45)
In section 14 of the Prisons (Scotland) Act 1989 (legalised police cells)—
   (a) in subsection (1)—
       (i) for “a police authority” substitute “the Scottish Police Authority”,
       (ii) for “police authority” where it second occurs substitute “Scottish Police Authority”,
   (b) in subsection (3), in the proviso, for “police authority” substitute “Scottish Police Authority”,
   (c) in subsection (4), for “police authority” substitute “Scottish Police Authority”,
   (d) in subsection (5), for the words from “police” to “cells” substitute “Scottish Police Authority”.

Criminal Justice and Public Order Act 1994 (c.33)
(1) The Criminal Justice and Public Order Act 1994 is amended as follows.
(2) In section 102(5) (arrangements for the provision of prisoner escorts), for “prescribed under section 9(1A)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “under section 28 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.
(3) In section 163 (local authority powers to provide closed-circuit television)—
   (a) in subsection (3), after “area” insert “or, in Scotland, the local commander designated for the local authority’s area”,
   (b) in subsection (4), after the definition of “local authority” insert—
       ““local commander” has the meaning given by section 45 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”.

Local Government etc. (Scotland) Act 1994 (c.39)
In section 150(1) of the Local Government etc. (Scotland) Act 1994 (traffic signs), for “chief officer of police for the area concerned” substitute “chief constable of the Police Service of Scotland”.

Children (Scotland) Act 1995 (c.36)

(1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 78 (powers of arrest etc. in relation to exclusion order)—
   (a) in subsection (4)—
      (i) paragraphs (a) and (b) are repealed, and
      (ii) after “delivered” insert “to the chief constable of the Police Service of Scotland”,
   (b) in subsection (5), for “each chief constable specified in subsection (4) above” substitute “the chief constable of the Police Service of Scotland”.

(3) In section 93(1) (interpretation of Part II), in the definition of “constable” for “a police force within the meaning of the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Kenny MacAskill

226 In schedule 6, page 86, line 27, at end insert—

( ) In section 18(4)(b) (prints, samples etc. in criminal investigations), for “any police force” substitute “the Police Service of Scotland”.

( ) In section 18A (retention of samples etc.: prosecutions for sexual and violent offences)—
   (a) in subsection (5), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,
   (b) in subsection (11), the definition of “the relevant chief constable” is repealed.

( ) In section 18C (section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences)—
   (a) in subsection (2), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,
   (b) in subsection (11), the definition of “the relevant chief constable” is repealed.

( ) In section 18F (retention of samples etc. relating to children: appeals)—
   (a) in subsection (1), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,
   (b) in subsection (10), the definition of “the relevant chief constable” is repealed.

( ) In section 19(4)(b) (prints, samples etc. in criminal investigations: supplementary provisions), for “police force which instructed the analysis” substitute “Police Service of Scotland”.

( ) In section 19C (use of certain samples etc.)—
   (a) in subsection (1)(e)—
      (i) for paragraph (i) substitute—
“(i) the Police Service of Scotland (“the Police Service”),”,
(ii) in paragraph (ii), for “Services Authority” substitute “Authority (“the Authority”),”,
(iii) in paragraph (iii), for “a police force” substitute “the Police Service or the Authority”,
(b) in subsection (4), for the words from “a” where it first occurs to “force” where it third occurs substitute “the Police Service, the Authority or a person acting on behalf of the Police Service or the Authority, the Police Service”,
(c) in subsection (5), for the words from “A” to “force” where it second occurs substitute “The Police Service, the Authority or a person acting on behalf of the Police Service or the Authority”.

( ) In section 194I(4) (power of Scottish Criminal Cases Review Commission to obtain documents), in the definition of “public body”, for paragraph (a) substitute—

“(a) the Police Service of Scotland;”.

( ) In section 307(1) (interpretation)—

(a) in the definition of “constable”, for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”,
(b) in the definition of “officer of law”, for paragraph (c) substitute—

“(c) any person who is appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012 who is either authorised by the chief constable of the Police Service of Scotland in relation to such service and execution or is a police custody and security officer;”.

( ) In Schedule 9 (certificates as to proof of certain routine matters), in the entry for the Firearms Act 1968 (c.27), in the second column, for “police force maintained for the authority’s area” substitute “Police Service of Scotland”.

Police Act 1996 (c.16)

(1) The Police Act 1996 is amended as follows.

(2) In section 59(2) (police federations), for “section 26(2A) of the Police (Scotland) Act 1967” substitute “under section 49 of the Police and Fire Reform (Scotland) Act 2012 in so far as relating to the matters described in section 53 of that Act,”.

(3) In section 60(2) (regulations for police federations)—

(a) in paragraph (c), for “police authorities” substitute “the Scottish Police Authority”,
(b) in paragraph (d), for “police authorities” substitute “the Scottish Police Authority”,
(c) in paragraph (e), for “26 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

(4) In section 62(1A)(a) (functions of the Board with respect to regulations), for “26 or 27 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

30
(5) In section 99(1) (jurisdiction of metropolitan police officers), for “a police force maintained under the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

**Police Act 1997 (c.50)**

(1) The Police Act 1997 is amended as follows.

(2) In section 93 (authorisations to deal with property etc.)—

(a) in subsection (3)—

(i) after paragraph (za) insert—

“(zb) if the authorising officer is within subsection (5)(d), by a constable of the Police Service of Scotland;”

(ii) in paragraph (a), for “(5)(d) to” substitute “(5)(e),”

(iii) after paragraph (e) insert—

“(ea) if the authorising officer is within subsection (5)(ia), by a staff officer of the Police Investigations and Review Commissioner;”

(b) after subsection (3A) insert—

“(3ZA) An authorisation under this section may be given by the authorising officer within subsection (5)(ia) only where it relates to the taking of action in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

(c) in subsection (5)—

(i) for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland, or any deputy chief constable or assistant chief constable of the Police Service of Scotland who is designated for the purposes of this paragraph by the chief constable;”

(ii) after paragraph (i) insert—

“(ia) the Police Investigations and Review Commissioner.”

(d) in subsection (6)(b), for the words from “of” to “maintained” substitute “or (ia) of subsection (5), means Scotland”.

(3) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (1)(b), for “, (c) or (d)” substitute “or (c)”

(b) in subsection (2), after paragraph (g) insert—

“(ga) where the authorising officer is within paragraph (ia) of that subsection, by a staff officer of the Police Investigations and Review Commissioner who is designated by the Commissioner for the purposes of this section;”

(4) In section 95 (authorisations: form and duration etc.)—

(a) in subsection (6), for “or (e),” substitute “(d), (e)”

(b) in subsection (7), for “, (c), (d) or (j)” substitute “or (c)”.
(5) In section 105(3) (appeals), for “(c) or (d)” substitute “or (c)".

(6) In section 107(4) (supplementary provisions)—
(a) in paragraph (a), for “police authority” substitute “the Scottish Police Authority”,
(b) after paragraph (b) insert—
“(bza)the functions of the Police Investigations and Review Commissioner under section 33A(1)(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.

(7) In section 120A(4) (refusal and cancellation of registration), for “A chief constable of a police force in Scotland” substitute “The chief constable of the Police Service of Scotland”.

(8) In section 126 (interpretation of Part 5)—
(a) in the definition of “chief officer”, for sub-paragraph (ii) substitute—
“(ii) the chief constable of the Police Service of Scotland, and”,
(b) in the definition of “police authority”, for sub-paragraph (i) substitute—
“(i) the Scottish Police Authority, and”.

Kenny MacAskill
227 In schedule 6, page 87, line 4, after <Service> insert <and any other senior officer of the Police Service who is designated by the chief constable for the purposes of this section>.

Kenny MacAskill
228 In schedule 6, page 87, line 12, leave out lines 12 to 16 and insert—
<(  ) for subsection (2) substitute—
“(2) An authorisation for the carrying out of intrusive surveillance shall not be granted by the chief constable or any other senior officer of the Police Service except on an application by a constable of the Police Service.”.>

Kenny MacAskill
229 In schedule 6, page 87, line 38, leave out from beginning to end of line 22 on page 88.

Kenny MacAskill
230 In schedule 6, page 89, line 2, leave out from <“The> to end of line 9 and insert <“A person who granted an authorisation for the carrying out of intrusive surveillance”,
(  ) in subsection (1)(a), for the words from “an”, where second occurring, to “surveillance” substitute “the authorisation”,
(  ) in subsection (1)(b), for “such an” substitute “the”,
(  ) after subsection (1) insert—
“(1A) Where an authorisation for the carrying out of intrusive surveillance is granted by a senior officer of the Police Service designated by the chief constable under section 10(1A)(a), the chief constable shall also be entitled to appeal under this section.
(1B) Where an authorisation for the carrying out of intrusive surveillance is granted by a staff officer designated by the Police Investigations and Review Commissioner under section 12ZA(2), the Commissioner shall also be entitled to appeal under this section.”.

Kenny MacAskill

231 In schedule 6, page 89, leave out lines 16 to 21 and insert—

<(  ) In section 20 (cancellation of authorisations)—

(a) after subsection (2) insert—

“(2A) Where an authorisation under this Act was granted or, as the case may be, last renewed by a senior officer of the Police Service and it is not reasonably practicable for that senior officer to cancel it under subsection (1) above, any senior officer of the Police Service designated by the chief constable for the purposes of section 10 above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(2B) Where an authorisation under this Act was granted or, as the case may be, last renewed by the Police Investigations and Review Commissioner and it is not reasonably practicable for the Commissioner to cancel it under subsection (1) above, any person designated by the Commissioner for the purposes of section 12ZA above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.”.

Kenny MacAskill

232 In schedule 6, page 89, line 38, at end insert—

<(  ) after the definition of “residential premises” insert—

“"senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012 (asp 00);”.

Kenny MacAskill

143 In schedule 6, page 90, line 13, leave out <15(4)> and insert <15(3)>

Kenny MacAskill

144 In schedule 6, page 90, line 33, at end insert—

<(  ) in paragraph 6, for “Chief Inspector” substitute “Inspectors”,>

Kenny MacAskill

145 In schedule 6, page 96, line 13, at end insert—

<(  ) in subsection (3), after paragraph (b) insert “; and

(c) if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.”.
Kenny MacAskill

146 In schedule 6, page 96, line 19, at end insert—

<\( )\> In section 36—

(a) in subsection (1), after “subsection” insert “(1A) or”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a complaint handling review if—

(a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint—

(i) has concluded its consideration of the complaint; and

(ii) has communicated its findings to the complainer;

(b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and

(c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting the review.”.>

Kenny MacAskill

147 In schedule 6, page 98, line 28, at end insert—

<\( )\> In section 52(1) (application for football banning order)—

(a) in the opening words, for “a police force” substitute “the Police Service of Scotland”,

(b) paragraphs (a) and (b) are repealed.

( ) In section 57(3) (variation of football banning order)—

(a) in paragraph (b), for the words from “police” to “resides” substitute “Police Service of Scotland”,

(b) paragraphs (c) and (d) are repealed.

( ) In section 69(1) (interpretation), in the definition of “the football banning orders authority”, for the words from “police force” to “area” substitute “Police Service of Scotland”.>

Kenny MacAskill

148 In schedule 6, page 99, line 7, at end insert—

<\( )\> in paragraph 3—

(i) in sub-paragraph (2)(a), for “3” substitute “5”,

(ii) in sub-paragraph (2)(b), for “2” substitute “3”.

>
In schedule 6, page 100, line 7, leave out from <and> to end of line 9 and insert <or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).>

In schedule 6, page 101, line 12, at end insert—

<Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

(1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.

(2) In section 18 (police information etc.)—

(a) in subsection (1)—

(i) the words “of a police force or the Scottish Crime and Drug Enforcement Agency” are repealed,

(ii) the words “or the Scottish Crime and Drug Enforcement Agency” (where second occurring) are repealed,

(b) in subsection (2)—

(i) for “A person” substitute “The chief constable”,

(ii) for “person”, where second occurring, substitute “chief constable”,

(c) in subsection (3), for “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(3) In section 38 (police access to lists of individuals barred from regulated work)—

(a) in subsection (1), for the words from “chief” to “Agency” substitute “the chief constable”,

(b) in subsection (2), for the words from “police” to “Agency” substitute “constables of the Police Service of Scotland”.

(4) In section 75 (sources of information)—

(a) in subsection (2), for the words from “A” to “Agency” substitute “The chief constable”,

(b) in subsection (3)—

(i) for “A person” substitute “The chief constable”,

(ii) for “person”, where second occurring, substitute “chief constable”,

(c) in subsection (4), for the words “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(5) In section 76 (police access to scheme information)—

(a) in subsection (1)—

(i) in the opening words, for the words from “chief” to “Agency” substitute “the chief constable”,

(ii) in paragraph (c), for the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”,

35
(b) in subsection (2) the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”.

(6) In section 97 (interpretation)—

(a) in the definition of “chief constable”, for “a police force in Scotland” substitute “the Police Service of Scotland”,

(b) the definition of “police authority” is repealed.

Kenny MacAskill
151 In schedule 6, page 102, line 10, leave out <Service>

Kenny MacAskill
152 In schedule 6, page 102, leave out lines 33 to 38

Kenny MacAskill
153 In schedule 6, page 103, line 2, leave out from beginning to <(4)(a)> in line 3 and insert—

<(1) The Criminal Justice and Licensing (Scotland) Act 2010 is amended as follows.

(2) In section 117(4)(a) (meaning of “investigating agency”)>

Kenny MacAskill
154 In schedule 6, page 103, line 4, at end insert—

<(3) In section 164(3) (persons to have regard to code of practice on disclosure), for paragraph (a) substitute—

“(a) constables of the Police Service of Scotland,”.>

Roseanna Cunningham
155 In schedule 6, page 106, line 9, at end insert—

<Vehicle Excise and Registration Act 1994 (c.22)

In Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt vehicles)—

(a) in paragraph 4(2)(b), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(b) in paragraph 5—

(i) for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(ii) for “authority’s” substitute “Scottish Fire and Rescue Service’s”.

Roseanna Cunningham
156 In schedule 6, page 109, leave out lines 24 to 27 and insert—

<( ) for subsection (6), substitute—

“(6) Those persons are—
(a) SFRS,
(b) such persons as the Scottish Ministers consider represent employees of SFRS,
(c) such persons as the Scottish Ministers consider represent local authorities, and
(d) such other persons as the Scottish Ministers consider appropriate.”.

### Roseanna Cunningham

157 In schedule 6, page 110, line 34, after <Act> insert—

("local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and “area” in relation to a local authority, means the local government area for which the authority is constituted.)

### Lewis Macdonald

274 In schedule 6, page 110, line 36, leave out from <but> to <mark> in line 37 and insert <including the Scottish marine area as defined by section 1 of the Marine (Scotland) Act 2010 (asp 5)>

### Roseanna Cunningham

158 In schedule 6, page 111, line 8, at end insert—

<Corporate Manslaughter and Corporate Homicide Act 2007 (c.19)

In section 6(2) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care for certain organisations in emergencies), for paragraph (b) substitute—

“(b) the Scottish Fire and Rescue Service;”.

### Kenny MacAskill

233 In schedule 6, page 112, line 17, at end insert—

<Local Government etc. (Scotland) Act 1994 (c.39)

In section 43(4) of the Local Government etc. (Scotland) Act 1994 (consultation on guidance as to exercise of traffic powers)—

(a) after “consult” insert—

“(a), and

(b) for the words from “and”, where it first occurs, to the end substitute—

“(b) the chief constable of the Police Service of Scotland,
(c) the Scottish Fire and Rescue Service, and
(d) the authorities for the areas to which the guidance relates.”.

### Schedule 7

### Kenny MacAskill

234 In schedule 7, page 113, line 8, at end insert—
<Local Government (Scotland) Act 1973 (c.65) Section 56(9)(b).
Section 63.
Section 64(7).
Section 236(2)(g).

Social Work (Scotland) Act 1980 (c.49) In section 94, the definition of “constable”.

Criminal Justice (Scotland) Act 1980 (c.62) In section 81(1), the definition of “constable”.

Civic Government (Scotland) Act 1982 (c.45) Section 77(2).
Section 85(2).
Section 86F(4).

Prisons (Scotland) Act 1989 (c.45) In section 14(4), the words “in their area”.
Section 14(7).

The Criminal Justice and Public Order Act 1994 (c.33) In section 163(4), the definition of “chief officer of police”.

Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) In Schedule 2, Part III, the entries relating to the Police (Scotland) Act 1967 (c.77).

Criminal Procedure (Scotland) Act 1995 (c.46) In section 194I(4), the definition of “police force”.
Section 280(5)(b)(i) and (iii).>

Kenny MacAskill

235 In schedule 7, page 113, line 11, leave out <62(1A)> and insert <60A. Section 61(1)(ca), (cb), (cc), (cd) and (6).
Section 62(1A)(b), (1AA), (1AB) and (1AC).
In section 62(2), the words “, or for the purposes of subsection (1AA) or (1AC) above,”.>

Kenny MacAskill

236 In schedule 7, page 113, line 13, at end insert— <Section 64(4E) and (4F).>

Kenny MacAskill

237 In schedule 7, page 113, line 13, at end insert—<Crime and Punishment (Scotland) Act 1997 (c.48) Section 45 and 46.
Section 63(1)(a)(iii).

Police Act 1997 (c.50) Section 93(3)(f), (3B) to (3E), (5)(j) and (6)(cc).
In section 94(2)(a), the words “or (d)”.
Section 94(2)(h), (4)(aa) and (5) to (7).
Section 107(4)(ba).>

Kenny MacAskill

238* In schedule 7, page 113, line 22, leave out <Section> and insert <Sections 12 and>
Kenny MacAskill
239 In schedule 7, page 113, line 24, at end insert—

<Section 16(2) and (7)>

Kenny MacAskill
240 In schedule 7, page 113, line 26, leave out <20(6)(b)> and insert <20(3), (6) and (7)>

Kenny MacAskill
159 In schedule 7, page 113, line 37, leave out <paragraph> and insert <paragraphs 1(b) and>

Kenny MacAskill
160 In schedule 7, page 113, line 40, leave out <Section 46.> and insert—

<In section 46(1), the words “or a joint police board”.
In section 46(3)(a), the words “or, as the case may be, board”.
In section 46(3)(b), the words “or board” and “or, as the case may be, board”.
>

Kenny MacAskill
161 In schedule 7, page 114, line 26, at end insert—

<In schedule 4, paragraph 2(1)(f).>

Kenny MacAskill
162 In schedule 7, page 114, line 28, after <for> insert <“constable”,>

Roseanna Cunningham
163 In schedule 7, page 115, line 40, at end insert—

<Section 16(5) and (6).>

Roseanna Cunningham
164 In schedule 7, page 116, line 8, at end insert—

<In section 79(1), the definition of “local authority”.
>

Kenny MacAskill
241 In schedule 7, page 116, line 23, at end insert—

<Local Government etc. (Scotland) Act 1994 (c.39) Section 8(5). In Section 8(7), the definitions of “fire personnel” and “police personnel”. Section 55(7).>
In section 55(12), the words from “any” to “1967”.

Section 124

David McLetchie

In section 124, page 65, line 9, at end insert—

<( ) Before making an order under subsection (2) the Scottish Ministers must publish a full business case for the implementation of the provisions of this Act.>
2nd Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- a list of any amendments already debated;
- the text of amendments to be debated on the second day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Local authority role in policing**
203, 173, 53, 205, 54, 55, 66, 206, 57, 207, 58, 59, 60, 61, 208

**Regulations: conduct and performance**
62, 63, 64

**Police Appeals Tribunal**
65

**The Police Investigations and Review Commissioner**
66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 209, 82, 83, 84, 85, 86, 210, 145, 146, 148, 149

**Disclosure**
78, 96, 137

**HMICS**
87, 247, 88, 89, 90, 91, 92, 93, 94, 95

**Provision of goods and services**
97, 98

**Assaulting police**
100, 101, 102, 103

**Independent Custody Visiting**
248, 249, 250, 251, 252

**Scottish Policing Commission**
242, 243
Police transitional arrangements

Limitation on mobility of transferred constables
253, 217, 218, 219, 220

Notes on amendments in this group
Amendment 253 pre-empts amendments 217, 218 and 219

Status of SFRS
255

Composition of SFRS
120, 256, 257, 258, 259, 121, 122, 260, 123, 124, 125, 223

First appointment of Chief Officer: terms and conditions
261

SFRS governance, strategic planning and accountability
262, 126, 128, 129, 221, 222, 136, 271

Functions and powers of SFRS
263, 264, 127, 265, 130, 266, 267, 274, 163

Local fire and rescue plans etc.
244, 268, 269, 131, 132, 133, 134, 135, 270

Inspectors of SFRS
272

SFRS: prohibition on employment of police
245

Transfer schemes: fire and rescue
273, 138, 139, 140

Parliamentary procedure for orders
141, 246

Minor and consequential amendments and repeals

Full business case
211

Amendments already debated

Gaelic names
With 165 – 176
Gender balance on policing bodies
With 180 – 204

Definitions
With 169 – 174, 114, 115, 116, 117, 118, 175, 119

Forensic services
With 35 – 99
Police and Fire Reform (Scotland) Bill: The Committee considered the Bill at Stage 2 (Day 2).


The following amendments were agreed to (by division)—

53  (For 6, Against 0, Abstentions 2)
54  (For 6, Against 0, Abstentions 2)
87  (For 5, Against 3, Abstentions 0)
128  (For 5, Against 2, Abstentions 1)
129  (For 5, Against 2, Abstentions 1)
135  (For 5, Against 3, Abstentions 0).

The following amendments were disagreed to (by division)—

203  (For 3, Against 5, Abstentions 0)
173  (For 3, Against 5, Abstentions 0)
204  (For 3, Against 5, Abstentions 0)
205  (For 3, Against 5, Abstentions 0)
206  (For 3, Against 5, Abstentions 0)
207  (For 0, Against 8, Abstentions 0)
208  (For 3, Against 5, Abstentions 0)
The following amendments were moved and, no member having objected, withdrawn: 248, 242, 253, 255 and 273.

The following amendments were not moved: 209, 210, 249, 250, 251, 252, 243 and 254.

The following provisions were agreed to without amendment: sections 45, 49, 50, 51, 52, 54, 56 and 57, schedule 3, sections 58, 59, 61, 62, 64, 71, 72, 73, 75, 76, 79, 80, 81, 83, 85, 86, 88, 89, 90, 91, 92, 93, 94, 98, 100, 101, 102, 103, 104, 105, 106, 107, 109, 110, 111, 115, 116, 118, 119, 121, 122, 123, 124, 125 and the long title.

The following provisions were agreed to as amended: sections 46, 47, 48, 53, 55, 60, 63, 65, 66, 67, 68, 69, 70, 74, 77, 78, 82, 84, 87, 95, schedule 4, sections 97, 99, 108, 112, 113, 114, 117, schedule 5, section 120 and schedules 6 and 7.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliament

Justice Committee

Tuesday 12 June 2012

[The Convener opened the meeting at 09:32]

Police and Fire Reform (Scotland) Bill: Stage 2

The Convener (Christine Grahame): I welcome everyone to the 20th meeting of the Justice Committee in 2012 and ask all present to completely switch off mobile phones and other electronic devices, as they interfere with the sound system even when switched to silent.

I have received apologies from Humza Yousaf and welcome in his place Gordon MacDonald. As Gordon has previously attended the committee, he does not need to declare any interests. John Lamont is also attending to move David McLetchie’s amendments; however, as he is not a substitute member, he cannot vote. So you are powerless, John—that is excellent.

Item 1 is day 2 of our two-day consideration of the Police and Fire Reform (Scotland) Bill at stage 2. In the unlikely event—and I stress the word “unlikely”—that we require an additional meeting to complete stage 2, we will meet again at lunchtime tomorrow. I do not intend to curtail debate but, given that, if we go on, we will need to sit tomorrow at lunchtime, much as I love the sound of members’ voices, I encourage everyone not to make unnecessarily lengthy contributions.

I welcome the Cabinet Secretary for Justice and his officials. Members will have copies of the bill, the marshalled list and the groupings of amendments for today’s consideration.

Section 45—Local policing

The Convener: I hope that Graeme Pearson is ready, because I am calling his amendment 203, which is grouped with amendments 173, 53, 205, 54 to 56, 206, 57, 207, 58 to 61 and 208.

Graeme Pearson (South Scotland) (Lab): I will try to be brief, convener.

This group considers the local authority’s role in policing. In our amendments, members are reflecting concerns that we have picked up from witnesses and elsewhere. Amendment 203, which seeks to stipulate that

“The chief constable must provide to each local authority as soon as reasonably practicable details of the resources allocated to policing in its area as at—

(a) 1 April 2012, and

(b) 1 April in each subsequent year”,
is an attempt to give comfort to those in local authorities who are genuinely concerned that the resources currently available in their policing areas might, with the creation of a single police force, simply melt away if local boards have no impact on or are unable to understand decisions that are taken centrally. Indeed, that very concern was raised at a meeting that I attended last night in Ayrshire. By accepting amendment 203, the cabinet secretary might well put that pressing concern to rest.

Amendment 173, in the name of Alison McInnes, seeks to place a positive duty on the local commander and the local authority to agree police plans, and I believe that it follows the logic of the consensus that we are trying to achieve in taking forward policing.

Do you want me to comment on the other amendments, convener?

The Convener: That is a matter for you, Mr Pearson.

Graeme Pearson: In her amendment 204, Jenny Marra again reflects on the gender balance that others have highlighted—

The Convener: Unfortunately, nice though it was, you cannot make a comment about amendment 204, because it is not in this group.

Graeme Pearson: Amendment 205, in the name of Lewis Macdonald, seeks to create a balance between local accountability and national oversight and addresses the need to ensure that local authorities are able to express concern about and have impact on policing decisions.

Amendment 206, which is also in the name of Lewis Macdonald, reflects the concerns that I mentioned with regard to amendment 203 by seeking to tease out the elements that should be in the police plan. For example, it says that the plan should include

“costings and an explanation of budget provision”

and set out

“the number of constables and police staff expected to be deployed in the local authority’s area”.

Finally, amendment 208, in the name of David McLetchie, says:

“Where, in the opinion of the local commander, there has been or is likely to be a material failure to achieve the main priorities and objectives for the policing of the local authority’s area, the local commander must report that to the local authority as soon as practicable.”

Again, that is all about transparency and giving people confidence that they know what is going on and understand the basis on which executive decisions are made.
I move amendment 203.

Alison McInnes (North East Scotland) (LD): Amendment 173 simply seeks to reword section 46(1) to place greater emphasis on a local authority’s role in determining the priorities and objectives for policing in an area. Although I do not doubt the intention behind the subsection as drafted, its use of the word “involve” remains open to interpretation, and amendment 173 would make it clear that priorities and objectives must be developed by the local commander and the local authority acting in concert. I am content with the majority of the amendments in this group in their intention of promoting the role and input of local authorities in planning policing in their areas; indeed, Graeme Pearson’s amendment 203, which seeks to require exact details of resource allocation, will prove vital in allowing local authorities to monitor whether their needs are being met.

I am not convinced that amendment 207, in the name of David McLetchie, is the correct way to proceed. At stage 1, we heard a great deal about the lack of a dispute resolution mechanism in the bill; although I can see where the member is coming from, I am very wary of putting in place a mechanism that would in effect formally allow the new force to ignore a local authority’s view on its area. However, one of the benefits of a single service is the opportunity to provide specialist support that is organised nationally but which is more equally accessible to all communities in Scotland. Such resource may not be easily attributable to individual local authority areas. For those reasons, I cannot support the amendments.

On Alison McInnes’s amendment 173, section 48(2)(a) already gives the local authority clear decision-making powers to approve local plans, which must include

“the main priorities and objectives for the policing of the local authority’s area”.

It is far better to support through the bill on-going efforts by local commanders and local authorities to work collaboratively to improve shared outcomes than to create a statutory requirement for the meeting of minds. Therefore, I cannot support amendment 173.

Mr McLetchie’s amendment 208 is also unnecessary, given the broad powers that local authorities already have to request information and reports. We should focus on facilitating and supporting positive collaborative local relationships and not anticipate failure.

I will deal with amendments 205 and 207 together. The risk in creating statutory escalation procedures is that they become the option of first, rather than last, resort. That approach would detract from the important relationship between the local authority and the local commander.

Amendment 205 is unnecessary because the bill already makes the chief constable responsible for the policing of each local authority area. Local authorities will be able to contact the chief constable or the Scottish police authority about any aspect of policing, and I see no need to compel them to do so if they do not approve the local plan. If the local authority chooses not to approve the plan, the chief constable or local commander could proceed to make arrangements for the policing of the area as proposed in the plan, while working with the local authority to resolve any outstanding issues. That will be possible without the provision that is proposed in amendment 207. I cannot support either amendment.

Amendments 53 to 61 in my name take account of views that were heard in stage 1 evidence and discussed with stakeholders. Amendment 53 clarifies that local authority feedback can be provided with specific reference to the local plan. Amendment 54 allows the local commander to refer to the chief constable a requirement from the local authority to provide information or reports if the local commander considers that complying with it could prejudice a policing operation or a prosecution. The chief constable can confirm or reject the requirement.

Amendment 55 gives the chief constable the function of participating in community planning, while requiring the local commander to discharge that function locally. That reflects the approach of the Scottish Government and the Convention of Scottish Local Authorities in the review of
community planning, as it will enhance national governance and accountability in relation to police participation in community planning.

Amendment 56 adjusts section 48(1) to clarify that preparation of the first local police plan must follow the approval of the first strategic plan by the Scottish ministers. Amendments 57 and 59 to 61 are minor drafting amendments. Amendment 58 will make express provision about the circumstances in which a local plan “may” or “must” be reviewed and replaced.

I invite the committee to support amendments 53 to 61, which are in my name.

The Convener: I invite Lewis Macdonald to speak to amendment 205 and the other amendments in the group.

Lewis Macdonald (North East Scotland) (Lab): Graeme Pearson described the straightforward purpose of the amendments in my name, which is to allow full transparency, at a local level, in relation to resources and staffing so that the local commander works with the local authority and makes that information available to it, which is of critical importance. They also put dispute resolution into the bill, in order to deal with issues that could arise when the local authority and the local commander disagree.

I listened carefully to Kenny MacAskill’s arguments against having statutory provision for all sorts of things that are proposed in amendments lodged by other members. We do not live in Teletubby land. He said that it is better to get people to work together and that we should facilitate positive collaboration and not anticipate failure. That is very nice and we all agree with it, and of course the Government’s job is to facilitate collaboration. However, Parliament’s job is to legislate for all sorts of outcomes, whether they are successful or unsuccessful, and the law’s job is to provide for what happens when relationships go wrong—for example, when the facilitation of local collaboration does not work. That is why it would be much better to put in place the provisions that are suggested in my amendments and those lodged by Graeme Pearson and Alison McInnes, so that the bill provides for what should happen when local partnerships do not work as well as we would all like them to. That purpose is shared by those amendments; it is also shared by David McLetchie’s amendments, although I regard those as a weaker alternative.

The Convener: I invite the weaker alternative, John Lamont, to speak to amendment 207 and the other amendments in the group.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I will speak to amendments 207 and 208, in the name of my colleague David McLetchie.

The bill states that a local police plan is to be prepared by the local commander and submitted to the authority for approval. In preparing the plan, the commander must consult such persons as he or she considers appropriate, which may include the local authority, and the plan can be amended on the agreement of the commander and the local authority at any time.

However, the bill provides no more detail on what happens when the local commander and the local authority disagree. Section 48 is unclear about what happens if the local authority does not approve a plan. Surely the presumption is that the plan will still be published without the local authority’s approval, but there is nothing in the bill that explains that.

There is also relatively little detail in the bill on how local authorities are to scrutinise local police plans; it is presumed that guidance is being developed by the pathfinder projects. Section 46 permits local authorities to monitor and provide feedback to local commanders, and it requires the local commander to provide information if requested.

In the stage 1 report, the committee agreed with the Government “that the manner in which local authorities are to scrutinise the local plans should” not “be included on the face of the Bill” as that “would be too prescriptive and would not allow” sufficient “flexibility”.

The committee also suggested in the report that more detail on that should be included in guidance in time for local authorities “to put in place any scrutiny mechanisms before the single service becomes operational.”

Amendment 207 seeks to clarify what happens if the local authority does not approve the local police plan. We have not suggested a detailed dispute resolution process on the basis that that may not provide sufficient flexibility, although there is a strong argument that the bill should do more in that regard and that a formal dispute resolution mechanism may prove necessary. The amendment instead provides that, “If the local authority does not approve a local police plan”,
it must
“notify the Authority”
so that its disapproval is recorded. The amendment also clarifies that the plan can be implemented notwithstanding the lack of local authority approval.

Amendment 208 seeks to address the lack of clarity about local authority scrutiny of local police plans. It compels the local commander to notify the local authority when it comes to light that a priority or objective of the plan might not be achieved. The term “material failure” is used to ensure that the provision applies only to major departures from the plan. The notification requirement is triggered both when a breach occurs and when the commander learns that a breach is likely. The rationale behind the amendment is that it will provide local authorities with information on the progress of implementation of the national plan without their specifically requesting that information.

We are generally supportive of the other amendments in the group with the exception of amendment 204, in the name of Jenny Marra—but that is not being dealt with at the moment. I apologise, convener.

The Convener: You were led astray by Graeme Pearson. I understand that—who is not? Cabinet secretary, do you want to respond to anything that has been raised subsequent to your comments?

Kenny MacAskill: The committee and stakeholders have agreed that a statutory dispute resolution mechanism is not necessary and would not be helpful. The bill currently provides a framework, and it is right that local authorities should have the flexibility to develop their own mechanisms for reaching agreement as matters progress.

Graeme Pearson: I am grateful to the cabinet secretary for responding to the various views that have been expressed by the committee. In relation to amendment 203, he commented on the powers of the chief constable as at 1 April 2012, but I would have thought that officers could still have co-operated with one another to provide a snapshot given the level of concern that has been expressed locally about a significant change in policing that is causing nervousness and upset.

On the cabinet secretary’s responses to the other amendments, I have to say that the matter is one of opinion and approach rather than of fact and designation. The amendments that have been lodged by Alison McInnes, Lewis Macdonald and David McLetchie are reasonable amendments that would improve and help to develop the way forward for the service. That is what we are trying to do—we are not trying to scupper the way forward; we are trying to make things better in the future. I am, therefore, disappointed at the approach that has been taken, which is to see little or no merit in any of the amendments.

The Convener: Are you pressing your amendment?

Graeme Pearson: Yes.

The Convener: The question is, that amendment 203 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 203 disagreed to.

The Convener: The question is, that section 45 be agreed to. Are we agreed?

Members: Sorry?

The Convener: The question is, that section 45 be agreed to. Are we agreed?

Members: Yes.

Section 45 agreed to.

The Convener: I will speak slowly for everyone’s benefit. If only we had had bacon rolls this morning.

Section 46—Local authority role in policing

Amendment 173 moved—[Alison McInnes].

The Convener: The question is, that amendment 173 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

**Amendment 173 disagreed to.**

**Amendment 204 moved—[Jenny Marra].**

**The Convener:** The question is, that amendment 204 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Marra, Jenny (North East Scotland) (Lab)
- McInnes, Alison (North East Scotland) (LD)
- Pearson, Graeme (South Scotland) (Lab)

**Against**
- Campbell, Roderick (North East Fife) (SNP)
- Finnie, John (Highlands and Islands) (SNP)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Keir, Colin (Edinburgh Western) (SNP)
- MacDonald, Gordon (Edinburgh Pentlands) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

**Amendment 204 disagreed to.**

**Amendment 53 moved—[Kenny MacAskill].**

**The Convener:** The question is, that amendment 53 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Campbell, Roderick (North East Fife) (SNP)
- Finnie, John (Highlands and Islands) (SNP)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Keir, Colin (Edinburgh Western) (SNP)
- MacDonald, Gordon (Edinburgh Pentlands) (SNP)

**Against**
- Marra, Jenny (North East Scotland) (Lab)
- Pearson, Graeme (South Scotland) (Lab)

**The Convener:** The result of the division is: For 6, Against 0, Abstentions 2.

**Amendment 53 agreed to.**

**Section 46, as amended, agreed to.**

**Section 47—Duty to participate in community planning**

**Amendment 55 moved—[Kenny MacAskill]—and agreed to.**

**Section 47, as amended, agreed to.**

**Section 48—Local police plans**

**Amendment 56 moved—[Kenny MacAskill]—and agreed to.**

**Amendment 206 moved—[Lewis Macdonald].**

**The Convener:** The question is, that amendment 206 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**
- Marra, Jenny (North East Scotland) (Lab)
- McInnes, Alison (North East Scotland) (LD)
- Pearson, Graeme (South Scotland) (Lab)

**Against**
- Campbell, Roderick (North East Fife) (SNP)
- Finnie, John (Highlands and Islands) (SNP)
- Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
- Keir, Colin (Edinburgh Western) (SNP)
- MacDonald, Gordon (Edinburgh Pentlands) (SNP)
The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 206 disagreed to.

Amendment 57 moved—[Kenny MacAskill]—and agreed to.

Amendment 207 moved—[John Lamont].

The Convener: The question is, that amendment 207 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 0, Against 8, Abstentions 0.

Amendment 207 disagreed to.

The Convener: I think that that is annihilation, really.

Graeme Pearson: He has already admitted that he is powerless.

The Convener: Yes, and we demonstrated that most cruelly.

Amendments 58 to 61 moved—[Kenny MacAskill]—and agreed to.

Amendment 208 moved—[John Lamont].

The Convener: The question is, that amendment 208 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 208 disagreed to.

Section 48, as amended, agreed to.

Sections 49 to 52 agreed to.

Section 53—Disciplinary procedures: conduct and performance

The Convener: Amendment 62, in the name of the cabinet secretary, is grouped with amendments 63 and 64.

Kenny MacAskill: Section 53 requires that “Regulations made under section 49 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.”

Following discussions with stakeholders, we have concluded that performance is an employee issue and rightly a matter for the police service and the authority, and not for the police investigations and review commissioner. Amendment 62 therefore removes unsatisfactory performance from the commissioner’s remit.

Amendment 63 clarifies that, although it is for the authority to determine how to deal with individual senior officer disciplinary cases, it is for regulations to set out the overall standards, processes and sanctions in relation to such matters. That will ensure that a fair, transparent and open process is followed, and that the necessary safeguards for senior officers are provided.

Amendment 64 is a technical amendment that relates to the consultation requirements for police pension regulations.

I ask the committee to support amendments 62 to 64, which are all in my name.

I move amendment 62.

Amendment 62 agreed to.

Amendment 63 moved—[Kenny MacAskill]—and agreed to.

Section 53, as amended, agreed to.

Section 54 agreed to.

Section 55—Consultation on regulations

Amendment 64 moved—[Kenny MacAskill]—and agreed to.

Amendment 174 moved—[John Finnie]—and agreed to.

Section 55, as amended, agreed to.

Sections 56 and 57 agreed to.

Schedule 3 agreed to.

Sections 58 and 59 agreed to.
Section 60—Powers to obtain information

The Convener: Amendment 65, in the name of the cabinet secretary, is in a group on its own.

Kenny MacAskill: Amendment 65 deals with the powers of a police appeals tribunal to obtain information. The amendment prevents the chairing member from requiring a person to disclose information or answer a question that that person could refuse to answer or disclose on any grounds—whether to do with confidentiality or otherwise—in civil proceedings in the Court of Session. The amendment provides an additional safeguard for individuals who are appearing before a police appeals tribunal.

I move amendment 65.

Amendment 65 agreed to.

Section 60, as amended, agreed to.

Sections 61 and 62 agreed to.

Section 63—General functions of the Police Investigations and Review Commissioner

The Convener: Amendment 66, in the name of the cabinet secretary, is grouped with amendments 67 to 77, 79 to 81, 82 to 86, 210, 145, 146, 148 and 149.

Kenny MacAskill: The police investigations and review commissioner will play a crucial role in ensuring public confidence in the police in meeting human rights obligations. Amendment 66 and the other amendments in my name improve the provisions relating to the operation of the commissioner. We have considered carefully the issues that were raised by the committee and we have consulted the Crown Office, the Police Complaints Commissioner for Scotland, police stakeholders and the Scottish Public Services Ombudsman. I am confident that the Government amendments in the group address the committee’s concerns and that they will ensure a robust legislative framework for the delivery of the commissioner’s functions.

When there is an indication of criminality by the police or police staff, the prosecutor may direct the commissioner to carry out an investigation. Amendments 66 and 69 give the prosecutor flexibility, so that offences other than those that lead to death or serious injury may be referred to the commissioner for investigation.

Amendment 67 addresses the concerns of the committee and stakeholders by clarifying that serious incidents will be referred to the commissioner by the police authority or the chief constable.

Amendment 68 is a technical amendment to remove a provision that is already contained in section 53.

I turn to amendments that provide clarity on what may and what may not be investigated by the commissioner as serious incidents or matters in the public interest. Amendments 70 and 74 will ensure that a matter that has been the subject of a relevant complaint can be investigated by the commissioner as a serious incident or a matter in the public interest.

Amendments 71, 72, 75 and 76 address the committee’s concerns about the relationship between criminal investigations and other investigations. They make it clear that a matter that is being investigated by the commissioner under the direction of the prosecutor, or one that has been so investigated and as a result of which criminal proceedings have been brought against any person, cannot be investigated as a serious incident or a matter in the public interest. Likewise, matters that have been investigated in a fatal accident inquiry by the commissioner cannot be investigated by the commissioner again.

I turn to amendments 73 and 77, which relate to the commissioner’s investigation of matters in the public interest. To address concerns about the scope of the public interest provisions, amendment 73 makes it clear that relevant police matters will be limited to incidents that have occurred or are alleged to have occurred and which involve the authority, the police service or a person serving with the police. Amendment 77 seeks to make minor changes to clarify that incidents that are capable of being investigated as serious incidents, but which have not been referred by the authority or the chief constable, may be investigated by the commissioner in the public interest.

At the request of police stakeholders, amendment 79 will require ministers to consult staff associations representing all ranks when they make regulations on investigative procedures.

Amendments 80 and 81 seek to remove the statutory duty on the commissioner to publish reports of serious incident and public interest investigations and to replace it with a discretionary power.

Amendment 145 seeks to insert a new provision to give the commissioner a power to publish complaint-handling review reports when he or she considers it appropriate to do so.

Amendments 82 to 84 are technical amendments to ensure that the obstruction and contempt provisions are consistent across all the commissioner’s functions.
Amendment 85 will ensure that the procedure to deal with complaints about the commissioner and his staff will be for complaints that are made by any person, including a police officer.

Amendment 86 seeks to insert a new section into the Police, Public Order and Criminal Justice (Scotland) Act 2006 to protect the commissioner from actions for defamation, as requested by the Police Complaints Commissioner for Scotland and supported by the Justice Committee.

Amendment 146 seeks to insert a new provision that will allow the police investigations and review commissioner to refuse to undertake a complaint-handling review if a period of three or more months has elapsed from when the appropriate authority concluded its review of the complaint and communicated its outcome to the complainant. The commissioner will have discretion to waive the time limit when there are exceptional circumstances.

Amendment 148 seeks to amend the length of tenure of the commissioner to five years for an initial appointment and to three years for reappointments.

Amendment 149 provides that Scottish ministers may, by order, apply to the commissioner’s staff officers provisions of any enactment relating to constables, with appropriate modifications, rather than just provisions of the bill and subordinate legislation made under it.

Roderick Campbell’s amendment 209 relates to reports that the commissioner prepares on investigations into serious incidents and investigations in the public interest. It provides that, if the commissioner decides to name an individual in an investigation report, that individual should be given seven days’ notice of that intention. The bill already requires the commissioner to provide a report to the person who requested an investigation, the Scottish police authority and any other person whom the commissioner considers appropriate, which could include persons to whom the report relates. The bill inserts into the 2006 act new section 41E, which says that the commissioner must not identify an individual or include any information in the report that is likely to result in the identification of an individual unless the commissioner determines that it is in the public interest to do so.

I believe that what Roderick Campbell is looking for would be better achieved through operational agreements between the commissioner, the chief constable and the Scottish police service than it would be by defining a set number of days in the primary legislation, which would not allow for any flexibility. Accordingly, I cannot support amendment 209. However, I acknowledge the concerns that Mr Campbell has raised on behalf of the Scottish Police Federation, and I am happy to meet him and the federation to discuss how those concerns might be addressed outwith the legislation.

Finally, amendment 210, in the name of David McLetchie, proposes that constables and police staff should be excluded from appointment to the commissioner’s staff. I cannot support that amendment, as it is essential that the commissioner has staff who have all the necessary training, skills and experience to carry out investigations effectively. The experience of other police oversight bodies, such as the Police Ombudsman for Northern Ireland and the Garda Síochána Ombudsman Commission teaches us that the experience and skills of constables are essential in the beginning and can reduce over time as the commissioner’s staff gain experience.

For those reasons, we are inserting a new paragraph 7A in schedule 4 to the 2006 act, which will allow the commissioner to appoint constables of the police service and other policing bodies to serve as members of the commissioner’s staff under his direction and control. It will be for the commissioner to ensure that the inward secondment of constables does not undermine the independence of investigations.

I ask the committee to support amendments 66 to 86 and 145, 146, 148 and 149 in my name.

I move amendment 66.

The Convener: I call Roderick Campbell to speak to amendment 209 and other amendments in the group.

Roderick Campbell (North East Fife) (SNP): Thank you, Presiding Officer.

The Convener: I am Presiding Officer now—that is excellent.

Roderick Campbell: I am sorry, convener. I have elevated you unnecessarily.

Amendment 209 is a probing amendment that arises from concern among rank-and-file police officers, and is particularly based on experience south of the border in cases such as the Menezes case, in which there might be considerable pressure to investigate complaints quickly and an individual officer might need to have adequate time to consider an application to protect anonymity. Amendment 209 is designed to give effect to that. I am, however, grateful for the cabinet secretary’s offer to meet to discuss the matter further.

John Lamont: Amendment 210, in the name of David McLetchie, is also intended to be a probing amendment. It seeks to prohibit the appointment of Scottish police service staff to the police investigations and review commissioner. The
argument is that the commission’s role in investigating complaints and serious wrongdoings of the police should be as a stand-alone body. The involvement of the very staff that the commission might have to investigate is arguably inappropriate.

I do not intend to move amendment 210, but we are concerned about the practical and financial arrangements for the commission. The extension of its remit to include investigations of serious criminal offences that are committed by a person who is serving with the police will clearly require more resources.

There are questions about the remit of the PIRC. There have been calls for a definition of “public interest”, and I would be grateful for the cabinet secretary’s views on those points.

Alison McInnes: I support the Government’s amendment 86 on the protection from actions for defamation for the PIRC. That was one of the recommendations on which the committee agreed, and it is vital to ensuring that the commissioner is free to perform his or her role fully without constraint. I welcome the cabinet secretary lodging such a robust amendment.

Kenny MacAskill: We recognise the points that were raised by Mr Lamont; it is a matter of balance. We have looked at what happens in Northern Ireland and the Irish republic. There is a benefit in having the right skills available when a new organisation is being set up. If the number of officers on secondment were to be excessive in years to come, questions would be raised, but we must allow some flexibility in starting up the office to allow the appointment of those who have the appropriate skills. That seems to have worked reasonably well for the Police Service of Northern Ireland and Garda Síochána.

I take on board the point that was made by Mr Lamont on behalf of Mr McLetchie, but these matters will doubtless be kept under review by the authority, by the committee and by me to ensure that they are being dealt with appropriately. It is a matter of balance.

Amendment 66 agreed to.

Amendments 67 to 69 moved—[Kenny MacAskill]—and agreed to.

Section 63, as amended, agreed to.

Section 64 agreed to.

Section 65—Serious incidents involving the police

Amendments 70 to 72 moved—[Kenny MacAskill]—and agreed to.

Section 65, as amended, agreed to.

Section 66—Investigations of other matters in the public interest

Amendments 73 to 77 moved—[Kenny MacAskill]—and agreed to.

Section 66, as amended, agreed to.

Section 67—Investigations: procedure etc

The Convener: Amendment 78, in the name of the cabinet secretary, is grouped with amendments 96 and 137.

Kenny MacAskill: Amendment 78 and the other amendments in the group are about information-sharing provisions. My colleague Roseanna Cunningham and I lodged the amendments following discussion with Her Majesty's inspectorate of constabulary, the Police Complaints Commissioner for Scotland, the Auditor General for Scotland and the inspectors of the fire and rescue service. Those stakeholders all agree that the exemptions and the disclosure provisions in the bill are unnecessary because they already have sufficient powers to share information appropriately.

I ask committee members to support amendments 78 and 96 in my name and amendment 137 in the name of Roseanna Cunningham.

I move amendment 78.

Amendment 78 agreed to.

Amendment 79 moved—[Kenny MacAskill]—and agreed to.

Section 67, as amended, agreed to.

Section 68—Reports on investigations

Amendments 80 and 81 moved—[Kenny MacAskill]—and agreed to.

Amendment 209 not moved.

Section 68, as amended, agreed to.

Section 69—Investigations: obstruction and contempt

Amendments 82 to 84 moved—[Kenny MacAskill]—and agreed to.

Section 69, as amended, agreed to.

Section 70—Complaints against the Commissioner

Amendment 85 moved—[Kenny MacAskill]—and agreed to.

Section 70, as amended, agreed to.
After section 70

Amendment 86 moved—[Kenny MacAskill]—and agreed to.

Amendment 210 not moved.

Sections 71 to 73 agreed to.

Section 74—Functions of inspectors

**The Convener:** Amendment 87, in the name of the cabinet secretary, is grouped with amendments 247 and 88 to 95.

**Kenny MacAskill:** Amendments 87 to 95 deal with Her Majesty’s inspectors of constabulary in Scotland. The amendments, taken together, adjust and refine HMICS’s role and responsibilities. I am happy to answer any questions that members may have on the detail of the amendments.

Amendment 247, in the name of Graeme Pearson, relates to Scottish ministers’ power to direct HMICS to carry out inquiries about matters relating to the police service or the authority. Amendment 247 proposes to add a provision specifying that inquiries may be about “the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic police priorities and local police plans are met.”

The provisions in the bill already allow ministers to direct HMICS to make such inquiries as ministers consider appropriate. That is sufficiently broad to allow Scottish ministers to determine what the subject of an inquiry may be. Further, giving in an isolated example the kind of things into which HMICS may inquire may be construed as intending some sort of limit on the kind of inquiries that HMICS is to make. That would be an unfortunate, unintended consequence and I therefore cannot support amendment 247.

I invite the committee to support amendments 87 to 95.

I move amendment 87.

10:15

**Graeme Pearson:** I note the cabinet secretary’s comments about the breadth of options available to HMICS. I do not acknowledge that my amendment 247 would have the effect that he suggests. My amendment states that “Inquiries under subsection (1)(a) may, in particular, be made about the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic police priorities and local police plans are met.”

That would allow HMICS, at the request of the cabinet secretary, to examine those matters and report objectively and in a neutral fashion on, in particular, staffing and the provision of constables.

Amendment 247 reflects the concerns that I have picked up and which have been evidenced during previous meetings of the Justice Committee about staffing issues and police numbers. The cabinet secretary is well aware that we have discussed those issues ad nauseam over the past year. To resolve some of the issues, it would be preferable to agree to an amendment such as amendment 247 to ensure that the general public realise that we identify with those concerns and are willing to place them on the record in the bill.

**The Convener:** I invite the cabinet secretary to wind up.

**Kenny MacAskill:** I think that those matters are clearly addressed in the bill.

**The Convener:** The question is, that amendment 87 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

**The Convener:** The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 87 agreed to.

**The Convener:** The question is, that amendment 247 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 247 disagreed to.

Section 74, as amended, agreed to.
After section 74
Amendment 88 moved—[Kenny MacAskill]—
and agreed to.
Sections 75 and 76 agreed to.

Section 77—HMICS reports
Amendments 89 to 92 moved—[Kenny MacAskill]—
and agreed to.
Section 77, as amended, agreed to.

After section 77
Amendments 93 and 94 moved—[Kenny MacAskill]—
and agreed to.

Section 78—Power to give directions after adverse HMICS report
Amendment 95 moved—[Kenny MacAskill]—
and agreed to.
Section 78, as amended, agreed to.
Sections 79 to 81 agreed to.

Section 82—Scrutiny and investigations: co-operation and information sharing
Amendment 96 moved—[Kenny MacAskill]—
and agreed to.
Section 82, as amended, agreed to.
Section 83 agreed to.

Section 84—Provision of other goods and services
The Convener: Amendment 97 is grouped with amendment 98.

Kenny MacAskill: Amendments 97 and 98 deal with the provision of goods and services by the Scottish police authority and the police service of Scotland to organisations and individuals specified by order.

Amendments 97 and 98 clarify that an order may specify the types of persons to whom goods and services may be provided rather than listing those persons by name. That ensures that the opportunity for parliamentary scrutiny is maintained without excessive bureaucracy. I ask that the committee supports amendments 97 and 98.

I move amendment 97.

Lewis Macdonald: I seek clarification from the cabinet secretary. Can he offer examples of the type of person to whom he would wish the section to apply?

Kenny MacAskill: I presume that it could be Governments or police services elsewhere.

Lewis Macdonald: In other words, other institutions external to the police service.

Kenny MacAskill: Yes.

The Convener: I take it that that was a winding up.

Kenny MacAskill: Yes.

The Convener: I clarify that I did not mean winding up in the sense of winding you up.

Amendment 97 agreed to.
Amendments 98 and 99 moved—[Kenny MacAskill]—
and agreed to.
Section 84, as amended, agreed to.
Sections 85 and 86 agreed to.

Section 87—Assaulting or impeding police
The Convener: Amendment 100, in the name of the cabinet secretary, is grouped with amendments 101 to 103.

Kenny MacAskill: In its evidence, the Scottish Police Federation suggested that the offences of assaulting, resisting, obstructing or hindering a constable be separated, partly to allow a true record of assaults on police officers to be kept. My officials have since confirmed to the federation that separate records on assaults can be kept under the current system; however, I believe that it is helpful to separate assault from the other types of behaviour listed as it highlights that an act of violence has been committed against a constable as opposed to their being subject to some other form of obstruction in the carrying out of their duties.

These amendments achieve that aim. Amendment 103 seeks to ensure that both offences can, where appropriate, be charged together, allowing the court to consider all the evidence contained in these incidents and to convict on either charge or both.

I move amendment 100 and ask the committee to support it and amendments 101 to 103.

Amendment 100 agreed to.
Amendments 101 to 103 moved—[Kenny MacAskill]—
and agreed to.
Section 87, as amended, agreed to.
Sections 88 and 89 agreed to.

Section 90—Purpose of custody visiting
The Convener: Amendment 248, in the name of Lewis Macdonald, is grouped with amendments 249 to 252.

Lewis Macdonald: At the outset, I make it clear that we welcome the move to put independent
custody visiting on a statutory footing. Amendment 249 seeks to strengthen—

**The Convener:** Mr Macdonald, I remind you that you are required to move amendment 248, which is the first in the group.

**Lewis Macdonald:** I shall do so, convener, but I shall start by speaking to my amendment 249, which seeks to strengthen the rights of custody visitors more than the Government proposes to do. In fact, we want to extend the same rights to prison visitors. Everyone agrees that independent custody visiting should be put on a statutory footing; however, there is no general agreement on the cabinet secretary’s plan to abolish independent prison visiting committees at a time when he is using this bill to strengthen the statutory position of visitors to those held in police cells.

The bill is about reforming the police and fire services and our debates this morning have focused on the best way of doing that. However, I think that it is fair to say that these particular sections have a tenuous connection with the rest of the bill and could just as easily be introduced in a different form. Indeed, that is what we want ministers to do and why we have lodged amendments 248, 250 and 251.

Over the past few days, it has become clear that, even though it had agreed to think again on the matter, the Government is still intending to scrap all Scotland’s visiting committees and replace their 240 volunteer members with, as I understand it, three paid public servants, who will, when they apply, be asked to show experience of working in senior roles in the prison service. The voluntary commitment of prison visiting committees, which include elected local councillors of all parties who are rooted in their local communities, will be cast aside in order to—

**The Convener:** I am delighted to hear about prison visiting committees, but I must point out that this group of amendments is about independent custody visiting. I just want to keep you on track.

**Lewis Macdonald:** I assure you, convener, that I am very conscious of the need to stay close to the detail of the bill.

**The Convener:** Indeed.

**Lewis Macdonald:** However, committee members will want to understand why I have lodged these amendments. The same cabinet secretary and Government that are proposing in this bill a statutory basis for custody visiting are also proposing to remove independent prison visiting committees. Instead of having provisions on custody visiting inserted into a bill on police and fire reform, we want the cabinet secretary to introduce a bill that will put both independent custody and prison visitors on a statutory footing. That is the intention behind these amendments, and we certainly believe that such an approach will best protect the voluntary principle, the principle of community involvement and the critical principle of the independence of those who visit and monitor prisons and police cells.

If the cabinet secretary were to accept the amendments and bring forward such a bill to extend the principles to prison visiting, that would make the whole system more effective, more efficient and—critically—indeed of the Government and the police and prison service.

On that basis, I move amendment 248.

**Kenny MacAskill:** Lewis Macdonald’s amendments 248 and 250 to 252 would remove the sections of the bill that place a requirement on the Scottish police authority to establish a system of independent custody visiting. Those provisions are in pursuance of the objectives of the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—OPCAT—which was ratified by the United Kingdom in 2003. The provisions enhance the current schemes in the eight police areas, bringing them together into a national system under arrangements made by the Scottish police authority. I believe that this new statutory regime will provide a more transparent criminal justice system in which the rights and treatment of individuals and the custody of the state are effectively monitored. Deleting the provisions would call into question our compliance with OPCAT in that regard. I therefore ask Lewis Macdonald to withdraw his amendments.

I also cannot support Mr Macdonald’s alternative amendment 249, which amends the wording of section 91. That would alter the circumstances in which a visit to a place of detention can be refused in order to mirror the current wording in section 92. However, that section relates only to visits by the UN sub-committee and recognises our commitments in that regard. The current approach to section 91 offers greater flexibility and requires ministers to predetermine the circumstances in which a police officer of the rank of inspector or above can refuse—or, more probably, delay—access to a particular detainee or group of detainees for operational reasons. That may be, for example, when a person is being interviewed and immediate access would compromise the legitimate investigation of a criminal offence. I emphasise that such circumstances should be limited and exceptional. I am happy to assure the committee that we will consult existing visitors, administrators and other stakeholders such as the Scottish Human Rights Commission in developing such criteria. I believe that the current provisions are
appropriate and provide flexibility and scope for development in consultation with current scheme administrators and stakeholders. I therefore ask Lewis Macdonald to withdraw amendment 149. Comparison cannot be made with the Government’s plans for prison visiting committees, which are vastly different, and police and prison custody are separate issues; therefore, I do not think that Lewis Macdonald is doing us any service in seeking to conjoin the two.

The Convener: I think that you meant amendment 249, cabinet secretary, which has not been moved yet. It is confusing.

Lewis Macdonald: I am sorry that the cabinet secretary addressed the point that I made only in his last sentence. I am also sorry that his response was that the two things are different and are not conjoined. He will know as well as the rest of us that OPCAT applies to those who are held in prison as well as to those who are held in police cells. What the cabinet secretary appears to be proposing for visitors to prisons is not likely to be OPCAT compliant, as the OPCAT requirement is for those persons to be independent of Government and his intention to appoint full-time public servants to replace voluntary prison visitors does not meet that requirement. I am most disappointed that the cabinet secretary has not addressed more clearly why he wants to move towards a stronger statutory basis for custody visiting, and in completely the opposite direction with prison visiting.

The Convener: Can we keep off the subject of prison visiting and on the bill?

Lewis Macdonald: I understand your enthusiasm, convener.

The Convener: I have been very lax with you so far.

Lewis Macdonald: I am happy to focus on the bill.

I seek to withdraw amendment 248, although I am sure that we will return to the issue at stage 3, because we have not yet heard a satisfactory explanation of the cabinet secretary’s approach on the matter.

Amendment 248, by agreement, withdrawn.

Section 90 agreed to.

Section 91—Independent custody visiting

Amendments 249 and 250 not moved.

Section 91 agreed to.

Section 92—SPT visits

Amendment 251 not moved.
behalf of a community to provide the peace and good order that are necessary for the conduct of daily life. They are answerable to the courts and also to their chief constable through the discipline process. Only at times of national crisis does the relationship change and the balance of influence shift.

It has been so since Robert Peel set out the following principle of policing in 1829:

“To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.”

Our task today is to take extreme care not to disturb that sensitive balance and to ensure that the national police service is answerable to not the Government, but the body politic of Scotland. That is a difficult balance to strike.

In earlier centuries, local police authorities, local boards orburghers that represented close-knit communities provided the means by which policing by consent could be achieved by not only calling the police to answer, but providing the budget. With an area, a regional and now a national police service, that element of localism is more challenging to deliver, hence the time and effort that the committee dedicated to earlier amendments that were designed to repair inadequacies in the bill.

It remains to be seen how local policing boards at divisional level will work in practice but, in any case, the means to deliver meaningful accountability to the democratic process is missing. The Auditor General for Scotland called it a democratic deficit. The Association of Chief Police Officers in Scotland, the Association of Scottish Police Superintendents, the Scottish Police Federation and even the fire chiefs, from their perspective, commented on the vacuum that has been identified in that regard.

Bill writers may argue that the SPA is designed to act in that endeavour. However, the board does not provide the transparency that is necessary in a modern democracy. It will be populated by people chosen on approval of the minister, paid by the minister, answerable to the minister and therefore to Government—not to mention the minister’s power to sack or retire the chief officer. The range of powers to influence and control are too heavily weighted to the advantage of the Executive, ministers and civil servants.

I served for four years on the service boards for the national criminal intelligence service and the national crime squad. The business of those boards was to deliver on targets, objectives, budgets and projects. The wider issue of democratic accountability is not the prime concern of such groupings. Given the constitution of the board, I am sure that the SPA will be similar in its approach. National democratic governance by means of a parliamentary arrangement or a commission is therefore critical.

Police detain, question, arrest—often by force—and support prosecutions to imprison our citizens. The result of bad policing is a cancer for any society. It allows injustice, corruption, unfairness and incompetence. Policing must face democratic oversight, delivered by the Scottish Parliament and independent of Government. Only last week, our convener rehearsed the reality of the Justice Committee having insufficient time proactively to examine issues due to the volume of Government business generated each year.

A Parliament searching for a role for its members should realise that there is a genuine role here worthy of a commission that would meet throughout the year. I maintain that parliamentary oversight of the relationships and the outcomes that arise from the creation of the national force is essential to the good health of those arrangements. In the absence of a proactive body checking, taking evidence and reporting to the Parliament, the belated post-mortem responses to scandals, shortcomings and mistakes will prove insufficient to deliver the vision of a safer Scotland for our communities.

The costs attached to a commission should be minimal in terms of a secretariat and support. In essence, regular evidence-gathering sessions should ensure effective governance, particularly as the cabinet secretary has commented that he is comfortable with the current preparations and plans. The committee and the cabinet secretary should remember that only last week, the incoming president of France sacked all three of the senior police chiefs publicly identified as personal staff to the previous Sarkozy Government. I do not want Scotland’s police to be similarly tarnished. The Leveson hearings have proved how insidious power is in its operation.

This committee can lead the way in ensuring the proactive oversight of government, executive, board and chief officers and their administration of policing, in the interests of our people and communities and not for the benefit and comfort of unseen figures.

I earnestly move amendment 242.

The Convener: Thank you for a full, thoughtful and eloquent submission. Do other members wish to speak on the amendment?

John Lamont: The Scottish Conservatives broadly support Graeme Pearson’s amendment for the reasons that he described so well. It goes to the crux of all the amendments that a number of
the Opposition parties have lodged to say that we have serious concerns about how local accountability will be protected. Graeme Pearson’s amendment goes some way towards dealing with those concerns. Unfortunately, as a committee substitute I do not have a vote this morning, as has already been demonstrated. I am powerless, but if I did have a vote I would vote in favour of the amendment.

The Convener: You could always ask to come back to this committee—you would be welcome.

Lewis Macdonald: I will reflect briefly on Graeme Pearson’s considered presentation and on John Lamont’s comments. A number of amendments to the bill have been lodged seeking to strengthen local accountability and local engagement. Unfortunately the Government has not seen fit to support any of those amendments and therefore we are in the current position. What is offered is a different model, but it is one that will strengthen accountability and oversight. I hope that, having rejected the amendments that related to what might be done at the local level, the Government will seriously consider supporting this amendment that relates to what can be done at a national level.

Alison McInnes: I will speak in support of Graeme Pearson’s amendments, and I thank him for his work on developing an innovative and very welcome suggestion. The bill is a major reform of a major service. It takes away a great deal of local accountability and does away with the need for locally elected representatives. Graeme Pearson’s amendment takes a different approach, which acknowledges the role of democratically elected people at a different level, here in the Parliament. The amendment has a great deal of merit and I urge the cabinet secretary to accept it.

Kenny MacAskill: I will speak to amendments 242 and 243. It is important to clarify that ministers will not have the power to sack or remove the chief constable from office. I fully support and recognise the importance of the scrutiny of policing by the Parliament and this committee. As Cabinet Secretary for Justice I have been grilled by members of the committee on a number of occasions over the past few years, so I can testify to that.

The Convener: Mr Pearson, the cabinet secretary has made an offer. Please wind up and tell me whether you wish to press or withdraw.

Graeme Pearson: I am not used to getting offers from cabinet secretaries.

The Convener: Well, you have one now.

Graeme Pearson: As you will know, I am relatively new to the committee. Before I decide whether to accept your offer and withdraw the amendment, I would like to understand whether or not we can engage in a discussion but lodge similar amendments at stage 3. If I am able to do that, I am more than happy to engage with the cabinet secretary.

I would like to put on the record my response to the cabinet secretaries’ allusion to the Auditor General’s arrangement. It did not really reflect the
position that I presented to him. The cabinet secretary and his officials must understand that, because the significant changes that we are talking about will make such a big impact on the way that this service will be monitored, it is important that we arrange innovative oversight to ensure the good health of the service.

In that context, I am happy to take the matter forward by discussing it further, and we can revisit it at stage 3.

The Convener: I point out that it is up to the Presiding Officer to choose amendments for stage 3 and I do not want to pre-empt any decision that she might make in that regard—

Graeme Pearson: I understand that, convener.

10:45

The Convener: Nevertheless, I believe that you have made a number of important points and, subject to the cabinet secretary’s response, I am sympathetic to taking this debate forward. Although I accept what the cabinet secretary has said, I think that there is room for compromise and would like the matter to be debated further if necessary. Of course, it might well not be necessary. I do not know what other members think—no one need say anything at this point—but putting something on the record might assist Mr Pearson if he requires to lodge an amendment at stage 3.

Graeme Pearson: Speaking as a relatively new committee member, I would hate to think that with the establishment of some form of subcommittee or ad hoc arrangement we would lose the necessary democratic oversight.

The Convener: You have made a very full submission on the record, the cabinet secretary has undertaken to discuss the issue further with you and you have heard what I have had to say on the matter. The choice of stage 3 amendments is up to the Presiding Officer, but it might be open to you to lodge an amendment at stage 3 if you are still dissatisfied.

Amendment 242, by agreement, withdrawn.
Amendment 243 not moved.

Section 94 agreed to.

Section 95—Transfer of constables, staff, property etc

The Convener: Amendment 212, in the name of the cabinet secretary, is grouped with amendments 213 to 215, 104, 216, 105 to 111, 254, 112 and 113.

Kenny MacAskill: The amendments in the group relate to the appointments of the SPA chair and senior officers, and to arrangements for the transfer of constables and staff to the new police service. We all agree that the chief constable and other senior officers should be appointed at the earliest possible date. Amendments 212, 213 and 216 are key to facilitating that, in that they seek to allow the authority to be established and senior officers to be appointed in the transitional period before the police service is established.

Amendments 104 to 111 seek to amend schedule 4 to the bill to adjust the provisions relating to the transfer of senior officers who are not appointed to the offices of chief constable and deputy chief constable. They also respond to views that have been expressed by stakeholders, and seek to simplify the post-reform structure and to improve operational effectiveness by ensuring that the only officers who hold the ranks of chief constable and deputy chief constable are those who are appointed to those offices in the new police service. The amendments maintain the principle of no detriment by preserving senior officers’ right to otherwise retain the terms and conditions of service that they held in their forces prior to their transfer to the new service.

Amendments 112 and 113 seek to make minor additions to schedule 4 to ensure that Scottish ministers can obtain the necessary information and assistance to meet property transfer schemes under the bill. Amendments 214 and 215 seek to make it clear that the provisions of schedule 4 relating to the transfer of constables to the police service on the appointed day apply equally to constables on relevant service.

Amendment 254, in the name of Lewis Macdonald, seeks to insert a new provision into schedule 4 to state that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to transfer of police staff to the police service. The TUPE regulations make provision for safeguards for employees who are affected by transfers of businesses or undertakings in the private sector. They do not legally apply to transfers in the public sector, so it would be neither appropriate nor necessary to apply them directly in this case. The Cabinet Office statement of practice on staff transfers in the public sector, known as COSOP, provides that “in circumstances where TUPE does not apply ... the principles of TUPE should be followed ... and the staff involved should be treated no less favourably than had” TUPE “applied”.

I have made a clear commitment that staff transfers under the bill should result in no detriment to any individual and that COSOP will apply. Indeed, the bill goes a step further than COSOP by making statutory provision in
schedules 4 and 5 to ensure that relevant TUPE principles are legally binding in respect of transfers under the bill. Accordingly, I cannot support amendment 254 and invite the committee to support amendments 104 to 113 and 212 to 216.

I move amendment 212.

**Lewis Macdonald:** As the cabinet secretary has made clear, the intention behind amendment 254 and a later amendment is to ensure that TUPE principles apply, and clearly relates to police staff who are, at the moment, unsure of their prospects after reorganisation. At stage 1, I mentioned constituents of mine who are employees of Grampian Police but work on secondment with Aberdeenshire Council or BAA at Aberdeen airport. Like many other police staff around the country, they are uncertain of their prospects. Clearly, the intention in applying the principles should be to ensure that such people are protected. I welcome what the cabinet secretary said about that, as far as it went, and I will be content not to move amendment 254.

**Alison McInnes:** I acknowledge the need for transitional arrangements for the new police service to be enshrined in the bill, so I am content to support the bulk of the amendments in the minister’s name. However, issues are raised by the relatively late introduction of the arrangements, particularly in relation to the make-up of the new police authority during the transitional phase. Will the cabinet secretary talk about the authority’s scope for making significant decisions while it has only one member—the chair? I seek reassurance in that regard.

**Kenny MacAskill:** The approach simply allows us to take the necessary steps to recruit the chief constable, by having the chair in place. The likelihood is that the other members of the authority will be in place before there is a move towards dealing with significant matters, so I think that I can safely say that the only matter that the chair will deal with on their own is likely to be the appointment of the chief constable.

Amendment 212 agreed to.

Section 95, as amended, agreed to.

**After schedule 3**

Amendment 213 moved—[Kenny MacAskill]—and agreed to.

Schedule 4—Transfer of constables, staff and property etc

Amendments 214, 215, 104, 216 and 105 to 111 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 253, in the name of Lewis Macdonald, is grouped with amendments 217 to 220. If amendment 253 is agreed to, I cannot call amendments 217 to 219, because they will be pre-empted.

**Lewis Macdonald:** The cabinet secretary said that the amalgamation of police forces should be without detriment to the terms and conditions of those who work in the service. One aspect of police officers’ conditions of service is that they can choose to remain in the police force area in which they joined up. Amendment 253 is intended to protect that.

As drafted, schedule 4 means that officers can be required to move anywhere in Scotland on promotion. The provision applies not just to the chief constable or deputy but to any promoted rank. I understand from conversations with the Scottish Police Federation that such a catch-all provision has not featured in previous amalgamations of police forces in Scotland and I see no reason why it should feature now, other than in relation to the most senior posts.

The issue is particularly important for police officers and communities outwith the central belt. People who—as Graeme Pearson said—are suspicious about the creation of a single service, because they fear that personnel and resources will be drained away from some parts of the country, will wonder why the bill makes it so easy to require officers to move from one part of the country to another. Amendment 253 would help to allay such suspicions.

Amendments 217 to 220, which are in John Lamont’s name, offer a different way of solving the problem. I will be interested to hear what the cabinet secretary says about all the amendments in the group.

I move amendment 253.

**John Lamont:** Schedule 4 concerns the transfer of constables, staff and property following the establishment of a single police force. Constables will no longer be employed by their regional forces, but by the Scotland-wide single police force. Paragraph 9(2) will limit the transfer of constables to another area of Scotland, and provides that constables may not be transferred if the move "would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist."

However, paragraph 9(4) sets out three cases in which that limitation will cease to apply. It states:

"Sub-paragraph (2) ceases to apply to a constable if ... the constable—

(a) is or becomes a senior officer of the Police Service,

(b) is promoted to a higher rank,"
The Scottish Police Federation has expressed concern about the provision because it would allow the transfer of an officer to anywhere in Scotland on promotion to a higher rank. The SPF argues that the provision could damage local policing and would act as a disincentive to new recruits due to the disruption that would be caused by relocation. The condition was not included when previous amalgamations took place in 1975.

The Scottish Conservatives believe that it is appropriate to allow the transfer to other parts of Scotland of a constable seeking promotion. Like people in other professions, constables should be given the choice to relocate in search of a promotion. However, the current wording of paragraph 9(4) of schedule 4 appears to allow the relocation of promoted constables at any future point following promotion. In particular, the use of the phrase “ceases to apply” appears to permit transfers to any other part of Scotland at any time if a constable is promoted after the establishment of the single police force. I hope that that is not the intention of the provision but, if it is, it would be disruptive to employees of the single police force, who would be liable to transfer to any part of Scotland at any time following promotion.

My amendment 253 seeks to clarify the position by replacing “ceases to apply” with “does not apply”. It would also reword paragraph 9(4)(b) of schedule 4 to clarify that a constable can be transferred only at the point of promotion and not at any future date.

John Finnie (Highlands and Islands) (SNP): I understand the Scottish Police Federation’s concerns regarding the provision. In many respects, it relates to the historical dimension of transfer being regarded as punitive. However, there is ample good practice on transfers. In addition, it should be remembered that transfers do not often come without cost, so concerns regarding transfers that would involve moving significant distances, particularly to remote Highlands and Islands areas, would be considerable. There is good practice in this regard and guidance from employment law. I do not support the amendments, but I wonder whether the point that underlies them could be reinforced in supplementary guidance to senior police officers.

The Convener: Are you tempted to provide supplementary guidance in that regard, cabinet secretary?

Kenny MacAskill: I have several comments to make on Lewis Macdonald’s and John Lamont’s amendments. Paragraph 9 of schedule 4 provides safeguards for officers who transfer to the new service. It provides that an officer must not be assigned duties that would necessitate the officer’s moving home to a place that would have been in another force area in the current force structure. Paragraph 9(4) of schedule 4 provides for exceptions so that the safeguard applies until the constable “is or becomes a senior officer ... is promoted to a higher rank” or consents to waiving their right.

Amendment 253 would remove those exceptions and the effect would be that the police service could not require any constable who has transferred to the police service to move outwith their previous home area for the entire duration of their career in the police service, irrespective of the seniority of that constable or any change in circumstances that was brought about by a promotion.

Amendments 217 to 220 would narrow the exception in paragraph 9(4) relating to promotion so that the provision would apply only where the requirement to move outwith their home force area was a direct consequence of the promotion. The effect would be that promoted constables would retain the right to stay in their home force area unless the promotion itself entailed a move outwith the area. The bill provides the right balance between the rights of individual officers and the needs of the wider service, and it provides a proportionate approach to ensure flexibility for the police service to organise itself and deploy resources in the way that will best deliver policing across Scotland, without its being unduly restrained by the force boundaries of the obsolete eight-service structure.

I therefore cannot support Lewis Macdonald’s and John Lamont’s amendments, which would place unnecessary restrictions on the police service’s flexibility to deploy officers as they are required across Scotland. Even where the exceptions apply, I would expect that the police service would take a proportionate and sensible approach to deciding whether or when to require constables to move outwith their home areas—not least because of the cost to the service of relocating officers. Mr Finnie made that point and it has been made to me by the employers, if I can put it that way, through ACPOS and by the Scottish Police Federation.

I can understand that there are concerns within the ranks of the SPF, but I assure them that I am not aware of any drive or desire by senior management in the police to do anything other than have the right to transfer in the most exceptional circumstances, and we have sought to preserve that.

I am happy to undertake to discuss matters again with Mr Finnie and the SPF to see whether
we can deal with issues in regulations or in other ways. It seems to me that neither the SPF nor ACPOS wants what the amendments seek. We currently have sufficient protection in the bill in that regard, but there will be some instances in which there must be some redeployment and the bill will ensure that the right to do that will be available to senior officers.

The Convener: Given that, are your concerns assuaged, Lewis?

11:00

Lewis Macdonald: No, I am afraid they are not. Not for the first time this morning, the cabinet secretary has said that everything will be all right, that we should just leave it to the chief constable and that he will not do the wrong thing. I think that his response to Mr Finnie was that he is not aware of any desire, anywhere in the police service, to do the wrong thing. Of course he is not; we would not expect there to be a desire to do the wrong thing.

The point is that there is an existing set of terms and conditions. Given that Mr MacAskill described my amendment 253 and then went on to describe Mr Lamont's amendments, I expected, because of the way in which he approached them, that he would respond to them in different ways, whereas he simply said no to my amendment and no to Mr Lamont's amendments. I do not think that he has even offered to produce the supplementary guidance that Mr Finnie sought. I am very disappointed by that.

In the light of the different impacts of the different approaches, I am content to seek to withdraw amendment 253, but I will support Mr Lamont's amendments.

Amendment 253, by agreement, withdrawn.

Amendment 217 moved—[John Lamont].

The Convener: The question is, that amendment 217 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 217 disagreed to.

Amendment 218 moved—[John Lamont].

The Convener: The question is, that amendment 218 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 218 disagreed to.

Amendment 219 moved—[John Lamont].

The Convener: The question is, that amendment 219 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 219 disagreed to.

Amendment 220 moved—[John Lamont].

The Convener: The question is, that amendment 220 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.
Amendment 220 disagreed to.
Amendment 254 not moved.
Amendment 112 moved—[Kenny MacAskill]—and agreed to.

The Convener: Lest members think that I have nailed them to their chairs, I indicate that I intend to stop very shortly, when we reach the fire reform part of the bill. I say that because there is a certain anxiety around the table. We will have a 10-minute break, so just hang in there.

Amendment 113 moved—[Kenny MacAskill]—and agreed to.

Schedule 4, as amended, agreed to.
Section 96—Key police definitions
Amendment 114 moved—[Kenny MacAskill]—and agreed to.

Section 97—Meaning of other words and expressions used in Part 1
Amendments 115 to 118 moved—[Kenny MacAskill]—and agreed to.

The Convener: I invite John Finnie to say whether he intends to move amendment 175.

John Finnie: Which one is that?

The Convener: It is the one on the meaning of “joint central committee of the Police Federation for Scotland”.

John Finnie: Forgive me; I thought that that amendment had already been voted on.

The Convener: No. We are talking about amendment 175, which was debated with amendment 169 on day 1. Do you want to pause and think? Do you know what you are doing?

John Finnie: Rarely. I will move the amendment.

Amendment 175 moved—[John Finnie].

The Convener: The question is, that amendment 175 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 175 disagreed to.

Amendment 119 moved—[Kenny MacAskill]—and agreed to.

Section 97, as amended, agreed to.

Section 98 agreed to.

Section 99—The Scottish Fire and Rescue Service
Amendment 176 moved—[John Finnie]—and agreed to.

The Convener: Thank you very much. We break until 11.15.

11:05
Meeting suspended.

11:15
On resuming—

The Convener: We are back again, refreshed.

Amendment 255, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: We are now two weeks closer to the enactment of the bill than we were when we previously discussed the status of the new services, but I fear that there has been no sign of any further progress on the issue of VAT in the intervening fortnight.

When we debated a similar amendment on the police side two weeks ago, the cabinet secretary offered nothing new, other than a vague hope that things would sort themselves out. The hard reality is that it was not Treasury ministers who got it wrong or introduced some new catch that would trip up the Scottish ministers in their well-laid plan for new single services; it was, of course, Mr MacAskill who introduced the bill without having first made an arrangement or come to an agreement that would avoid the new services being liable for VAT. Hoping that other parties here or ministers in another Government would come up with a solution after the event has clearly not done the trick. Indeed, as the cabinet secretary confirmed when he previously spoke about the matter, the prospect of solving the problem that he had walked into was so poor that he introduced
the bill with VAT liability built into the financial projections.

That is just not good enough. VAT liability of £4 million every year is equivalent to an extra 27 firefighting appliances, for example, or whatever other extra provision the Scottish fire and rescue service could secure with the extra resources. This is not a minor problem; there has been a failure to resolve an issue that is at the very heart of the bill. It is not enough to say, as Mr MacAskill did when we previously debated a similar amendment, that the service cannot be treated as a local authority without having to build houses or run schools; in fact, it is possible for it to be treated as a local authority without taking on any such responsibilities. Strathclyde partnership for transport, for example, is covered in precisely those terms in legislation elsewhere, and it has no obligation to carry out general local authority functions.

We have made a proposition for the Government to respond to, so that it can tell us what it intends to do in order to secure 27 extra firefighting appliances or whatever else can be secured by resolving the issue, which is, as yet, unresolved.

I move amendment 255.

Kenny MacAskill: Amendment 255 states that the Scottish fire and rescue service “is to be regarded as if it is a local authority” in an attempt to exempt it from VAT. However, the amendment would not achieve that purpose. Simply stating that a body is a local authority does not automatically exempt it from VAT. Furthermore, the amendment as drafted would place all the duties and functions of a local authority—such as those to do with schools and housing—on the SFRS, which is clearly inappropriate.

The new streamlined governance and accountability arrangements that we are putting in place for the new services are key to delivering all the benefits of reform. I cannot support changes that would completely undermine the effectiveness of our new arrangements, even if they allowed us to reclaim VAT.

I can confirm that, after extensive discussion, HM Treasury has rejected our request that the SFRS and the Scottish police authority will be able to recover VAT. That will mean that the SPA and the SFRS will be the only police and fire and rescue authorities in the United Kingdom that are unable to recover VAT. Indeed, we understand that, following reforms in England and Wales, the new police commissioners will be entitled to recover VAT. That is manifestly unfair, and the combined annual cost to the Scottish fire and police authorities amounts to around £25 million.

We think that the Treasury has based its decision on the fact that the new police and fire authorities will be funded by central Government. The Treasury’s view in this case is in stark contrast with the view that it took in relation to academy schools in England, which are funded by central Government; in that case, the Treasury inserted a new section into the Value Added Tax Act 1994 to ensure that they could recover VAT. It also ignores the fact that the new police authority will continue to be able to receive funding from Scottish local authorities to pay the costs of agreed local priorities, which is at odds with the Treasury’s policy as set out in its letter of 29 February to the Finance Committee. The Government’s clear view is that the ability to obtain local funding provides a direct link with local taxation, which would satisfy the Treasury’s policy as stated in that letter.

We have made every effort to co-operate with the Treasury to satisfy that policy and achieve a policy outcome for Scotland’s police and fire services. We are ready and willing to lodge amendments to the bill to provide reassurance to the Treasury by expressly including the funding link in the bill and we have shared illustrative draft amendments with it. We are therefore disappointed that the Treasury has rejected our proposals, and that it has failed to provide any suggested amendments that would meet its requirements, or, indeed, any reasons for its decision.

The Treasury’s decision is in effect a tax on Scottish public sector reform that has not been levied on similar reforms in the rest of the United Kingdom, as we contrast the police service of Scotland with the Police Service of Northern Ireland. The people of Scotland are being penalised twice: first, by the Westminster-imposed cuts and, secondly, by this additional VAT grab by the Exchequer.

However, we costed our outline business cases responsibly, on the basis that VAT would be payable, not because we consider that that approach is right but because it is the prudent approach that demonstrates competent management of our finances. The figures show that, even with the VAT payment, the single services will deliver estimated savings of £1.7 billion over 15 years.

It is a matter of great regret that our police service remains the only police service in the United Kingdom on which VAT is levied—the PSNI, and even police commissioners are not. Our fire and rescue service is equally encumbered, but organisations such as academy schools are given
VAT exemption. There seems to be some prejudice against what we are seeking to do.

**Lewis Macdonald:** The job of the cabinet secretary is not to tell us why another Government has got things wrong: the job of the cabinet secretary is surely to tell us why his Government has got it wrong. Why is the cabinet secretary telling the committee today that he has tried but failed to persuade the Treasury?

The bill was months in the preparation and years in the thinking. The Scottish Police Services Authority has been paying VAT since 2007. It is simply not good enough to say that the Government made a case and nobody listened. Surely these matters should have been resolved before we got to this stage, and that is the responsibility of the Scottish Government and not the responsibility of the Treasury. Indeed, it is not news to any of us because the rejection that the cabinet secretary has reported is in exactly the same terms as the letters that Unison received from the Treasury minister weeks and months ago, which were made available to the committee in evidence on the bill. It is simply not good enough to say that it is all the fault of the Treasury.

Apparently, the cabinet secretary has shared illustrative draft amendments to the bill with Treasury ministers. Would it not be a good idea to share those draft amendments with the committee? It is a shame that that was not done at stage 2, but I hope that the cabinet secretary will agree that it will be done in advance of stage 3.

The cabinet secretary said that being treated as a local authority will not make authorities exempt from VAT. That is an interesting statement in the context of the illustrative draft amendments—which I look forward to seeing—but it is not one that I accept. Of course, the point about the obligations being placed on a local authority is not correct, as I indicated in relation to Strathclyde partnership for transport. However, there is an opportunity for the cabinet secretary to come back with the illustrative draft amendments, prior to stage 3.

**The Convener:** I will let the cabinet secretary respond to those points on the record, because this is an important debate. I will let Lewis Macdonald back in afterwards, should he wish; otherwise, we will move on.

**Kenny MacAskill:** We are happy to share the illustrative draft amendments. However, amendment 255 would require the UK Government to agree to cover the services with the provisions of the Value Added Tax Act 1994. That comes back to the actions of the UK Treasury. When academy schools came along, it decided to exempt them. When police commissioners were formed, it decided to exempt them, and the PSNI was always given an exemption. However, when the Scottish Government asks for exemption for the Scottish authorities, we are told no. We provide ways in which we could be flexible in order to meet the criteria that the Treasury has specified for schools and so on south of the border, but it says no. At the end of the day, Lewis Macdonald’s position is the same as mine, but it still requires the Treasury’s approval. It has said no to us whichever way we have tried to go.

I am happy to share the illustrative amendments with Mr Macdonald, but he would have to show me how we would manage to get the changes to the VAT act signed off by the Treasury.

**Lewis Macdonald:** The Treasury’s actions are a response to the Scottish Government’s proposals. I am baffled by the fact that the Scottish Government has got to this stage without making any proper provision to protect Scottish interests. That is disappointing.

However, I am pleased that the cabinet secretary has agreed to let us see the proposals that he has made to the Treasury as a way to move the issue on. Clearly, if we could support the proposals, we would welcome that, but we need to see what the draft amendments are and what impact they would have. That is sufficient to allow us to come back to the issue at stage 3, so I seek the committee’s leave to withdraw amendment 255.

**Amendment 255, by agreement, withdrawn.**

**The Convener:** It would also be nice if the rest of us could see the illustrative amendments, not just Mr Macdonald, although I am sure that he would share them with us.

Amendment 120, in the name of the minister, is grouped with amendments 256 to 259, 121, 122, 260, 123 to 125 and 223.

**Kenny MacAskill:** Amendment 120 and the other amendments in the group deal with the composition of the SFRS. Amendment 120 draws a distinction between the appointment of the chair of the SFRS and the appointment of the other members. That reflects the distinct role of the chair and will enable the chair to be appointed earlier than the other members.

Amendment 121 will ensure that Scottish ministers can still modify the minimum or maximum number of members of the SFRS by order. Amendment 122 will enable rather than oblige the members of the SFRS to elect a member to act as deputy to the chairing member. As a result of amendments 120 to 122, the existing provisions in paragraph 5 of schedule 1A that relate to the chairing member and deputy are...
no longer required. Amendment 124 will therefore remove paragraph 5 of schedule 1A.

Amendment 125 is a technical amendment to remove duplication in the bill around procedures for the removal from office of a member of the SFRS.

Amendment 223 deals with membership of the SFRS in the important months before the service goes live. The SFRS will ultimately have a chair and six to 10 members who are likely to take up their appointments at different times during the coming months. Amendment 223 will enable the chair and other members of the SFRS to act with full authority when undertaking important planning and preparation work, even when there are fewer than six other members. It is a transitional provision and so will apply only until such time as the SFRS becomes fully operational.

Amendment 256, in the name of Lewis Macdonald, seeks to ensure that at least half of the members of the SFRS are local authority members who have been nominated by COSLA. Amendment 257 would require ministers to have “due regard to representation among members of SFRS of persons with knowledge of communities and fire and rescue services in all regions of Scotland.”

Similar wording was proposed during the previous committee meeting for the Scottish police authority, and the committee rejected it. I have been clear throughout that members of both bodies should be appointed solely on the basis of their skills and expertise through an open and fair public appointments process. We expect a wide range of people to put themselves forward for public appointments process. We expect a wide range of people to put themselves forward for appointment to the SFRS, including local authority members, but it is essential that they all have equal status on the board and that they work collectively as a board member. That is why the bill disqualifies staff from becoming members of the board.

The service must also be flexible enough to change over time and committee members have suggested that there are likely to be changes to the appropriate proportion of local authority members at any particular time. Accordingly, I cannot support amendments 256 and 257.

In amendment 259, Jenny Marra has proposed that the SFRS should have a quota of at least 40 per cent of each gender, which she previously suggested for policing bodies. There was a good discussion on that at the previous meeting. I support the intention of promoting gender equality in all public bodies, but I do not agree that statutory quotas are the right way to go about it. The most important thing is that appointments provide the range of skills and expertise that the service needs. We want the service to reflect Scottish society, and that means taking account of a range of issues, not just gender. The appointments process will be subject to the requirements of the Equality Act 2010. That is the most appropriate and comprehensive way of ensuring that all applicants are considered fairly.

Amendments 258 and 260, in the name of Jenny Marra, would require that at least one member of SFRS staff is appointed to the board from its inception. I fully expect the SFRS board and senior management to engage constructively with staff in the trade unions, but our position on members of the board being appointed for their skills and expertise, not because they represent a particular interest or area, has been made clear. I am also concerned that there could be conflicts of interest between the individual’s role in representing staff and their role in acting collectively as a board member. That is why the bill disqualifies staff from becoming members of the board.

However, this is a new board and a new body and, as the board settles into its work, we will be prepared to consider a view from it about the potential benefits of allowing an employee to be a full board member. As the bill stands, changes to allow staff membership of the board would not be possible without primary legislation. I therefore lodged amendment 123, which will allow ministers to modify by order the disqualification criteria for membership of the SFRS board. That will mean that, if there is a strong case in future for those who are currently disqualified from being members of the board to become members of it, the disqualification criteria can be adjusted accordingly.

I invite the committee to support amendments 120 to 125.

I move amendment 120.

11:30

Lewis Macdonald: As the cabinet secretary said, amendment 256 is intended to ensure the engagement of local authorities and local communities through members of local authorities. The arguments that apply in this case are much the same as the arguments that we put in relation to the police authority. Those arguments remain valid, given that we are not yet decided on national oversight of the police service, but also given the absence of any specific local oversight of either the police or the fire service. The amendment therefore remains important.

Amendment 257 was not answered by the point that the cabinet secretary made when he talked about the importance of representing the whole of Scotland and not just particular interests. The purpose of amendment 257 is not to ensure the representation of particular interests but to ensure...
that the fire authority board represents the whole of Scotland. Although I do not expect the cabinet secretary to support amendment 256, it is disappointing that he continues to resist amendments that are designed to ensure that there is geographical knowledge of the whole of Scotland on the part of board members, whichever sector of society they come from. That is important in itself, and that is the purpose of amendment 257.

Jenny Marra (North East Scotland) (Lab):
Together, amendments 268 and 260 provide for at least one member of staff of the Scottish fire and rescue service to be included on the board of the service. Amendment 268 provides for a nominated member of staff to be included on the board, and amendment 260 removes from the bill the provision that explicitly disqualifies staff from becoming members.

I listened to the cabinet secretary explain his amendment, and I seek clarification from him of whether it covers the same point as amendment 260 and removes the disqualification of staff from becoming members. I ask him to say whether the amendments would have the same effect.

The Convener: Can I just correct you, Jenny? I think that you are talking about amendment 258 instead of 260. Amendment 260 is on the proportion of men and women. The other one is about members of staff.

Jenny Marra: Sorry, convener. I mixed up the numbers.

It is common practice among many of Scotland’s other public service bodies to include staff representation in their governing structures. That includes various colleges, universities and national health service boards, NHS 24 being just one example.

To have an appropriately qualified member of staff on the board will ensure that there is an ongoing and constructive dialogue between staff and the governing structures of the Scottish fire and rescue service as its operational priorities change and develop, and it will allow the concerns of the staff—those at the coalface of decisions by the chief fire officer—to be filtered and considered as the strategic direction of the service changes and develops. From the outset, it will foster confidence among staff in the new governance structures of the service and enhance the transparency and accountability of the chief fire officer to the members he or she will direct. That, in turn, will translate into a greater feeling of public confidence in the service as a whole.

Convener, I am sorry if I mixed up the amendment numbers, but I will continue. Amendment 259 seeks to ensure that neither the proportion of men nor the proportion of women who are appointed to the board is less than 40 per cent. I reiterate the points that I made during the first part of the stage 2 consideration of the bill, when I spoke to a similar amendment—as the cabinet secretary has pointed out—relating to the boards of the new single police service. As with representation in the police service, there is a clear need to redress the gender imbalance in the governing structures of Scotland’s fire and rescue service. Up until the most recent election, Scotland’s fire boards consisted of 146 members of whom 114 were male and just 32 were female. That left the gender balance at 78 per cent male and just 22 per cent female. I still feel strongly that, when opportunities such as the bill arise to redesign our public services as we want them to look in 20 years’ time, we must harness progressive opinion that seeks to overcome the inequality that we all want to remove from Scottish society.

Kenny MacAskill: Our amendment 123 enables the modification by order of categories of people who are disqualified if a strong case is made. Amendment 260, in the name of Jenny Marra, would remove one of those categories relating to staff, but I think that we should see how matters develop. The situation could be dealt with by way of subordinate legislation in due course rather than in primary legislation, and I think that it would be better to see how things work out.

Amendment 120 agreed to.

Amendment 256 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 256 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 256 disagreed to.

Amendment 257 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 257 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.
For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 257 disagreed to.

Amendment 258 moved—[Jenny Marra].

The Convener: The question is, that amendment 258 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 258 disagreed to.

Amendment 259 moved—[Jenny Marra].

The Convener: The question is, that amendment 259 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 259 disagreed to.

Amendments 121 and 122 moved—[Kenny MacAskill]—and agreed to.

Amendment 260 moved—[Jenny Marra].

The Convener: The question is, that amendment 260 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 260 disagreed to.

Amendments 123 to 125 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 261, in the name of Lewis Macdonald, is in a group on its own.

Lewis Macdonald: The amendment follows the revelation that the new chief officer of the fire and rescue service is to be paid a record sum of £165,000 a year—more than any previous chief fire officer in Scotland has been paid and several times the salary of many of the members of staff who will shortly lose their jobs as the process rolls forward. The chief fire officer of Strathclyde Fire and Rescue is already exceedingly well paid, receiving £155,000 a year, which is more than either the First Minister of Scotland or the Prime Minister of the United Kingdom receives.

There is also huge controversy over the practice of chief officers retiring, gaining access to a lump sum and promptly returning to the service at full pay to do much the same job as they did before. That sends the wrong message at a time when so many other people are struggling with austerity measures of one kind of another. Ministers might well argue that a larger service requires a higher salary, but that is hardly in tune with the current hit on pay and pensions that so many others in Scotland’s public service are taking. Amendment 261 does not seek to overturn the decision that ministers have made—clearly, we do not want to delay the appointment at all—but it will require ministers to come to Parliament and give us the reasons for their decision.

I move amendment 261.

Kenny MacAskill: Although I can see and support the intention behind amendment 261—after all, as the SFRS will be a significant public
body in Scotland, it is quite right that its chief officer's terms and conditions of service be open and transparent—I do not consider it necessary for ministers to make a statement about those terms and conditions to Parliament. Accordingly, I cannot support the amendment. As the committee might be aware, the first chief officer post was advertised on 1 June, partly in response to requests from the committee for an early appointment. The job advertisement, which is available on the Scottish Government website, sets out the main terms and conditions of service, including salary, and I am happy to send a copy to the committee if that would be helpful. Since 2010, all Scottish public bodies have been required to list on their websites the names and salary details of members of their senior leadership team and to update that list twice a year. I expect the same to apply to the SFRS senior team so that there is on-going transparency about the salaries of senior officers and staff.

As a result, I cannot support amendment 261.

**Lewis Macdonald:** I was giving the cabinet secretary the chance to make an informal statement about his reasons; I am sad to say that he has not taken it and has not told us why the salary of the chief fire officer has to be so much higher than that of any other public servant in a comparable post. As I do not accept his response as sufficient explanation, I will press amendment 261.

**The Convener:** The question is, that amendment 261 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

**The Convener:** The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 261 disagreed to.

**The Convener:** Amendment 262, in the name of Graeme Pearson, is grouped with amendments 126, 128, 129, 221, 222, 136 and 271.

**Graeme Pearson:** Amendment 262 seeks to ensure that, as we have previously discussed, we get transparency in how public bodies conduct their business. I will not rehearse all the arguments that have been made at previous meetings and I have no comment to make on the other amendments in the group.

I move amendment 262.

**Kenny MacAskill:** I would expect the SFRS to be open and transparent and to engage with the public, but amendment 262 would mean that all information—even on sensitive issues such as fire fatalities or criminality—would have to be made public. Furthermore, although the SFRS will be covered by freedom of information legislation, the amendment would compel the publication of all correspondence between the service, local authorities, the Convention of Scottish Local Authorities and Scottish ministers, which would inhibit the frank discussions that those bodies need to have to deliver the best service for communities.

Amendment 262 would also place an unnecessary burden on the service to produce an annual engagement strategy. As I said, I expect the SFRS to be open and transparent. Since our discussion on the police part of the bill on 29 May, I have written to David McLetchie indicating my intention to lodge an amendment at stage 3 to ensure that the Scottish police authority meets in public, with appropriate protections for sensitive information, and that it publishes its agendas and papers, but with the necessary safeguards in place for sensitive information. I will lodge a similar amendment for the SFRS.

Amendment 126 also relates to those issues and seeks to complement and supplement the range of statutory obligations that the bill already places on the SFRS with regard to transparency, accountability and governance by placing the body under an additional broader duty to go above and beyond those obligations and, for example, to make its decision making more open and inclusive than is required by statute.

Amendments 128 and 129 are minor technical amendments that seek to avoid any duplication in the bill with regard to auditing procedures, and amendments 221 and 222 deal with consultation arrangements for the SFRS's first and subsequent strategic plans. COSLA suggested that the approach to the body’s strategic plan should be more in line with the approach to involving local authorities and others in the development of the strategic police plan.

Amendment 221 meets that aim by obliging the SFRS to obtain views from local authorities and others on what the first strategic plan should contain. It will also ensure that local authorities and others will be sent copies of the draft plan to comment on, and it will place a duty on SFRS to have regard to those comments in preparing the plan.
Amendment 222 will have the same effect in relation to subsequent strategic plans.

Amendment 136 will place an obligation on the SFRS to give a copy of its annual report to the Scottish ministers.

Amendment 271, in the name of Lewis Macdonald, would oblige the SFRS to include information on average staff numbers in the annual report. That seems to be unnecessarily prescriptive. The provisions that relate to the annual report are purposely broad in order to give the SFRS the flexibility to include the most relevant and useful information. Of course, the SFRS might choose to include information about staff numbers, but I cannot support the prescriptive approach of amendment 271.

I ask the committee to support amendments 126, 128, 129, 136, 221 and 222—all of which are in the name of Roseanna Cunningham.

11:45

Lewis Macdonald: The cabinet secretary described the approach in amendment 271 as "prescriptive", but the amendment is simply intended to strengthen confidence by ensuring that there is transparency around the important issue of staffing levels in the fire service, now and in the future. I would have been happy if the cabinet secretary had not resisted the amendment, but there we are. We rehearsed the issue in some detail in the context of police staff, and it arises in the context of the fire service, so I intend to move amendment 271.

The cabinet secretary described amendments 128 and 129 as "minor technical amendments", but it appears that they will remove accountability to ministers and the Parliament in relation to the service's accounts. If that is the case, it is regrettable. Can the cabinet secretary reassure me that the amendments are of a minor and technical nature and will not substantially reduce the accountability of the service to the Parliament or to the Scottish ministers?

Kenny MacAskill: The amendments will not do that. SFRS will be covered by the Public Finance and Accountability (Scotland) Act 2000, so there will be that protection. As I said, amendments 128 and 129 are minor and technical.

Graeme Pearson: I welcomed what the cabinet secretary said about responding to David McLetchie, and his indication that he will approach the fire service environment in a similar vein. The cabinet secretary has expressed a commitment to openness and transparency, but he will be aware that attempting to deliver such openness and transparency in the current arrangements can be frustrating—hence amendment 262, which would have tried to force the delivery of openness in government in a modern society.

On amendment 271, in the name of Lewis Macdonald, I had hoped that the cabinet secretary would acknowledge how important the staffing issue is—not only to the general public but to the staff themselves. The cabinet secretary's acceptance of amendment 271 would have been regarded as a healthy and welcome move.

I press amendment 262.

The Convener: The question is, that amendment 262 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 262 disagreed to.

Amendment 126 moved—[Kenny MacAskill]—and agreed to.

The Convener: Amendment 263, in the name of Jenny Marra, is grouped with amendments 264, 127, 265, 130, 266, 267, 274 and 163.

Jenny Marra: Amendment 263 would enable supported businesses to be awarded contracts for supply, maintenance and replacement of fire uniforms, through a statutory obligation under article 19 of "Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts". I am grateful to the cabinet secretary for his correspondence on the matter and for his sympathy for the principle behind amendment 263.

I want to address concerns that were expressed when a similar amendment was lodged in relation to the police service. The cabinet secretary said in correspondence that the approach would be too restrictive in its application, because it would deny the right of any business other than a supported business to enter into contracts for supply, maintenance and replacement of uniforms. However, that would not be the effect of amendment 263. It would place an obligation on
the fire service to use article 19 businesses as the first choice in supply, maintenance and replacement of uniforms, but if the supported businesses could not supply the contract, other businesses would be invited to tender as usual. The legal reading of the amendment provides for that arrangement, so it would not be restrictive and exclude commercial businesses.

The cabinet secretary has corresponded with me during the past couple of days and said that amendment 263 says that

“it must reserve the right to participate to ... supported businesses”.

Indeed, that is the express intention of amendment 263. If I was to propose that the wording be “may reserve the right”, it would just reiterate the Government’s policy that is already within the Public Contracts (Scotland) Regulations 2012 and there would be no greater effect of including the measure in the bill. If we use the wording “must reserve the right”, the fire service will be obliged to consider awarding contracts for uniforms to supported business and then to open the contracts to tender from all other commercial businesses.

I also appreciate that the cabinet secretary’s correspondence has cited the procurement framework and the procurement bill that will be introduced later this year, but I suggest that agreeing to amendment 263 would be an express way of supporting the Government’s intention to give more business to supported businesses and to support the workers in Scotland.

Amendment 265 seeks to put in place a non-exhaustive list of general functions of the SFRS by amending the Fire (Scotland) Act 2005. The rationale behind the amendment is the need to acknowledge the variety of services that the fire service will provide. As the service has evolved, it is important for the bill to reflect exactly how it will contribute to delivering the Government’s national outcomes through its functions.

I move amendment 263.

Lewis Macdonald: There are, in the group, four amendments in my name. Amendment 264 would introduce a requirement for ministers to approve any decision to let a contract in the future operation of the fire service. It is open to ministers to suggest ways in which that could be limited. In our previous debate on the matter, in respect of the police, the cabinet secretary said that that could result in ministerial permission being required for the ordering of paperclips. That is clearly not the case, unless ministers choose not to lodge any further amendments on the matter.

Amendment 264, along with amendments 266 and 267, is intended to ensure that the fire service is not in the future faced with the prospect of contracting out or privatisation. That is a simple provision that the cabinet secretary has said he supports in principle, so I invite him to support the amendments.

Amendment 274 seeks to introduce a provision that is unlike those that we have discussed before. It would extend the responsibility of the SFRS beyond the shoreline to include the marine area. The reason for that is simply to respond to circumstances. Until very recently, the Maritime and Coastguard Agency of the United Kingdom was responsible for fire-fighting offshore and on vessels that are within UK waters. That responsibility has been typically arranged through agreement with Scottish fire services. Amendment 274 seeks to probe the Government’s intentions for the future responsibility for fire-fighting at sea and to ensure that no gap is left inadvertently in statutory or practical responsibility for fire-fighting either on offshore installations which, as we know, are extremely sensitive and hazardous places for people to work, or on vessels in Scottish waters.

Kenny MacAskill: As Ms Marra mentioned, she and I exchanged correspondence on amendment 263 just yesterday and officials from the Scottish Government’s procurement directorate provided further advice to her on the relevant procurement regulations, not least the fact that they state that a contracting authority “may”—rather than “must”—“reserve the right to participate” to a supported business. That approach strikes the right balance between giving supported businesses a strong opportunity to win contracts and giving contracting authorities such as the SFRS flexibility to meet their needs and to secure value for money for the public purse. The new service might, where appropriate, choose to reserve contracts—and not just those for uniforms—for supported businesses, but it should also, where necessary, be able to open contracts to a broader range of suppliers in order to secure uniforms at the right cost and of the right quality.

A new framework contract under article 19 is currently out to tender by the Scottish Government and will be up and running in time for day 1 of the new service. That framework will provide a more flexible, open and transparent procurement route that will also allow the new service to select a range of goods and services—not just procurement of uniforms—from a pre-selected list of supported businesses. It will also provide a more efficient means for supported businesses to market other services. Accordingly, I do not feel that I am in a position to support amendment 263.

Jenny Marra’s amendment 265 seeks to introduce a new overarching general function for SFRS. The Government’s position is clear: the function that is set out in the Fire (Scotland) Act
2005 and the Fire (Additional Function) (Scotland) Order 2005 were debated and agreed by Parliament in the very recent past and remain fit for purpose. I am aware that some stakeholders have called for the introduction of a new function along the lines that have been proposed by Ms Marra in the belief that the existing functions require to be broadened to reflect the full range of services that the service provide. However, I am not persuaded that such a move is necessary or prudent.

Amendment 265 would result in an extremely wide-ranging function and would impose duties on SFRS to save lives, protect property and render humanitarian services across Scotland in all circumstances and without limit or constraint. That aim is neither sensible nor achievable. There is nothing to suggest that the existing statutory functions fail in any way to support the fire and rescue service in undertaking the wide prevention and response role that it has developed.

Furthermore, through the additional functions order, the legislative framework already provides sufficient flexibility to adjust or expand existing functions in the future if necessary without the need for primary legislation. The functions are underpinned by the “Transitional Fire and Rescue Framework for Scotland 2012” and will be put in context and further strengthened by the inclusion of a new purpose for SFRS that will have a clear focus on prevention and community safety, to which all stakeholders, including the Fire Brigades Union and SFRS, will have the opportunity to offer input. I welcome comments in the Justice Committee’s stage 1 report and evidence from the chief inspector of fire and rescue authorities that support our view that the framework provides a suitable vehicle for any clarification or further guidance on SFRS functions without the need for legislation. I therefore cannot support amendment 265.

With regard to Lewis Macdonald’s amendments, I suggest that adopting the definition of “Scottish marine area” in amendment 274 would significantly expand the scope of SFRS’s statutory functions and would result in significant and disproportionate resource implications. I remain of the view that the position that is taken in the bill is the better and more proportionate approach; for a start, it will maintain the existing approach under the 2005 act by defining the low-water mark as the seaward boundary up to which SFRS is required to respond to incidents. Although SFRS will have the power to exercise functions beyond that point, that approach will ensure that its actions are discretionary and based on risk assessment rather than being mandatory in all cases. I cannot support amendment 274.

If agreed to, amendments 266 and 267 would remove sections 109 and 110, the purpose of which is to update sections 35 and 36 of the 2005 act, which already provide powers to accept assistance and delegate functions to third parties. Sections 109 and 110 are also intended to add new safeguards to ensure that those powers cannot be exercised in the future unless the chief officer is satisfied that the third party has the necessary knowledge, skills and expertise to carry out the function. I cannot support any move to remove powers for SFRS to accept assistance from or to delegate functions to third parties, or to remove the new safeguards that will provide protection when the SFRS does that.

Arrangements with third parties play a vital role in the collaborative delivery of fire and rescue services—with the support, for example, of mountain rescue or cave rescue teams—and allow aspects of performance of functions to be delegated to specialist agencies. In the context of a single service, it is all the more important to ensure that powers to accept assistance or to delegate functions be exercised only where the chief officer is satisfied that the third party in question has sufficient knowledge, skills and expertise to perform the function. This additional requirement strengthens the assistance provisions, building on protections that should ensure that high levels of service are maintained and public safety is not jeopardised. I therefore cannot support amendments 266 and 267.

12:00

I appreciate that with amendment 264 Lewis Macdonald is seeking to prevent any privatisation or contracting out of SFRS services. However, the fact that there is no limitation on the requirement that he proposes for SFRS to obtain ministers’ agreement before entering into any contract will severely constrain the service’s ability to go about its daily business. I certainly do not want every contract for stationery or diesel to come across my desk.

With regard to the Government amendments in the group, amendment 127 seeks to make it clear that the SFRS can exercise its power to form or promote companies only with Scottish ministers’ consent. That will ensure that the SFRS can establish a company only if there is sound reason to do so and if the company’s activities are consistent with SFRS’s core functions.

Amendments 163 and 130 seek to repeal sections 16(5) and 16(6) of the Fire (Scotland) Act 2005 to allow SFRS to make a profit from providing services such as hiring out vehicles or premises, providing training to individuals outwith the SFRS or rescuing animals. In line with the 2005 act, the SFRS will not be able to charge for
carrying out its core duties such as extinguishing fires, protecting life or protecting property in the event of fire. I ask the committee to support amendments 127, 130 and 163.

Jenny Marra: I appreciate that the cabinet secretary and the Scottish Government have a wider procurement strategy, but I reiterate that amendment 263 deals with a specific need of supported workplaces that produce uniforms and which are currently under threat of closure from the United Kingdom Government. The cabinet secretary might well want to do all that he can to support those workers and to use the powers in his grasp to bring those contracts back to Scotland, but this one simple measure could easily save the jobs of 43 workers in Dundee. The proposal is within the law—by which I mean article 19—and it is within the power of the cabinet secretary and committee members to save those jobs by supporting the amendment. I urge the committee to do so.

The Convener: The question is, that amendment 263 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 264 disagreed to.

Amendment 127 moved—[Kenny MacAskill]—and agreed to.

Amendment 128 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 128 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 128 agreed to.

Amendment 129 moved—[Kenny MacAskill].

The Convener: The question is, that amendment 129 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Against
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

The Convener: The result of the division is: For 5, Against 2, Abstentions 1.

Amendment 129 agreed to.

Section 99, as amended, agreed to.

Before section 100

Amendment 265 moved—[Jenny Marra].

The Convener: The question is, that amendment 265 be agreed to. Are we agreed?
Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 265 disagreed to.
Sections 100 to 107 agreed to.

Section 108—Charging
Amendment 130 moved—[Kenny MacAskill]—and agreed to.

Section 109—Assistance
Amendment 266 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 266 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.

Amendment 267 disagreed to.
Sections 110 agreed to.

Section 111 agreed to.

Section 112—Strategic plan
Amendments 221 and 222 moved—[Kenny MacAskill]—and agreed to.

Section 112, as amended, agreed to.

Section 113—Local fire and rescue plans
The Convener: Amendment 244, in the name of Alison McInnes, is grouped with amendments 268, 269, 131 to 135 and 270.

Alison McInnes: Amendment 244 reflects amendment 173 to part 1 of the bill, which we considered earlier. The intention is to place greater emphasis on the role that a local authority will have in determining the priorities and objectives of the SFRS in its area. As I said in relation to amendment 173, I do not doubt the intent behind the current wording of the provisions, but I am concerned that the use of the word “involve” remains open to interpretation. Amendment 244 would make it clear that the priorities and objectives must be developed by the SFRS acting in concert with each local authority.

I am largely happy to agree to the other amendments in the group, although I would welcome some clarification from the cabinet secretary on amendment 135, which changes the language. Instead of a local authority having the right to make representations or observations, or to offer advice or recommendations, it will simply be able to provide feedback. I would be interested to hear whether the minister thinks that that risks limiting local authorities’ ability to monitor and shape the work of the SFRS in their areas.

I move amendment 244.

Lewis Macdonald: As Alison McInnes indicated, the debate on these amendments is, to a degree, a mirror image of this morning’s first debate, except that, in this case, the amendments relate to the fire service. My amendments make
provision for improvements in the transparency and accountability of the fire service through the local fire and rescue plans. They also seek to resolve the question of what should happen when there is a conflict or a difference of opinion between a local authority and the local senior officer in the fire service, which amendment 270 covers.

Like Alison McInnes, I was struck by amendment 135. The rest of the Government's amendments in the group are fairly uncontentious, but amendment 135 appears to dilute the existing provision in the bill, which would be a step in the wrong direction. I am inclined to think that it would be a retrograde step.

Kenny MacAskill: Although I understand the motivation for amendment 244, I believe that the bill already delivers a framework for local collaboration and partnership. It gives the local authority clear decision-making powers to approve local plans, which—under new section 41E(2)(a) of the 2005 act, for which section 113 provides—must include the "priorities and objectives for SFRS in connection with the carrying out in the local authority's area of SFRS's functions."

In that way, the bill supports continuing efforts by local senior officers and local authorities to work collaboratively to improve shared outcomes. That is more pragmatic than creating a statutory requirement for the meeting of minds, which is why I cannot support amendment 244.

Amendments 268 and 269 create duties for the provision of additional information to local authorities on resource allocation and workforce deployment. The bill already enables local authorities to obtain reports and information from the local senior officer on the carrying out of SFRS functions in their area. That can include information on the allocation of resources and the deployment of staff in that area. I consider that approach to be more helpful than prescribing the duties that are proposed in the amendments.

I want to make three points. First, amendment 268 would place a statutory duty on the future chief officer to provide information on matters that are not within his or her gift, as they are the responsibility of the existing authorities' boards and chief fire officers.

Secondly—this applies to both amendments 268 and 269—we expect there to be a core allocation of resources and staff in each local authority area. However, one of the benefits of a single service is the opportunity to provide more equal access to specialist support that is organised on a national basis but is accessible to all communities in Scotland. Such a resource may not be easily attributable to individual local authority areas.

Thirdly, the bill already requires local fire and rescue plans to set out how the SFRS proposes to deliver priorities and objectives. That is a far more meaningful requirement, which focuses on the means by which outcomes will be delivered, than a requirement for a head count of personnel who are expected to be employed in a local area, as proposed in amendment 269.

For those reasons, I cannot support amendments 268 and 269, and I am not convinced about the need for amendment 270, as the bill already makes the SFRS responsible for ensuring that adequate arrangements are in place for the carrying out of SFRS functions in each local authority area. Local senior officers are SFRS employees, and local authorities can contact the SFRS concerning their conduct, performance or any other aspect of SFRS functions without the need for statutory provisions.

Government amendments 131 to 135 make relatively minor adjustments to the provisions to improve the operation of local authority scrutiny of the SFRS. We have already discussed corresponding police provisions.

Amendment 131 will amend new section 41E(3) of the 2005 act, to insert express reference to representatives of SFRS employees. That will ensure that local senior officers must consult such representatives when they are preparing local fire and rescue plans.

Amendment 132 will amend new section 41H of the 2005 act to make it clear that the duty on the SFRS to provide a local authority with information or reports that relate to the carrying out of SFRS functions in that authority's area may include reports that are related to the local fire and rescue plan.

Amendment 133 will ensure that feedback is provided by the local authority to the local senior officer, and amendment 134 will make a minor technical change.

Amendment 135 will adjust provisions that relate to the monitoring role of local authorities. The focus remains on enabling local authorities to "monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority's area".

I do not consider that the amendment will limit the opportunities for local authorities to scrutinise local services—Alison McInnes was worried about that. It is intended only to ensure consistency of drafting with the equivalent police provisions in section 46(2). It responds to stakeholders' concerns that have arisen from a different drafting about the policy intent being different across the police and fire services. I give Alison McInnes the assurance that the amendment is meant simply to get a
shared drafting mechanism, and not to undermine what would be provided.

I ask the committee to support amendments 131 to 135, in the name of Roseanna Cunningham.

The Convener: We will find out whether the cabinet secretary has reassured Alison McInnes on amendment 135.

Alison McInnes: I am not greatly reassured about it, and will disagree to it. I will press amendment 244.

The Convener: The question is, that amendment 244 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 244 disagreed to.

Amendment 268 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 268 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 244 disagreed to.

Amendment 268 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 268 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 5, Against 3, Abstentions 0.

Amendment 135 agreed to.

The Convener: There was no jiggery-pokery there, Alison. I am just trying to move us along.

Amendment 270 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 270 be agreed to. Are we agreed?

Members: No.
The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 270 disagreed to.

Section 113, as amended, agreed to.

Section 114—Annual report

Amendment 136 moved—[Kenny MacAskill]—and agreed to.

Amendment 271 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 271 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 271 disagreed to.

Section 114, as amended, agreed to.

Sections 115 and 116 agreed to.

Section 117—Inspectors of SFRS

The Convener: Amendment 272, in the name of Graeme Pearson, is in a group on its own.

Graeme Pearson: Amendment 272 addresses the current provision in the bill that reports should be laid before Parliament if they relate to matters mentioned in section 43B(3)(a) and (b). I see no reason why the provision should be limited in that regard. I would be grateful to hear the cabinet secretary’s views on the matter.

I move amendment 272.

Kenny MacAskill: I am happy to support amendment 272.

The Convener: My goodness. Things are turning out nice.

Amendment 272 agreed to.

Amendment 137 moved—[Kenny MacAskill]—and agreed to.

Section 117, as amended, agreed to.

After section 117

The Convener: Amendment 245, in the name of John Lamont, is in a group on its own. John has one of his own—this is getting exciting.

John Lamont: Thank you, convener. I hope that I meet your excitement.

Amendment 245 seeks to tackle an issue that was the subject of petition PE1254, which was closed in September 2011. The petition called for an amendment to section 51 of the Fire (Scotland) Act 2005 to allow special constables to be employed by a fire and rescue authority. In England and Wales, a similar provision exists in the Fire and Rescue Services Act 2004, but special constables are not deemed to be members of the police force there. In Scotland, special constables hold the same powers. The result is that in England and Wales, special constables are allowed to act as fire officers but in Scotland they are not.

PE1254, by Mark Laidlaw, was closed on the grounds that the Scottish Government would consider the issue as part of the wider consultation on police and fire reform. Although the issue was included in the consultation on the bill, the Government has taken the view that to allow special constables to act as fire officers in the new single police force could risk creating a conflict of interest.

Amendment 245 would permit the employment of special constables as fire officers. There are four reasons why such an arrangement would be desirable. First, it would allow public-spirited people to have more than one role, which would be particularly useful in rural communities. Secondly, it would bring special constables in line with their counterparts in England and Wales, who are currently allowed to be fire officers. Thirdly, the skills of a special constable could be useful for fire officers and vice versa. For example, a fire officer attending what may turn out to be a crime scene could benefit from police training on evidence protection. Lastly, the petition gained the support of a number of organisations. It attracted the support of the Chief Fire Officers Association in Scotland, the Fire Officers Association and the Scottish Police Federation.
I move amendment 245.

**The Convener:** It is my turn to speak because this relates to a constituent of mine from Galashiels, Mark Laidlaw. I had dealings with him on this important issue when he lodged his petition. I hope that the cabinet secretary will look favourably on it, because there is a lacuna in the law that prevented special constables from being in the fire service. The fact that this issue has been raised shows the value of the Public Petitions Committee and the value of an individual being able to lodge a petition.

**Roderick Campbell:** It is a sensible proposal.

**Kenny MacAskill:** I fully understand the point made by the convener and by Mr Lamont, as preventing special constables from being in the fire service can have an effect on rural communities. As Mr Lamont correctly pointed out, the Parliament passed the original prohibition in order to deal with conflicts of interest—long before I became Cabinet Secretary for Justice. However, it appears to the Government that this could be managed by the chief constable or the chief fire officer considering the individual circumstances. If the committee is happy with the amendment, so are we.

**The Convener:** The committee is happy and Mr Laidlaw will be happy. John, do you wish to press the amendment?

**John Lamont:** No—yes, I wish to press the amendment, sorry.

**The Convener:** There was a hesitancy there. No wonder you are blushing. We are all getting tired.

*Amendment 245 agreed to.*

*Section 118 agreed to.*

**Schedule 5—Transfer of staff, property etc**

**The Convener:** Amendment 273, in the name of Lewis Macdonald, is grouped with amendments 138 to 140.

**Lewis Macdonald:** We rehearsed the arguments for this amendment in relation to the application of the conditions of TUPE to police staff. The intention behind amendment 273 is to extend their application to those who work in the fire service. The cabinet secretary gave a clear assurance as to how he will ensure that the effective conditions of TUPE will apply in relation to police staff. I would welcome a similar assurance from him in relation to the fire service. In the meantime, I move amendment 273.

**Kenny MacAskill:** Amendment 273 seeks to insert a new provision into schedule 5 to state that the TUPE regulations will apply to the transfer of fire and rescue service to the SFRS.

As we discussed earlier in relation to police staff, it is neither appropriate nor necessary to make provision in the bill to apply TUPE regulations directly. I have made a clear commitment, which I make again now for fire and rescue staff, that staff transfers under the bill should result in no detriment to any individual and that the Cabinet Office statement of practice on staff transfers in the public sector will apply. Indeed, the bill goes a step further than COSOP by making statutory provision in schedules 4 and 5 so that relevant TUPE principles are legally binding in respect of transfers under the bill. For those reasons, I cannot support amendment 273.

Government amendment 138 is a minor technical amendment to ensure consistent use of the term “transfer day” in the schedule. Amendments 139 and 140 are technical amendments that ensure that all relevant information is provided—in the correct format—for the transfer schemes.

I ask the committee to support amendments 138 to 140 in the name of Roseanna Cunningham.

**Lewis Macdonald:** I have no difficulty with the Government amendments.

In relation to amendment 273, the cabinet secretary has put significant assurances on the record. I wish to consider those assurances in consultation with staff representatives between now and the next stage of the bill. On that basis, I withdraw amendment 273.

*Amendment 273, by agreement, withdrawn.*

*Amendments 138 to 140 moved—[Kenny MacAskill]—and agreed to.*

*Schedule 5, as amended, agreed to.*

*After section 118*  

**Amendment 223 moved—[Kenny MacAskill]—and agreed to.*

*Section 119 agreed to.*

**Section 120—Subordinate legislation**

**The Convener:** Amendment 141, in the name of the cabinet secretary, is grouped with amendment 246.

**Kenny MacAskill:** Amendment 141 responds to a point that the Subordinate Legislation Committee raised. The amendment makes orders under section 122 subject to the affirmative procedure when they make textual amendments to primary legislation, and subject to the negative procedure otherwise.
Amendment 246 amends section 120 so that an order that is made under paragraph 1 of schedule 5 to appoint a day for the transfer of joint fire and rescue board staff to the Scottish fire and rescue service is subject to no parliamentary procedure. That is in line with usual practice. The amendment will bring the approach for the transfer of the fire and rescue service into line with the procedure for the equivalent transfer of staff and constables to the police service of Scotland.

I ask the committee to support amendments 141 and 246. I move amendment 141.

Amendment 141 agreed to.

Amendment 246 moved—[Kenny MacAskill]—and agreed to.

Section 120, as amended, agreed to.

Sections 121 to 123 agreed to.

Schedule 6—Minor and consequential amendments

The Convener: Amendment 224, in the name of the cabinet secretary, is grouped with amendments 142, 225 to 232, 143, 144, 147, 150 to 158, 233 to 240, 159 to 162, 164 and 241.

Kenny MacAskill: This is a group of minor and consequential amendments to other legislation. I will not go through all the amendments, but I am happy to provide more detail on any on which members have questions. I ask the committee to support all the amendments in the group.

I move amendment 224.

Alison McInnes: I think that I am looking at the right group. I am interested in the subject matter of amendments 227 to 232, which are included in the group of minor and consequential amendments, given that they relate to intrusive surveillance. I seek confirmation from the cabinet secretary that the amendments merely reflect existing practice.

Kenny MacAskill: Yes. The amendments make changes to the Regulation of Investigatory Powers (Scotland) Act 2000, which provides arrangements for the authorisation of surveillance activities, in particular intrusive surveillance for the purposes of preventing or detecting serious crime. At present, for police forces in Scotland, those forms of surveillance can be authorised only by a chief constable. Under a single police service, we do not consider that the single chief constable with a single deputy would have sufficient capacity or provide sufficient resilience to deal with the number of authorisations that is likely to be required. We also want to provide flexibility for the chief constable to arrange the police service as he or she sees fit, which might include establishing a serious crime division that would take on the activity.

The amendments provide that the chief constable may designate any deputy chief constable or assistant chief constable to grant authorisations under the 2000 act. They also remove the provisions for urgency or absence, as we expect the chief constable to designate enough senior officers to provide cover for any circumstances.

Alison McInnes: Thank you.

Lewis Macdonald: Amendment 142 removes the reference to the Police Pensions Act 1976 and amendment 229 removes the section on the grant of authorisation in cases of urgency. I would be grateful for a brief explanation of those two matters.

Kenny MacAskill: Amendment 142 removes an amendment to the Police Pensions Act 1976. Further amendments are required to that and several other acts that relate to police pensions. Some of the issues are reserved and will therefore need to be included in an order under the Scotland Act 2012 following the passage of the bill. In the interest of clarity, we intend to provide a package of measures that relate to pensions in the section 104 order rather than splitting it across two pieces of legislation.

I presume that that also deals with the other aspect.

Lewis Macdonald: The other aspect was the grant of authorisation in cases of emergency, which is covered by amendment 229, but I am grateful for your clarification on pensions.

Amendment 224 agreed to.

Amendments 142, 225 to 232 and 143 to 157 moved—[Kenny MacAskill]—and agreed to.

12:30

Amendment 274 moved—[Lewis Macdonald].

The Convener: The question is, that amendment 274 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
McInnes, Alison (North East Scotland) (LD)

The Convener: The result of the division is: For 2, Against 6, Abstentions 0.
Amendment 274 disagreed to.
Amendments 158 and 233 moved—[Kenny MacAskill]—and agreed to.

Schedule 6, as amended, agreed to.

Schedule 7—Repeals
Amendments 234 to 240, 159 to 164 and 241 moved—[Kenny MacAskill]—and agreed to.
Schedule 7, as amended, agreed to.

Section 124—Commencement

The Convener: Amendment 211, in the name of David McLetchie, is in a group on its own.

John Lamont: I will speak to and move amendment 211 in the name of my colleague David McLetchie.

The Scottish Government estimates that a single police force will result in £130 million of savings a year and £1.7 billion of savings over 15 years. Those figures and those in the financial memorandum are based on an outline business case that was produced in 2011. The financial memorandum states that it “does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets.”

Chief Constable Smith of ACPOS said that the outline business case was “never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings.”—[Official Report, Justice Committee, 28 February 2012; c 971-2.]

The Scottish Government’s position is that the full business cases are a matter for the services, as they will influence and determine the detailed design of the new police and fire and rescue services. The Government expects those business cases to be completed at the earliest opportunity available to the new services.

Our amendment 211 seeks to force the Scottish Government to publish a full business case before the implementation of the bill.

I move amendment 211.

Lewis Macdonald: Amendment 211 seems perfectly reasonable. If the Government’s decisions are based on a full understanding of the business case, one would imagine that the Government has gone beyond the outline business case that we have seen and that it is satisfied with the consequential calculations that it has made. It would therefore be entirely welcome if the spirit of enthusiastic endorsement of third-party amendments in the past 30 minutes were to be reflected again in relation to amendment 211.

The Convener: You have such charm, Lewis—you are irresistible.

Kenny MacAskill: Amendment 211 would mean that the Scottish ministers would have to publish a full business case before commencing parts of the bill under section 124. The outline business case, which was produced in accordance with Treasury guidance and published in September 2011, provided a strong evidence-based case for the move to single services. Work is under way on how the services will be delivered, but it will be up to the Scottish police authority, the SFRS board and the new chief officers to develop strategic plans for the first three years of the new services and to decide the detail of how they work. The Scottish Government expects the production of detailed business cases by the services to be a necessary contribution to that work. They should simply get on with that matter. Therefore, I cannot support Mr McLetchie’s amendment 211.

John Lamont: I cannot accept the cabinet secretary’s point. A large part of the Scottish Government’s argument in favour of single police and fire services has been about the significant savings that will be delivered to the Scottish taxpayer. It is not acceptable for the Scottish Government to push ahead with the changes without a full business case. I encourage the committee to support amendment 211.

The Convener: The question is, that amendment 211 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For
Marra, Jenny (North East Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Pearson, Graeme (South Scotland) (Lab)

Against
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)

The Convener: The result of the division is: For 3, Against 5, Abstentions 0.

Amendment 211 disagreed to.

Section 124 agreed to.

Section 125 agreed to.

Long title agreed to.

The Convener: The committee will be delighted to know that that ends stage 2 consideration of the bill. I thank you all very much. It has been a long morning for you, cabinet secretary, as it has been for the committee, but members must stay in their
seats as we move on to agenda item 2, after which they will get to go.
Police and Fire Reform (Scotland) Bill
[AS AMENDED AT STAGE 2]

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Police and Fire Reform (Scotland) Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

PART 1
POLICE REFORM

CHAPTER 1
THE SCOTTISH POLICE AUTHORITY

1 The Scottish Police Authority
(1) There is established a body corporate to be known as the Scottish Police Authority or, in Gaelic, Ùghdarras Poilis na h-Alba.
(2) Schedule 1 makes provision about the Authority’s constitution, members and staff and other matters relating to it.

2 Functions of the Authority
(1) The Authority’s main functions are—
(a) to maintain the Police Service,
(b) to promote and support continuous improvement in the policing of Scotland,
(c) to hold the chief constable to account for the policing of Scotland.
(2) The Authority also has the additional functions conferred on it by virtue of this or any other enactment.
(3) The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.

3 Maintenance of the police
In pursuance of its function under section 2(1)(a)—
(a) the Authority must (in accordance with regulations made under section 49)—
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(i) pay constables' pay and allowances, and
(ii) reimburse any expenses reasonably incurred by a constable, and
(b) the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures.

4 General powers of the Authority

(1) The Authority may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) The Authority may in particular—
(a) enter into contracts,
(b) borrow money,
(c) acquire and dispose of land and other property,
(d) with the authorisation of the Scottish Ministers, purchase compulsorily land, and
(e) form or promote (whether alone or with another) companies under the Companies Act 2006.

(3) The Authority may not exercise the power in subsection (2)(b) or (e) without the consent of the Scottish Ministers.

(4) Such consent may be given—
(a) with respect to a particular case or a particular class of case,
(b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in subsection (2)(c) includes power to accept, on such terms and conditions as the Authority considers appropriate—
(a) gifts of money, and
(b) gifts or loans of other property.

(6) The powers in subsection (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to the compulsory purchase of land under subsection (2)(d) as if—
(a) that provision were contained in an Act in force immediately before the commencement of that Act, and
(b) the Authority were a local authority.

5 Directions

(1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers.

(2) A direction may not be given in respect of—
(a) a specific operation being or to be carried out by the Police Service, or
(b) the way in which the Police Service is carrying out (or is to carry out) a specific operation.

(3) The Scottish Ministers must—
   (a) publish a direction given under this section in such manner as they consider appropriate, and
   (b) lay a copy of it before the Scottish Parliament.

(4) The Scottish Ministers may vary or revoke a direction (and subsection (3) applies in relation to an instrument varying or revoking a direction as it applies to a direction).

CHAPTER 2

THE POLICE SERVICE OF SCOTLAND

The Police Service of Scotland

There is to be a constabulary to be known as the Police Service of Scotland (or, in Gaelic, Seirbheis Phoilis na h-Alba) comprising—

(a) a constable holding the office of chief constable,
(b) one or more constables holding the office of deputy chief constable,
(c) one or more constables holding the office of assistant chief constable, and
(d) other individuals holding the office of constable.

Constables: appointment, ranks and terms of office

Senior officers

(1) The Authority must appoint—
   (a) the chief constable,
   (b) one or more deputy chief constables, and
   (c) one or more assistant chief constables.

(2) An appointment of a chief constable has effect only if approved by the Scottish Ministers.

(3) The Authority must consult the chief constable before appointing a deputy or assistant chief constable.

Regular constables

It is for the chief constable to appoint constables (other than senior officers).

Special constables

The chief constable may appoint special constables, being constables who are not entitled to be paid but who may, in accordance with regulations made under section 49, be entitled to receive—

(a) allowances,
(b) periodic payments which acknowledge the giving of, or a commitment to give, services.

10 **Constable’s declaration**

(1) An appointment of an individual as a constable has effect only where the individual has made a declaration in the following terms before a sheriff or justice of the peace—

“I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law.”.

(2) The Scottish Ministers may by order modify the declaration.

11 **Ranks**

(1) The ranks which a constable may hold are—

(a) chief constable,
(b) deputy chief constable,
(c) assistant chief constable,
(d) chief superintendent,
(e) superintendent,
(f) chief inspector,
(g) inspector,
(h) sergeant,
(i) constable.

(2) Constables appointed as senior officers under section 7 are to hold the rank corresponding to the office to which they are appointed.

(3) It is for the chief constable to assign, and to make promotions to, ranks below that of assistant chief constable.

(4) A constable may be demoted in rank only—

(a) if the constable consents, or
(b) in accordance with regulations made under section 49.

(5) The Scottish Ministers may by regulations modify subsection (1) to add or remove any rank below that of chief constable.

(5A) Regulations made under subsection (5) may make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate including (in particular) provision—

(a) creating or removing an office corresponding to the rank,
(b) relating to the functions of senior officers,
(c) modifying this or any other enactment.

(6) Before making regulations, the Scottish Ministers must consult—
(a) the chief constable,
(b) the Authority,
(c) the joint central committee of the Police Federation for Scotland,
(d) such persons as appear to them to be representative of senior officers,
(e) such persons as appear to them to be representative of superintendents (including chief superintendents), and
(f) such other persons as they consider appropriate.

12 Constables: terms of office
A constable is to hold and vacate office in accordance with—

(a) regulations made under section 49, and
(b) any other enactment (for example, the Police Pensions Act 1976 or section 14 of this Act) which makes provision in that regard.

13 Rewards
The Authority may, on the recommendation of the chief constable, pay such sums by way of reward as it thinks fit to—

(a) a constable (other than the chief constable) who in its opinion has carried out the constable’s functions with exceptional diligence or in a specially meritorious manner, or
(b) a person who in its opinion has made a substantial contribution to the carrying out of police functions.

14 Senior officers: resignation or retirement for efficiency or effectiveness
(1) The Authority may call on a senior officer to resign or, where appropriate, retire from office in the interests of efficiency or effectiveness of the Police Service.
(2) Before calling on a senior officer to resign or retire, the Authority must—

(a) give the senior officer—

(i) a written explanation of the reason why the Authority proposes to call on the senior officer to resign or retire, and
(ii) an opportunity to make written representations,
(b) consider any written representations made, and
(c) where the chief constable is to be called on to resign or retire, consult the Scottish Ministers.

(2A) Where—

(a) a senior officer is called on to resign or retire, and
(b) the officer has made written representations under subsection (2)(a)(ii),
the Authority must provide the officer with written reasons for its decision.

(3) A senior officer called on to resign or retire must do so with effect from—
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(a) the date determined by the Authority when calling on the senior officer to resign or retire, or
(b) such earlier date as may be agreed between the senior officer and the Authority.

15 Temporary service outwith the Police Service of Scotland

(1) The chief constable may make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service.

(1A) A constable on temporary service outwith the Police Service—

(a) is to continue to hold the office of constable, and
(b) except where contrary provision is made by regulations under subsection (2) or by or under any other enactment, is to continue to—

(i) have all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
(ii) have the powers and privileges of a constable throughout Scotland, and
(iii) be under the direction and control of the chief constable in relation to the constable’s performance of policing functions.

(2) The Scottish Ministers may by regulations—

(a) prescribe types of temporary service in respect of which a constable—

(i) may not be engaged in pursuance of subsection (1),
(ii) may be so engaged only with the consent of the Authority or the Scottish Ministers (or both),
(iii) is not to have any of the functions, powers or privileges of a constable,
(iv) is not to be under the direction and control of the chief constable, and
(b) make such further provision in respect of constables on temporary service as they consider appropriate.

(4) Regulations made under subsection (2) may in particular make provision—

(a) modifying any provision of this Act or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables) in relation to constables on temporary service,
(b) about the liability for unlawful conduct of a constable while on temporary service.

(5) At the end of a period of temporary service outwith the Police Service, a constable—

(a) is entitled to revert to serve as a constable of the Police Service in the rank in which the constable was serving immediately before the period began, and
(b) is to be treated as if the constable has served as a constable of the Police Service during the period of temporary service for the purposes of any scale prescribed by virtue of regulations made under section 49 fixing the constable’s rate of pay by reference to length of service.

(6) Subsection (5) does not apply where a pension, allowance or gratuity becomes payable to the constable during the period of temporary service by virtue of regulations made under the Police Pensions Act 1976.
(7) A constable may, during any period of temporary service, be promoted to a higher rank and in such a case—

(a) the reference in subsection (5)(a) to the rank in which the constable was serving immediately before the period began is to be construed as a reference to the rank to which the constable is promoted, and

(b) the constable is, for the purposes of subsection (5)(b), to be treated as having served in that rank from the time of promotion.

16 Temporary service as constable of the Police Service of Scotland

(1) The chief constable may make arrangements for any person falling within subsection (2) to be engaged on temporary service as a constable of the Police Service.

(2) A person falls within this subsection if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force,

(d) the Police Service of Northern Ireland,

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(f) the British Transport Police Force,

(g) the Civil Nuclear Constabulary,

(h) the States of Jersey Police Force,

(i) the salaried police force of the Island of Guernsey, or

(j) the Isle of Man Constabulary.

(3) An individual may be engaged on temporary service under arrangements made under this section only where the individual has made the declaration specified in section 10 before a sheriff or justice of the peace.

(4) An individual engaged on temporary service under such arrangements—

(a) is under the direction and control of the chief constable,

(b) has all the functions conferred on a constable by virtue of this or any other enactment or by rule of law, and

(c) has all the powers and privileges of a constable throughout Scotland.

Chief constable

17 Chief constable’s responsibility for the policing of Scotland

(1) The chief constable is responsible, and must account to the Authority, for the policing of Scotland.

(2) In particular, the chief constable—

(a) has direction and control of the Police Service (see section 21),
(b) is responsible for the day to day administration of the Police Service, including the allocation and deployment of resources received from the Authority,

(c) is to be involved in the preparation of the strategic police plan and the Authority’s annual report (see sections 34(3A) and 40(4)),

(ca) is to prepare annual police plans (see section 35),

(d) must seek to secure continuous improvement in the policing of Scotland (see section 38(2)),

(e) must designate local commanders and ensure that adequate arrangements are in place for the policing of each local authority area (see section 45), and

(f) may be required to provide the Authority with information relating to the Police Service, policing or the state of crime (see sections 41(3), 61(4) and 81(3)).

(3) The chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by—

(a) the appropriate prosecutor in relation to the investigation of offences,

(b) the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995 (c.46),

(c) the Lord Justice General, or

(d) the sheriff principal for the place in which the functions are to be carried out.

(4) The chief constable must seek to ensure that the policing of Scotland is done—

(a) with due regard to—

(i) the policing principles, and

(ii) any recommendations made or guidance issued by the Authority on the policing of Scotland, and

(b) in accordance with—

(i) the strategic police priorities,

(ii) the most recently approved strategic police plan, and

(iii) the relevant annual police plan.

(5) Any recommendation made or guidance issued by the Authority for the purposes of subsection (4)(a)(ii) must not be inconsistent with—

(a) the strategic police priorities,

(b) the most recently approved strategic police plan, or

(d) any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences.

18 Delegation of chief constable’s functions

(1) The chief constable may direct or authorise any other constable to carry out any of the chief constable’s functions.

(2) A direction or authorisation under subsection (1) does not affect the chief constable’s—

(a) responsibility for the carrying out of delegated functions, or
(b) ability to carry out delegated functions.

(3) The Authority must designate a deputy chief constable to carry out the chief constable’s functions where—
   (a) the office of chief constable is vacant, or
   (b) the chief constable is unable to carry out those functions by reason of being absent, incapacitated or suspended from duty.

(5) Only one deputy chief constable may be so designated to act at any one time.

(6) This section does not affect any restriction on delegation of the chief constable’s functions contained in any enactment which makes provision in that regard.

Functions of constables

19 Constables: functions and jurisdiction

(1) A constable has—
   (a) all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
   (b) all the powers and privileges of a constable throughout Scotland.

(2) A constable who is the chief constable, a deputy chief constable, an assistant chief constable or a local commander also has all the additional functions conferred on such a constable by virtue of this or any other enactment or by rule of law.

20 Constables: general duties

(1) It is the duty of a constable—
   (a) to prevent and detect crime,
   (b) to maintain order,
   (c) to protect life and property,
   (d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,
   (e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and
   (f) to attend court to give evidence.

(2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

(3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).
21 Direction and control of the Police Service

(1) Constables are, in the carrying out of their functions (including any functions held by virtue of being a deputy chief constable, an assistant chief constable or a local commander), subject to the direction and control of the chief constable.

(2) A constable must—
   (a) carry out lawful orders, and
   (b) punctually and promptly perform all appointed duties and attend to all matters within the scope of that constable’s office.

(3) Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable.

22 Failure to perform duty

(1) It is an offence for a constable, without reasonable excuse, to be absent from duty.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(3) It is an offence for a constable to neglect or violate the constable’s duty.

(4) A person who is guilty of an offence under subsection (3) is liable—
   (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, or
   (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

23 Failure to return equipment

(1) It is an offence for a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, immediately upon being ordered to do so, any relevant item.

(2) It is an offence for a person who ceases to be a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, when ceasing to be a constable, any relevant item.

(3) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(4) Subsection (5) applies where a sheriff or a justice of the peace is satisfied on evidence on oath that—
   (a) there has been a failure to return a relevant item, and
   (b) the relevant item is in any place.

(5) The sheriff or, as the case may be, the justice of the peace, may grant a warrant to any constable named in the warrant to enter and search the place at any reasonable hour, if necessary by force, and to take any relevant item which is found in the place.
(6) For the purposes of this section, a “relevant item” is anything issued to a constable for the carrying out of the constable’s functions.

24 Liability for unlawful conduct

(1) The chief constable is liable in respect of any unlawful conduct on the part of any person falling within subsection (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(2) A person falls within this subsection if the person is—

(a) a constable under the direction and control of the chief constable, or

(b) a member of an international joint investigation team who is not—

(i) a constable,

(ii) a member of the Authority’s staff, or

(iii) a member of the police staff.

(3) The Authority must pay—

(a) any damages or expenses awarded against the chief constable in any proceedings brought by virtue of this section,

(b) any expenses incurred by the chief constable in relation to such proceedings (in so far as not recovered in the proceedings), and

(c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the Authority).

(4) Where the office of chief constable is vacant, references in subsections (1) to (3) to the chief constable are to be read as references to the person who is for the time being carrying out the chief constable’s functions.

(5) The Authority may, in such cases and to such extent as it thinks fit, pay—

(a) any damages or expenses awarded against a constable in proceedings arising in respect of any unlawful conduct on the part of that constable,

(b) any expenses incurred by the constable concerned in relation to such proceedings (in so far as not recovered in the proceedings),

(c) any sum required in connection with the settlement of any claim which has or might have given rise to such proceedings.

Police cadets

25 Police cadets

(1) The chief constable may appoint police cadets to undergo training with a view to becoming constables.

(2) Subject to section 21 and any other contrary enactment, police cadets are to be treated as employees of the Authority.
Police staff

26 Police staff

(1) The Authority may appoint police staff to assist in the carrying out of police functions.

(2) Police staff appointed under subsection (1) may be—

(a) employed by the Authority, or

(b) provided to the Authority under arrangements between the Authority and a third party.

(3) The chief constable has power to make appointments under subsection (1) on behalf of the Authority.

27 Terms and conditions of police staff

(1) Police staff may be employed on terms and conditions determined by the Authority.

(2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of police staff.

(3) The arrangements mentioned in subsection (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

28 Police custody and security officers

(1) The chief constable may certify a member of the police staff appointed under section 26(1) as having been authorised to carry out functions in relation to custody and security.

(2) An individual so certified is to be known as a “police custody and security officer”.

(3) A police custody and security officer has—

(a) for the purposes of the functions which the officer is authorised to carry out, the powers and duties set out in schedule 2, and

(b) all other functions conferred on police custody and security officers by virtue of this or any other enactment or by rule of law.

(4) A police custody and security officer is to be regarded as acting in accordance with the officer’s powers and duties only if the officer is readily identifiable as such an officer when so acting (whether or not by means of a uniform or badge worn).

(5) Sections 22(3) and (4), 23 and 89 apply in relation to a police custody and security officer as they apply in relation to a constable (and when so applied, a reference to a constable is to be read as a reference to such an officer).

29 Certification of police custody and security officers

(1) The chief constable may issue a certificate under section 28(1) only if satisfied that the member of the police staff concerned—
(a) is a fit and proper person to carry out a police custody and security officer’s functions, and

(b) has received training to such standard as the chief constable considers appropriate for the carrying out of those functions.

(2) The chief constable may revoke a certificate if the certified person appears to the chief constable not to be a fit and proper person to carry out a police custody and security officer’s functions.

(3) The chief constable may (pending consideration of whether to revoke a certificate) suspend the certificate where it appears to the chief constable that the certified person may not be a fit and proper person to carry out a police custody and security officer’s functions.

(4) A certificate is otherwise to continue in force until such date or occurrence as it may specify.

30 False statements in relation to certification

(1) It is an offence for a person to provide information for the purpose of enabling or assisting the person or any other person to be certified as a police custody and security officer if the person knows that, or is reckless as to whether, the information is false or misleading in a material respect.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 3
FORENSIC SERVICES

31 Forensic services

The Authority must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.

CHAPTER 4
PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

32 Policing principles

The policing principles are—

(a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and

(b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—

(i) is accessible to, and engaged with, local communities, and

(ii) promotes measures to prevent crime, harm and disorder.
33 Strategic police priorities

(1) The Scottish Ministers may determine strategic priorities for the Authority (“strategic police priorities”).

(2) Strategic police priorities may relate to—

(a) the policing of Scotland, or

(b) the carrying out of the Authority’s functions.

(3) Before determining strategic police priorities, the Scottish Ministers must consult—

(a) the Authority,

(aa) the chief constable,

(b) such persons as appear to them to be representative of local authorities, and

(c) such other persons as they consider appropriate.

(4) When determining strategic police priorities, the Scottish Ministers must have regard to the policing principles.

(5) The Scottish Ministers must arrange for the strategic police priorities to be published in such manner as they consider appropriate.

(5A) The Scottish Ministers must lay a copy of the strategic police priorities before the Scottish Parliament.

34 Strategic police plan

(1) The Authority must prepare a strategic police plan.

(2) A strategic police plan is a plan which—

(a) sets outs the main objectives for the Authority and for the policing of Scotland,

(b) explains the reasons for selecting each main objective,

(c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,

(d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and

(e) includes any other information connected with the Authority’s functions, or policing, which the Authority considers appropriate.

(3) Before preparing a strategic police plan, the Authority must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in policing.

(3A) The Authority must involve the chief constable in the preparation of a strategic police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.

(4) When preparing a strategic police plan, the Authority must—

(a) send a copy of a draft plan to—

(i) each local authority,

(ii) the inspectors of constabulary, and
(iii) such other persons as the Authority considers likely to have an interest in
the plan,

(b) invite the recipients to comment on the draft plan within such reasonable period as
the Authority may specify, and

(c) have regard to any comments received within that period.

(5) The Authority must—

(a) submit its strategic police plan to the Scottish Ministers, and

(b) use its best endeavours to secure their approval of the plan (with or without
modifications).

(6) If the Scottish Ministers approve a strategic police plan submitted to them, the Authority
must—

(a) publish the approved plan in such manner as the Authority considers appropriate
(having regard to the desirability of it being accessible to those whom the
Authority considers likely to have an interest in it), and

(b) lay a copy of it before the Scottish Parliament.

(7) The Authority—

(a) must review an approved strategic police plan at least once every 3 years (and
must, in particular, do so where the strategic police priorities have been
significantly revised), and

(b) following such a review, must—

(i) prepare a replacement strategic police plan, or

(ii) notify the Scottish Ministers that, having undertaken a review, the
Authority has concluded that there is no need to replace the existing
strategic police plan.

(8) Subsections (3) to (7), and sections 33 and 37, apply in relation to a replacement strategic
police plan as they applied in relation to the plan being replaced.

35 Annual police plans

(1) The chief constable must prepare an annual police plan for each yearly period beginning
on 1 April.

(2) An annual police plan is a plan which—

(a) sets out the proposed arrangements for the policing of Scotland during the yearly
period,

(b) describes how those arrangements are expected to contribute towards the
achievement of the main objectives for the policing of Scotland set out in the
strategic police plan (by reference, where appropriate, to outcomes identified in
that plan), and

(c) includes any other information connected with policing which the chief constable
considers appropriate.

(2A) When preparing an annual police plan, the chief constable must—

(a) send a copy of a draft plan to the Authority,
(b) invite the Authority to comment on the draft plan within such reasonable period as
the chief constable may specify, and
(c) have regard to any comments received within that period.

(3) The chief constable must—

5 (a) publish the annual police plan before the start of the yearly period to which it
relates in such manner as the chief constable considers appropriate (having regard
to the desirability of it being accessible to those whom the chief constable
considers likely to have an interest in it), and
(b) lay a copy of it before the Scottish Parliament.

37 Planning functions: considerations

In carrying out their respective functions in relation to the preparation of the strategic
police plan and each annual police plan, the Authority and the chief constable must—

(a) have regard to the policing principles,
(b) have regard to, and ensure that the strategic police plan and each annual police
plan is not inconsistent with, the strategic police priorities, and
(c) ensure that an annual police plan is not inconsistent with the most recently
approved strategic police plan.

CHAPTER 5

BEST VALUE

38 Best value

(1) It is the duty of the Authority to make arrangements which secure best value for the
Authority (that is, a continuous improvement in the carrying out of the Authority’s
functions).

(2) It is the duty of the chief constable to make arrangements which secure best value for
the Police Service (that is, a continuous improvement in the carrying out of police
functions).

(3) In securing best value, the Authority and the chief constable must maintain an
appropriate balance among—

(a) the quality of the carrying out of functions,
(b) the cost of carrying out functions,
(c) the cost to persons of any service provided for them on a wholly or partly
rechargeable basis by the Authority or, as the case may be, under arrangements
made by the chief constable.

(4) In maintaining that balance, the Authority and the chief constable must have regard to—

(a) efficiency,
(b) effectiveness,
(c) economy, and
(d) the need to meet the equal opportunity requirements.
(5) The Authority and the chief constable must carry out their duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

39 Best value: further provision

(1) In carrying out their respective duties under section 38(1) and (2), the Authority and the chief constable must have regard to—

(a) any relevant guidance issued by the Scottish Ministers, and

(b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of subsection (1) or, as the case may be, (2) of section 38 (or purposes which include those purposes).

(2) In the event of a conflict in any respect between any matters to which the Authority or the chief constable is to have regard under subsection (1), the Authority or the chief constable must in that respect have regard only to those falling within paragraph (a).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—

(a) the Authority,

(b) the chief constable, and

(c) such other persons as they consider appropriate.

(4) The Scottish Ministers may vary or revoke relevant guidance.

(5) In this section “relevant guidance”—

(a) means guidance on the carrying out of the duties imposed by subsections (1) or (2) of section 38,

(b) includes, in particular, guidance on—

(i) how to make, and what is to be included in, the arrangements mentioned in those subsections,

(ii) how to implement the duties imposed by those subsections.

Chapter 6

Annual reports, accounts, audit and examination

40 The Scottish Police Authority’s annual report

(1) The Authority must prepare an annual report as soon as practicable after the end of each reporting year.

(2) An annual report is a report setting out—

(a) an assessment of the Authority’s performance during the reporting year in carrying out its functions,
(b) an assessment of the Police Service’s performance during the reporting year in the policing of Scotland, and

c) such other information relating to the Authority’s functions, or to policing, as the Authority considers appropriate.

(3) An annual report must, in particular, contain—

(a) an assessment of the performance by the Authority and the Police Service during the reporting year in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and

(b) an assessment of the performance by the Police Service during the reporting year in implementing the proposed arrangements set out in the annual police plan for the period to which the report relates.

(4) The chief constable must—

(a) within 3 months of the end of a reporting year, provide the Authority with a report setting out the chief constable’s assessment of the Police Service’s performance during that reporting year in the policing of Scotland, and

(b) provide the Authority with such other assistance as it may reasonably require in relation to the preparation of an annual report.

(4A) A report provided by the chief constable under subsection (4)(a) must, in particular, contain the chief constable’s assessment of the Police Service’s performance during the reporting year concerned—

(a) in achieving, or in working towards achieving, the main objectives for the policing of Scotland set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and

(b) in implementing the proposed arrangements set out in the annual police plan for the reporting year concerned.

(5) The Authority must—

(a) publish each of its annual reports in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it),

(b) provide a copy of each of its annual reports to the Scottish Ministers, and

(c) lay a copy of each of its annual reports before the Scottish Parliament.

(6) In this section “reporting year” means a yearly period ending on 31 March.

41 Accounts

(1) The Authority must—

(a) keep proper accounts and proper records in relation to the accounts, and

(b) as soon as practicable after the end of each yearly period ending on 31 March, prepare a statement of accounts in respect of that period.

(2) A statement of accounts so prepared must be in such form and contain such information as the Scottish Ministers may determine.
(3) Without prejudice to the generality of section 81, the chief constable must—
   (a) provide the Authority with such assistance and information as it may reasonably
    require for the purposes of subsection (1), and
   (b) seek to ensure that sufficient information is kept for those purposes.

(4) In particular, the Authority is entitled to require the chief constable to provide, within
such reasonable time as it may specify, accounts of such of the transactions relating to
the Police Service as it may specify.

42 Audit
The Authority must send a copy of each statement of accounts to the Auditor General
for auditing.

43 Examination of Police Service by Auditor General
   (1) The Auditor General may initiate examinations into—
      (a) the economy, efficiency and effectiveness of the Police Service, and
      (b) the arrangements made by the chief constable under section 38(2).
   (2) In determining whether to initiate an examination, the Auditor General must take into
    account any proposals made by the Scottish Parliament.
   (3) It is for the Auditor General personally to initiate an examination under this section and
    to decide who is to carry it out.
   (4) In carrying out the examination that person (“the examiner”)—
      (a) is not entitled to question the merits of the policy objectives of the chief constable
          or the Police Service, but
      (b) may consider the appropriateness of any criteria used to assess the use of
          resources available to the Police Service.
   (5) The examiner (if not the Auditor General) must report the results to the Auditor General,
    who may report the results to the Scottish Parliament and the Authority.
   (6) The Auditor General may publish the results of an examination.
   (7) Sections 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 (asp
    1) apply in relation to an examination under this section as they apply in relation to an
    examination under section 23 of that Act.

44 Examinations of Scottish Police Authority by Auditor General
The reference in section 23 of the Public Finance and Accountability Act 2000 to
examinations into the economy, efficiency and effectiveness with which resources have
been used is, in relation to the Authority, to include a reference to examinations into the
arrangements made by the Authority under section 38(1).
CHAPTER 7
LOCAL POLICING

45 Local policing

(1) The chief constable must ensure that there are adequate arrangements in place for the policing of each local authority area (and any adjacent territorial waters).

(2) For each local authority area, the chief constable must designate a constable as local commander.

(3) A constable may be designated as local commander in relation to more than one local authority area.

46 Local authority role in policing

(1) A local commander must involve the local authority in the setting of priorities and objectives for the policing of its area.

(2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander—

(a) its views on any matter concerning or connected to the policing of its area, and

(b) any recommendations for the improvement of the policing of its area that it thinks fit.

(2A) A local authority may provide feedback by reference to any local police plan in force for the area.

(3) A local commander must provide to the local authority such—

(a) reports on the carrying out of police functions in its area (including by reference to any local policing plan in force for the area),

(b) statistical information on complaints made about the Police Service in, or the policing of, its area, and

(c) other information about the policing of its area,

as the local authority may reasonably require.

(4) A local commander may refer a requirement under subsection (3) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—

(a) the carrying out of any operation by the Police Service, or

(b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the chief constable.

47 Duty to participate in community planning

(1) In section 16(1) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning)—

(a) paragraph (c) is repealed, and

(b) in paragraph (e), for “a police force” substitute “the Police Service of Scotland”.
(2) The chief constable must delegate the carrying out of the chief constable’s functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.

(3) Subsection (2) does not affect—

(a) the chief constable’s responsibility for the carrying out of the delegated functions,

(b) the chief constable’s ability to carry out the delegated functions.

### Local police plans

(1) As soon as is reasonably practicable after the first strategic police plan is approved under section 34, a local commander must prepare and submit a local police plan to the relevant local authority for approval.

(2) A local police plan is a plan which—

(a) sets out the main priorities and objectives for the policing of the local authority’s area,

(b) explains the reasons for selecting each of those priorities and objectives,

(c) sets out the proposed arrangements for the policing of the local authority’s area (and how those arrangements are expected to achieve the main priorities and objectives),

(d) where reasonably practicable, identifies outcomes by reference to which the achievement of those priorities and objectives may be measured,

(e) describes how those priorities, objectives and arrangements are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning, and

(f) includes any other information connected with the policing of the local authority’s area which the local commander considers relevant.

(3) In preparing a local police plan, the local commander must—

(a) have regard to the most recently approved strategic police plan, and

(b) consult—

(i) the joint central committee of the Police Federation for Scotland,

(ii) such persons as appear to the local commander to be representative of senior officers,

(iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),

(iv) such persons as appear to the local commander to be representative of police staff, and

(v) such other persons as the local commander considers appropriate.

(4) If the local authority approves a local police plan submitted to it, the local commander must publish it in such form and manner as the Authority may specify.

(5) The local commander must review the local police plan if—

(a) a new strategic police plan is approved under section 34, or
(b) the plan is not replaced under subsection (5A) or modified under subsection (7) during the period of 3 years beginning with the date of publication of the plan.

(5A) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.

(5B) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.

(6) Subsections (3) to (5) apply in relation to a replacement local police plan as they apply in relation to the plan being replaced.

(7) The local commander and the local authority may agree to modify an approved local police plan at any time.

(7A) Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.

(9) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

CHAPTER 8

GOVERNANCE AND ADMINISTRATION OF POLICE

49 Governance and administration of police

The Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets.

50 Appointments, promotions etc.

(1) Regulations made under section 49 may in particular make provision relating to—

(a) eligibility for appointment as constable or police cadet or for appointment or promotion to a particular rank,

(b) the procedure for appointment of senior officers or for the appointment or promotion of other constables,

(c) periods of service on probation,

(d) the efficiency or effectiveness of constables or police cadets,

(e) restrictions on the private life or business interests of constables or police cadets,

(f) resignation or retirement of constables.

(2) Such regulations—

(a) may provide for appointments of senior officers to be for fixed terms, but

(b) must not provide for fixed term appointment to any rank below that of assistant chief constable.

51 Conditions of service

(1) Regulations made under section 49 as to conditions of service may in particular make provision about—

(a) pay, allowances and expenses,
(b) public holidays and leave,
(c) the issue, use and return of police clothing and equipment.

(2) In relation to special constables, such regulations must not entitle them to pay but may make provision entitling them to receive periodic payments in acknowledgment of the giving of services (including provision about the minimum aggregate length of service needed within a period in order to give rise to an entitlement to receive a periodic payment in respect of that period).

(3) Regulations made under section 49—
(a) may make retrospective provision about pay or allowances, but
(b) must not retrospectively reduce any pay or allowance payable to or in respect of any person.

52 Regulations: duties

(1) Regulations made under section 49 may make provision relating to duties of constables or police cadets.

(2) Such regulations may in particular make provision about—
(a) duties which are or are not to be performed,
(b) hours of duty,
(c) the treatment as occasions of police duty of attendance at meetings of the Police Federations and any other body recognised for the purposes of section 64 of the Police Act 1996 (c.16) as representing members of police forces.

53 Disciplinary procedures: conduct and performance

(1) Regulations made under section 49 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.

(2) Such regulations may make provision—
(a) setting out—
(i) standards of behaviour which, if breached, may be treated as misconduct,
(ii) standards of performance which, if breached, may be treated as being unsatisfactory performance,
(iii) other circumstances in which a constable’s behaviour may be treated as misconduct or in which a constable’s performance may be treated as unsatisfactory (for example, where performance is inefficient or where there has been a failure to perform functions),
(b) for circumstances in which a constable may be suspended from duty pending investigation into whether the constable has been engaged in misconduct,
(c) subject to subsection (3), for a constable who is found to have been engaged in misconduct or whose performance is found to have been unsatisfactory to be dealt with by being—
(i) dismissed (with or without notice),
(ii) demoted in rank,
(iii) warned that future misconduct or unsatisfactory performance may lead to further disciplinary action,
(iv) admonished, or
(v) dealt with in any other way,
(d) conferring functions on the Police Investigations and Review Commissioner in relation to investigations of whether a constable has been engaged in misconduct,
(e) applying the procedures (with or without modifications) in relation to a constable engaged on temporary service outwith the Police Service (see section 15).

(3) Such regulations must provide for the Authority to determine any case which relates to the standard of behaviour or performance of a senior officer.

(4) A constable suspended by virtue of regulations made under section 49 is not entitled to carry out any functions as a constable unless the regulations otherwise specify.

54 Personal records

Regulations made under section 49 may make provision relating to—

(a) the keeping of personal records about constables and police cadets,
(b) the taking of fingerprints and samples from constables and police cadets and the retention, use and destruction of such fingerprints and samples or of information derived from such samples.

55 Consultation on regulations

(1) Before making regulations under section 49 about any matter mentioned in section 61(1) of the Police Act 1996 (c.16) (other than pensions), the Scottish Ministers must—

(a) share a draft of the regulations with the Police Negotiating Board for the United Kingdom, and

(b) consider any representations made.

(2) Before making any other regulations under section 49, the Scottish Ministers must—

(a) consult and share a draft of the regulations with—

(i) the chief constable,
(ii) the Authority,
(iii) the joint central committee of the Police Federation for Scotland,
(iv) such persons as appear to them to be representative of senior officers,
(v) such persons as appear to them to be representative of superintendents (including chief superintendents), and
(vi) such other persons as they consider appropriate, and

(b) consider any representations made.
56 Regulations: supplementary

(1) Regulations made under section 49 may—
   (a) make provision for the delegation of functions to—
       (i) the Scottish Ministers,
       (ii) the Authority,
       (iii) the chief constable,
       (iv) a local commander,
       (v) the Police Investigations and Review Commissioner, or
       (vi) any other person,
   (b) authorise or require the delegation of functions by any person.

(2) In the absence of express contrary intention, nothing in this Part affects the generality of
the power conferred by section 49.

CHAPTER 9

POLICE APPEALS TRIBUNALS

57 Right to appeal to police appeals tribunal

(1) A constable may appeal to a police appeals tribunal against any decision to dismiss the
constable, or to demote the constable in rank, taken in pursuance of regulations made
under section 49.

(2) An appeal is competent only if the constable has exhausted any available process of
review or appeal provided for in such regulations.

(3) Schedule 3 makes provision about police appeals tribunals, the rules relating to appeals,
and other relevant matters.

58 Representation

(1) Before determining an appeal, a police appeals tribunal must—
   (a) give both the appellant and the respondent a chance to make representations
       (whether by way of written submissions or oral hearing), and
   (b) consider such representations.

(2) Either party may require that the representations are to be made by way of oral hearing.

(3) Where an oral hearing is to be held, the parties may elect to be represented (including by
a legally qualified person).

59 Determinations by tribunal

(1) A police appeals tribunal may determine an appeal by—
   (a) confirming the decision being appealed, or
   (b) replacing that decision with any less severe decision which could have been made
       by the person who made it.
(2) Where the determination replaces the decision appealed against, it takes effect from the
date of the decision which resulted in the dismissal or demotion in rank of the appellant.

(3) Subsection (4) applies where a determination made by a police appeals tribunal
reinstates the appellant—

(a) as a constable,

(b) in—

(i) the rank previously held by the appellant, or

(ii) a different rank.

(4) The appellant is to be deemed, for the purposes of reckoning service for pension and to
such extent (if any) as may be determined by the tribunal for the purposes of pay, to
have served as a constable, or in the reinstated or different rank, continuously from the
date of the decision which resulted in the dismissal or demotion in rank of the appellant
to the date of the tribunal’s determination.

(5) In determining an appeal, the tribunal may deal with such other matters relating to the
appellant’s reinstatement or period of service as the tribunal thinks fit including, in
particular, any periods where the appellant was suspended in consequence of the
proceedings which led to the appellant’s dismissal.

60 Powers to obtain information

(1) The person appointed to chair a police appeals tribunal (the chairing member) may
require the appellant, respondent or any other person—

(a) to attend a hearing of the tribunal, at such time and such place as the chairing
member may specify, for the purposes of giving evidence,

(b) to give to the tribunal, by such day as the chairing member may specify, such
documents or information as the tribunal may reasonably require.

(2) Subsection (1) does not authorise the chairing member or the tribunal to require any
person to answer any question or to disclose anything which the person would be
entitled to refuse to answer or disclose in civil proceedings in the Court of Session.

(3) It is an offence for any person on whom a requirement under subsection (1) is served to—

(a) fail to attend a hearing of the tribunal as required by the citation,

(b) refuse or fail, while attending such a hearing as so required, to answer any
question,

(c) refuse or fail to give the tribunal any document or information so required,

(d) knowingly or recklessly make any statement in respect of any information so
required which is false or misleading in a material respect, or

(e) deliberately alter, suppress, conceal or destroy any document so required.

(4) A person who is guilty of an offence under subsection (3) is liable on summary
conviction to a fine not exceeding level 2 on the standard scale.

(5) It is a defence for a person charged with an offence under subsection (3)(a), (b) or (c) to
show that the person had a reasonable excuse for the refusal or failure.
CHAPTER 10
COMPLAINTS AND INVESTIGATIONS

61 Complaints handling
(1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.
(2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.
(3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.
(4) Without prejudice to the generality of section 81 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).
(5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).
(6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

62 The Police Investigations and Review Commissioner
(1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.
(2) Accordingly—
   (a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute—
   “The Police Investigations and Review Commissioner”
   (b) for the title of that section substitute—
   “The Police Investigations and Review Commissioner”.
   (c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.
(3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

63 General functions of the Police Investigations and Review Commissioner
After section 33 of the 2006 Act, insert—

“33A General functions of the Commissioner
(1) The Commissioner’s general functions are—"
(a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—

(i) the handling of relevant complaints; and

(ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;

(b) where directed to do so by the appropriate prosecutor—

(i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;

(ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);

(c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and

(d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).

64 Investigations under supervision of Lord Advocate or procurator fiscal

After section 41 of the 2006 Act, insert—

“Investigations

41A Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A(1), must comply with—

(a) any lawful instruction given by the appropriate prosecutor who issued the direction, and

(b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

65 Serious incidents involving the police

After section 41A of the 2006 Act (inserted by section 64), insert—

“41B Serious incidents involving the police

(1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A(1) is—

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—
(i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and

(ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;

(b) any other circumstance in or in consequence of which—

(i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

(ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or

(c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.

(2) But a matter is not a “serious incident involving the police” if it is—

(b) a matter—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or

(c) a matter which is being, or has been, investigated—

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

66  Investigations of other matters in the public interest

After section 41B of the 2006 Act (inserted by section 65), insert—

“41C  Investigation of matters in the public interest

(1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.

(2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—

(b) a matter—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;

(c) a matter which is being, or has been, investigated—
(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14); or

(d) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A(1).”.

67 Investigations: procedure etc.

After section 41C of the 2006 Act (inserted by section 66), insert—

“41D Investigations: procedure etc.

10 (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A(1) as they consider appropriate.

(2) Regulations may, in particular, make provision—

(a) requiring the chief constable or the Authority to refer matters to the Commissioner;

(b) about circumstances in which the Commissioner—

(i) must, must not or need not carry out an investigation; or

(ii) may discontinue an investigation;

(c) about the form and procedure of an investigation;

(d) imposing restrictions on the extent of any investigation;

(e) setting time limits within which matters must be investigated;

(f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);

(h) for the delegation of functions to the Commissioner.

(3) Before making regulations under this section, the Scottish Ministers must consult—

(a) the Commissioner;

(b) the Authority;

(c) the chief constable;

(ca) such persons as appear to them to be representatives of senior officers;

(cb) such persons as appear to them to be representatives of superintendents (including chief superintendents);

(cc) the joint central committee of the Police Federation for Scotland; and

(d) such other persons as they think appropriate.”.

68 Reports on investigations

After section 41D of the 2006 Act (inserted by section 67), insert—
“41E Reports on investigations

(1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A(1).

(2) The Commissioner must—

(a) provide a copy of a report prepared under subsection (1) to—

(i) the person (if any) who requested the investigation;

(ii) the Authority; and

(iii) any other person whom the Commissioner considers appropriate;

and

(c) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.

(3) Apart from identifying the Authority or the Police Service, a report must not—

(a) mention the name of any person; or

(b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

69 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 68), insert—

“41F Investigations: obstruction and contempt

(1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—

(a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A(1); or

(b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.

(2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.

70 Complaints against the Commissioner

Before section 43 of the 2006 Act insert—

“42A Complaints against the Commissioner
(1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner’s staff.

(2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.

70A Protection from actions for defamation

After section 46 of the 2006 Act, insert—

“Protection from actions for defamation

(1) For the purposes of the law of defamation—

(a) any statement made by the Commissioner or any of the Commissioner’s staff—

(i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A(1);

(ii) in communicating with any person for the purposes of such a review or investigation;

(iii) in a report on such a review or investigation; or

(iv) in a report made under section 43,

has absolute privilege;

(b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A(1) has absolute privilege; and

(c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

CHAPTER 11

HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

71 Her Majesty’s inspectors of constabulary in Scotland

(1) There are to continue to be inspectors of constabulary in Scotland.

(2) Her Majesty may by Order in Council appoint such number of inspectors of constabulary as the Scottish Ministers may determine.

(3) The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary.

(4) An inspector of constabulary is to hold and vacate office at Her Majesty’s pleasure.

(5) An inspector of constabulary is otherwise—
(a) to be paid such remuneration or allowances as the Scottish Ministers may determine, and
(b) to hold office in accordance with such other terms and conditions as may be so determined.

72  **Assistant inspectors of constabulary**

(1) The Scottish Ministers may—

(a) appoint assistant inspectors of constabulary on such terms and conditions as they may determine, or

(b) make arrangements for constables to serve as assistant inspectors of constabulary.

(2) A constable engaged on service as an assistant inspector of constabulary is under the direction and control of the inspectors of constabulary.

(3) The Scottish Ministers are liable in respect of any unlawful conduct on the part of any constable engaged on service as an assistant inspector of constabulary in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

73  **Staff officers**

(1) The inspectors of constabulary may—

(a) appoint staff officers, on such terms and conditions as they may determine, for the purpose of assisting them in the carrying out of their functions, or

(b) make arrangements for constables to serve as staff officers for that purpose.

(2) A constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary.

(3) The inspectors of constabulary are liable in respect of any unlawful conduct on the part of any constable engaged on service as a staff officer in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

74  **Functions of inspectors**

(1) The Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the Authority or the Police Service as they consider appropriate.

(2) The inspectors of constabulary may make such other inquiries as they think fit about—

(a) the state, efficiency and effectiveness of the Authority and the Police Service, and

(b) the arrangements made by the Authority and the chief constable under section 38(1) and (2).

74A  **HMICS plan**

(1) The inspectors of constabulary must prepare a plan setting out—
(a) priorities for inquiries to be carried out by them, and
(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The inspectors of constabulary—

(a) must keep the plan under review, and
(b) may from time to time revise the plan.

(3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.

(4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

**HMICS powers**

(1) The inspectors of constabulary have power to do anything which they consider necessary or expedient for the purposes of, or in connection with, the carrying out of their functions.

(2) The inspectors of constabulary may authorise any assistant inspector of constabulary, or any of their staff officers, to carry out on behalf of the inspectors of constabulary such of their functions as they may determine to the extent so authorised.

(3) Subsection (2) does not affect the inspectors of constabulary’s—

(a) responsibility for carrying out delegated functions, or
(b) ability to carry out delegated functions.

**Duty to assist and co-operate with HMICS**

The Authority and the chief constable must provide the inspectors of constabulary with such assistance and co-operation as they may require for the purposes of, or in connection with, the carrying out of their functions (and must, in particular, comply with any reasonable request made by the inspectors of constabulary in that regard).

**HMICS reports**

(1) The inspectors of constabulary must give the Scottish Ministers—

(a) a report of any inquiry carried out in pursuance of section 74(1) and any other information in relation to the report that the inspectors of constabulary think fit, and

(b) any other information relating to the inquiry that the Scottish Ministers may request.

(2) As soon as is reasonably practicable after giving the report to the Scottish Ministers, the inspectors of constabulary must—

(a) give a copy of the report to the Authority and, where the report relates to the Police Service, to the chief constable, and
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(b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of a report given to them under this section.

77A HMICS reports: other inquiries

(1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.

(2) The inspectors of constabulary must—

(a) as soon as is reasonably practicable after giving the report under subsection (1)—

(i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and

(ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and

(b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.

(3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.

77B Inquiry reports: consideration and action

In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 77 or 77A and, having done so, must take such measures (if any) as they think fit in relation to the report.

78 Power to give directions after adverse HMICS report

(1) This subsection applies where a report given by the inspectors of constabulary under section 77 or 77A states that the inspectors of constabulary are of the opinion—

(a) that the Authority or Police Service—

(i) is not efficient or effective, or

(ii) will, unless remedial measures are taken, cease to be efficient or effective, or

(b) that best value for the Authority or the Police Service—

(i) has not been secured in pursuance of subsection (1) or, as the case may be, (2) of section 38, or

(ii) will not, unless remedial measures are taken, be so secured.

(2) Where subsection (1) applies, the Scottish Ministers may direct the Authority to take such measures as may be specified in the direction.
(3) The Authority must comply with any direction given under this section.

79 HMICS annual report

(1) As soon as is practicable after the end of each yearly period ending on 31 March, the inspectors of constabulary must prepare an annual report on the carrying out of their functions during that period.

(2) The inspectors of constabulary must—
   (a) give a copy of each of their annual reports to the Scottish Ministers, the Authority and the chief constable, and
   (b) publish each of their annual reports in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report given to them under this section.

CHAPTER 12
CO-OPERATION, EXCHANGE OF INFORMATION ETC.

80 Co-operation between Scottish Police Authority and Police Service

(1) The Authority and the chief constable may make arrangements under which—
   (a) the Authority is to provide assistance to the Police Service, or
   (b) the Police Service is to provide assistance to the Authority.

(2) Such assistance may involve—
   (a) members of the Authority’s staff providing services for the Police Service, or
   (b) constables or police staff providing services for the Authority.

81 Police information

(1) The Authority must provide the Scottish Ministers with such reports, statistics or other information relating to the Authority or the Police Service as they may reasonably require.

(2) Such information may, in particular, relate to—
   (a) the Authority or its functions,
   (b) the Police Service or police functions,
   (c) the state of crime.

(3) The chief constable must provide the Authority with such reports, statistics or other information relating to the Police Service, police functions or the state of crime as it may reasonably require.

(4) The chief constable may refer a requirement made under subsection (3) to the Scottish Ministers if the chief constable considers that complying with the requirement would or might prejudice—
   (a) the carrying out of any operation by the Police Service, or
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(b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the Scottish Ministers.

(6) The chief constable must provide the Lord Justice General or a sheriff principal with such reports relating to policing as may be reasonably required.

(7) A requirement by the sheriff principal may relate only to the policing of places in which the sheriff principal has jurisdiction.

(8) The chief constable must seek to ensure that sufficient information about the state of crime is kept to enable the compliance with any requirement made under this section for the provision of information in that regard.

(9) The clerk of any court having criminal jurisdiction must comply with any requirement made by the chief constable to provide any information available to the clerk which the chief constable may require for the purposes of subsection (8).

(10) Nothing in this section requires anyone to provide any report, statistic or other information before the earliest time at which it is reasonable for that person to do so.

82 Scrutiny and investigations: co-operation and information sharing

(1) The inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner must—

(a) co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service, and

(b) in particular, must together make arrangements with a view to—

(i) securing the exchange of information between them about the Authority and the Police Service, and

(ii) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service.

(2) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay any of the persons to whom it applies in taking any action which the person considers to be necessary as a matter of urgency.

(3) In complying with the duty in subsection (1), the inspectors of constabulary and the Police Investigations and Review Commissioner must—

(a) comply with any direction (general or specific) given by the Scottish Ministers, and

(b) have regard to any guidance given by the Scottish Ministers.

(4) A direction or guidance may relate to all the functions of the inspectors of constabulary and the Police Investigations and Review Commissioner or to such of those functions (or to such functions of any or all of them) as are specified in the direction or guidance.

(5) The Scottish Ministers may vary or revoke any direction or guidance.
CHAPTER 13

PROVISION OF GOODS AND SERVICES

83 Provision of police services

(1) The Authority may authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services.

(2) An authorisation under subsection (1) may be of a general or specific nature and may, in particular, set out a scale by reference to which charges for police services are to be made.

(3) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the police services concerned.

(4) The Authority, when making such an authorisation, must comply with any code about charging for police services issued by the Scottish Ministers.

(5) Any such code—

(a) may be of a general or specific nature,

(b) may be varied or revoked at any time.

(6) The chief constable must ensure that all sums received by way of charges for police services are paid to the Authority.

(7) Nothing in this section permits the making of any charge for police services which exceeds the cost of providing those services.

(8) Except in so far as authorised or required by any other enactment or rule of law, the chief constable may not make charges in respect of the carrying out of police functions otherwise than in accordance with an authorisation under subsection (1).

(9) In this Part, “police services” means services in connection with the maintenance of order, or the protection of persons or property from harm, which are provided on or in relation to land owned or occupied by the person who requests those services.

84 Provision of other goods and services

(1) The Authority may—

(a) provide goods and services to any other public body or office-holder,

(b) provide goods and services of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.

(2) Goods and services may be provided in pursuance of subsection (1) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of its functions.

(3) The Authority may, with the consent of the chief constable, make arrangements for the Police Service—

(a) to provide goods and services (other than police services) to any other public body or office-holder,
(b) to provide goods and services (other than police services) of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.

(4) Goods and services may be provided in pursuance of subsection (3) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of police functions.

(5) The Authority may make charges in respect of any goods or services provided by it, or by the Police Service, in pursuance of subsection (1) or (3).

(6) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the goods or services concerned.

(7) Nothing in this section permits the Authority to make any charge for forensic services it is required to provide in pursuance of section 31.

(8) Goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) include—

   (a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),

   (b) services involving the inspection, testing, maintenance or repair of vehicles,

   (c) any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority’s functions or, as the case may be, police functions.

CHAPTER 14
GRANTS

85 Police grants

(1) The Scottish Ministers may make grants to the Authority of such amounts as they determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

86 Grants to other persons

(1) The Scottish Ministers may make grants of such amounts as they determine, or provide such other financial assistance as they think appropriate, to such persons as they think fit for the purposes of providing services to, or otherwise assisting or supporting, the Authority or the Police Service in the carrying out of the Authority’s functions or, as the case may be, police functions.

(2) Grants may be made or financial assistance provided under this section only where the Scottish Ministers consider it is necessary or expedient to do so for promoting the efficiency or effectiveness of, or securing best value for, the Authority or the Police Service.

(3) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).
Any financial assistance provided is subject to any conditions specified by the Scottish Ministers.

**Chapter 15**

**Offences**

### 87 Assaulting or impeding police

(A1) It is an offence for a person to assault—
- a person (“A”) acting in a capacity mentioned in subsection (2), or
- a person assisting A while A is acting in such capacity.

(1) It is an offence for a person to resist, obstruct or hinder—
- a person (“A”) acting in a capacity mentioned in subsection (2), or
- a person assisting A while A is acting in such capacity.

(2) The capacities are—
- that of a constable,
- that of a member of police staff,
- that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
- that of a person who—
  - is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
  - is carrying out functions as a member of that team.

(3) A person who is guilty of an offence under subsection (A1) or (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

(3A) A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (A1) and an offence under subsection (1).

(3B) Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.

(4) In this section and section 88, a reference to a member of a relevant police force is a reference to a member of—
- a police force maintained under section 2 of the Police Act 1996 (c.16),
- the metropolitan police force,
- the City of London police force, or
- the Police Service of Northern Ireland.

### 88 Escape from custody

(1) It is an offence for a person—
(a) to remove a person from custody, or
(b) to assist the escape of a person in custody.

(2) The reference in subsection (1) to a person in custody is to be construed as a reference to a person—

(a) who is in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (3) or a person assisting A while A is acting in such capacity, or
(b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested.

(3) The capacities are—

(a) that of a constable,
(b) that of a police custody and security officer,
(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
(d) that of a person who—

(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
(ii) is carrying out functions as a member of that team.

(4) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

### Impersonation etc.

(1) It is an offence for a person (not being a constable)—

(a) to impersonate a constable with an intent to deceive, or
(b) to do anything calculated to suggest that the person is a constable.

(2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.

(3) It is a defence for a person charged under subsection (2) to prove that the article—

(a) was obtained lawfully, and
(b) is in the person’s possession for a lawful purpose.

(4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.

(5) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 4 on the standard scale.

(6) In this section an “article of police uniform” means—
(a) any article of uniform or any distinctive badge or mark usually issued to constables, or
(b) any article having the appearance of such article, badge or mark.

CHAPTER 16

INDEPENDENT CUSTODY VISITING

90 Purpose of custody visiting

The provisions in this Chapter are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

91 Independent custody visiting

(1) The Authority must make arrangements to ensure that independent custody visitors may—

(a) visit detainees,
(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must—

(a) provide for the appointment as independent custody visitors of suitable persons who are independent of both the Authority and the Police Service,
(b) authorise independent custody visitors to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained, and
(c) provide for reporting on each visit.

(3) The arrangements may, in particular, authorise independent custody visitors to—

(a) access, without prior notice, any place in which a detainee is held,
(b) examine records relating to the detention of persons there,
(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
(e) meet such other persons that the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.

(4) The arrangements may allow access to a detainee to be refused only where—

(a) the Scottish Ministers have determined grounds on which access to detainees (or to a category of detainee) can be so refused,
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(b) it appears to a constable of the rank of inspector (or above) that such a ground is satisfied in relation to the detainee, and
(c) any other procedural requirements the Authority considers necessary have been met.

(5) The Authority must—
(a) keep the arrangements under review and revise them as it thinks fit,
(b) prepare and publish such reports on independent custody visiting as the Scottish Ministers may reasonably require.

(6) The Authority and members of its staff, the Police Service and police staff and independent custody visitors must have regard to any guidance issued by the Scottish Ministers about independent custody visiting.

(7) Before issuing guidance, or making a determination for the purposes of subsection (4)(a), the Scottish Ministers must consult—
(a) the Authority,
(b) the chief constable,
(c) independent custody visitors or such persons as appear to them to be representative of independent custody visitors, and
(d) such other persons as they consider appropriate.

(8) The Scottish Ministers must lay a copy of guidance issued or any determination made before the Scottish Parliament.

92 SPT visits

(1) The Authority must make arrangements to ensure that members of the SPT may—
(a) visit detainees,
(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must authorise members of the SPT to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.

(3) The arrangements may, in particular, authorise members of the SPT to—
(a) access, without prior notice, any place in which a detainee is held (accompanied by such experts as the SPT members think fit),
(b) examine records relating to the detention of persons there,
(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
(e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.
(4) The arrangements may allow access to a detainee to be refused only—
   (a) where there are urgent and compelling grounds of public safety, natural disaster or
       serious disorder in the place to be visited that temporarily prevent the carrying out
       of such a visit, and
   (b) the Scottish Ministers have notified the Authority that such grounds exist and that
       access should accordingly be refused.

(5) The Authority must keep the arrangements under review and revise them as it thinks fit.

(6) The Authority and members of its staff and the Police Service and police staff must have
    regard to any guidance issued by the Scottish Ministers about SPT visits.

93 Interpretation of Chapter 16

(1) For the purposes of this Chapter, a reference to a detainee is a reference to a person in
    the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (2) or
    a person assisting A while A is acting in such a capacity.

(2) The capacities are—
   (a) that of a constable,
   (b) that of a police custody and security officer,
   (c) that of a member of a relevant police force when such member is executing a
       warrant or is otherwise acting in Scotland by virtue of any enactment conferring
       powers on the member in Scotland,
   (d) that of a person who—
       (i) is a member of an international joint investigation team that is led by a
           person acting in a capacity mentioned in paragraph (a) or (c), and
       (ii) is carrying out functions as a member of that team.

(3) For the purpose of subsection (2) a reference to a member of a relevant police force is a
    reference to a member of—
   (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
   (b) the metropolitan police force,
   (c) the City of London police force, or
   (d) the Police Service of Northern Ireland.

(4) In this Chapter—
   “SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or
   Degrading Treatment or Punishment established under Article 2 of OPCAT, and
   “OPCAT” means the Optional Protocol to the Convention against Torture and
   other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18
   December 2002 at the fifty-seventh session of the General Assembly of the United
   Nations by resolution A/RES/57/199.
CHAPTER 17
MISCELLANEOUS AND GENERAL

94 Dissolution of the Police Advisory Board for Scotland

(1) The Police Advisory Board for Scotland is dissolved.

(2) In section 63 of the Police Act 1996 (c.16) (Police Advisory Boards for England and Wales and for Scotland)—

(a) in subsection (1)—

(i) repeal “and a Police Advisory Board for Scotland”, and

(ii) repeal “in those countries respectively”,

(b) repeal subsection (1ZA), and

(c) in subsection (2), for “each of the Police Advisory Boards” substitute “the Police Advisory Board for England and Wales”.

95 Transfer of constables, staff, property etc.

(1) Schedule 3A makes provision about the period before the Police Service is established.

(2) Schedule 4 contains provision about the transfer of constables, inspectors of constabulary, police cadets, staff, property, rights, liabilities and obligations.

97 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),

“annual police plan” has the meaning given by section 35,

“appropriate prosecutor” means the Lord Advocate or procurator fiscal,

“assistant chief constable” means a constable appointed to the office of assistant chief constable under section 7,

“Auditor General” means the Auditor General for Scotland,

“Authority” means the Scottish Police Authority,

“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),

“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—

(a) the chief constable,

(b) other senior officers,

(c) any special constable, and

(d) any constable on temporary service outwith the Police Service,

“deputy chief constable” means a constable appointed to the office of deputy chief constable under section 7,
“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,

“international joint investigation team” means any investigation team formed in accordance with—

(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union,

(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with Article 34 of the Treaty on European Union,

(c) the Convention implementing the Schengen Agreement of 14 June 1985,

(d) the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, or

(e) any international agreement to which the United Kingdom is a party and which is specified for the purposes of (as the case may be) section 24, 87, 88 or 93 in an order made by the Scottish Ministers.

“local commander” means a constable designated under section 45(2),

“local police plan” has the meaning given by section 48,

“member of the Authority’s staff” means an individual appointed under paragraph 7(1) of schedule 1,

“police appeals tribunal” means a tribunal constituted in accordance with schedule 3,

“police cadet” means an individual appointed under section 25,

“police custody and security officer” means an individual certified under section 28(1),

“police functions” means the functions of constables (including the chief constable’s functions and any functions of a deputy chief constable, an assistant chief constable or a local commander),

“policing” means the carrying out of police functions (and references to the policing of Scotland are references to the carrying out of police functions in or as regards Scotland),

“the Police Investigations and Review Commissioner” means the Commissioner established by section 33 of the 2006 Act and renamed by section 62,

“Police Service” means the Police Service of Scotland,

“police services” has the meaning given by section 83(9),

“police staff” means staff appointed under section 26(1) (and “member of the police staff” is to be construed accordingly),
“senior officer” means a constable who holds the office of chief constable, deputy chief constable or assistant chief constable,

“strategic police priorities” has the meaning given by section 33,

“strategic police plan” has the meaning given by section 34,

“terms and conditions” includes terms and conditions about payment of remuneration or allowances or about reimbursement of expenses.

(2) In this Part, references to securing best value are to be construed in accordance with section 38.

98 Crown application

(1) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.

(4) The power conferred by section 4(2)(d) does not apply in relation to Crown land.

(5) In this section, “Crown land” means land held or used by or on behalf of the Crown (and includes an interest belonging to Her Majesty in right of Her private estates).

PART 2
FIRE REFORM

The Scottish Fire and Rescue Service

99 The Scottish Fire and Rescue Service

(1) After section 1 of the 2005 Act, insert—

“1A The Scottish Fire and Rescue Service

(1) There is established a body corporate to be known as the Scottish Fire and Rescue Service or, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba (referred to in this Act as “SFRS”).

(2) SFRS has the functions conferred on it by or under this Act or any other enactment.

(3) Schedule 1A makes further provision about SFRS.”.

(2) After schedule 1 to the 2005 Act, insert—

“SCHEDULE 1A
(introduced by section 1A(3))

THE SCOTTISH FIRE AND RESCUE SERVICE

Status

1 (1) SFRS—


(a) is not a servant or agent of the Crown, and
(b) has no status, immunity or privilege of the Crown.

(2) SFRS’s property is not property of, or property held on behalf of, the Crown.

Membership

5 2 (1) SFRS is to consist of —

(a) a person appointed by the Scottish Ministers to chair SFRS (“the chairing member”), and
(b) not fewer than 6 nor more than 10 other members appointed by the Scottish Ministers.

10 (3) The Scottish Ministers may appoint as members only persons who they consider to have skills and expertise relevant to the functions of SFRS.

(4) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified such other number as they think fit.

15 (5) Members of SFRS may elect from their number a member to act as deputy to the chairing member.

Disqualification

3 1 (1) A person is disqualified from appointment, and from holding office, as a member of SFRS if that person is or becomes—

(a) a member of staff of SFRS,
(b) a member of—
   (i) the Scottish Parliament,
   (ii) the House of Lords,
   (iii) the House of Commons, or
   (iv) the European Parliament,
(c) disqualified from standing for election as a member of—
   (i) the Scottish Parliament,
   (ii) the House of Commons, or
   (iii) a local authority.

20 (2) The Scottish Ministers may by order modify sub-paragraph (1).

Tenure

4 1 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.

(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

35 (3) On ceasing to be a member, a person is eligible for reappointment.
(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

Removal from office

6 (1) The Scottish Ministers may remove a member from office if—
   (a) the member is an undischarged bankrupt,
   (c) the member has, without reasonable excuse, been absent from meetings of SFRS for a period longer than 4 consecutive months,
   (d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of SFRS,
   (e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,
   (f) the member has failed to comply with the terms or conditions of the member’s appointment,
   (g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—
   (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
   (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
   (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),
   (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
   (e) who has been adjudged bankrupt (and has not been discharged), or
   (f) who is subject to any other kind of order, arrangement or undertaking analogous to those mentioned in paragraphs (a) to (d), anywhere in the world.

Remuneration, allowances and expenses of members

7 SFRS may pay to its members such remuneration, allowances and expenses as the Scottish Ministers may determine.

The Chief Officer

8 (1) SFRS must employ a Chief Officer.

   (2) The Chief Officer may not be a member of SFRS.

   (3) The first Chief Officer is to be appointed by the Scottish Ministers on such terms and conditions as they may determine.
(4) Each subsequent appointment of a person as the Chief Officer is to be made by SFRS.

(5) The appointment of a person under sub-paragraph (4) is subject to the approval of the Scottish Ministers.

(6) The terms and conditions of a person appointed under sub-paragraph (4) are to be determined by SFRS.

**SFRS’s employees**

9 (1) SFRS may employ staff.

(2) Staff are to be employed on terms and conditions determined by SFRS.

(3) SFRS may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who is, or has ceased to be, a member of staff (including the Chief Officer).

(4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.

(5) The arrangements mentioned in sub-paragraph (3) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

**Committees and sub-committees**

10 (1) SFRS may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

(3) The members of any committee or sub-committee may include persons who are not members of SFRS but such persons are not entitled to vote at meetings.

(4) A committee or sub-committee must not consist entirely of persons who are not members of SFRS.

(5) SFRS may pay such remuneration, allowances and expenses as are determined by SFRS to a member of a committee or sub-committee who is not—

(a) a member of SFRS, or

(b) a member of staff of SFRS.

**Procedure**

11 (1) SFRS may regulate—

(a) its own procedure (including quorum), and

(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of SFRS is not affected by any—

(a) vacancy in its membership,

(b) defect in the appointment of a member,
disqualification of a person as a member after appointment.

**Governance and accountability**

11A SFRS must try to ensure that each of its members, when acting in the capacity of member—

(a) acts consistently with any principle of good governance which appears to SFRS to constitute best practice, and

(b) acts in a way which is as accountable and transparent as is reasonably practicable.

**SFRS’s general powers**

12 (1) SFRS may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) SFRS may in particular—

(a) enter into contracts,

(b) borrow money,

(c) acquire and dispose of land and other property,

(d) with the authorisation of the Scottish Ministers, purchase compulsorily land,

(e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).

(3) SFRS may not exercise the power in sub-paragraph (2)(b) or (e) without the consent of the Scottish Ministers.

(4) For the purposes of sub-paragraph (3) consent may be given—

(a) with respect to a particular case or class of case,

(b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in sub-paragraph (2)(c) includes the power to accept, on such conditions as SFRS considers appropriate—

(a) gifts of money, and

(b) gifts or loans of other property.

(6) The powers in sub-paragraph (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under sub-paragraph (2)(d) as if—

(a) that sub-paragraph were contained in an Act in force immediately before the commencement of that Act, and

(b) SFRS were a local authority.
Delegation of functions

13 (1) SFRS may delegate any of its functions to a person mentioned in sub-paragraph (2).

(2) Those persons are—

(a) the Chief Officer,
(b) any other member of staff of SFRS,
(c) any of its committees.

(3) Sub-paragraph (1) does not affect—

(a) SFRS’s responsibility for the carrying out of the delegated functions, or
(b) SFRS’s ability to carry out the delegated functions.

Location of principal office premises

14 Any determination by SFRS as to the location of the principal office premises of its members or its Chief Officer is subject to the approval of the Scottish Ministers.

Grants

15 (1) The Scottish Ministers may make grants to SFRS of such amounts as they may determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

Accounts

16 (1) SFRS must—

(a) keep proper accounts and accounting records, and
(b) prepare for each financial year a statement of accounts.

(2) Each statement of accounts must comply with any directions given by the Scottish Ministers as to—

(a) the information to be contained in it,
(b) the manner in which the information is to be presented,
(c) the methods and principles according to which the statement is to be prepared.

(4) SFRS must send each statement of accounts to the Auditor General for Scotland for auditing.

(6) In this paragraph, “financial year” means—

(a) the period beginning on the day on which SFRS is established and ending—

(i) on 31 March next occurring, or
(ii) if that period is of less than 6 months’ duration, on 31 March next occurring after that, and
(b) each subsequent period of a year ending on 31 March.”.

Functions

100 Promotion of fire safety

In section 8 of the 2005 Act (fire safety)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2)—

(i) for “a relevant authority shall” substitute “SFRS must”, and

(ii) for “the authority” substitute “it”.

101 Fire safety: enforcement

(1) In section 61 of the 2005 Act (enforcing authorities)—

(a) in each of subsections (7) and (8)—

(i) for “A relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”, and

(b) in subsection (9), for paragraphs (b) and (c) substitute—

“(b) in relation to any other relevant premises, SFRS.”.

(2) In section 67 of the 2005 Act (enforcement of Chapter 1 of Part 3 of the 2005 Act: determination of disputes)—

(a) for subsection (1), substitute—

“(1) Subsections (1A) and (1B) apply where—

(a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, and

(b) in relation to the duty in question, the person and the authority cannot agree on the action that requires to be taken to comply with the duty.

(1A) The person and the authority may refer the matter to the person appointed under section 43A(1)(a) for determination.

(1B) If the enforcing authority is SFRS, it or the person may refer the matter to the person appointed under section 43A(1)(a) for determination.”, and

(b) in subsection (4), for “(1) or (2)” substitute “(1A) or (1B)”.

102 Fire-fighting

In section 9 of the 2005 Act (fire-fighting)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

103 Road traffic accidents

In section 10 of the 2005 Act (road traffic accidents)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and
(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

104 Conferral of functions in relation to other emergencies

In section 11 of the 2005 Act (conferral of functions in relation to other emergencies)—

(a) in subsection (1), for “a relevant authority (the “specified authority”)” substitute “SFRS”, and

(b) in each of subsections (2) and (3), for “the specified authority”, in each place where it occurs, substitute “SFRS”.

105 Power to respond to other eventualities

In section 13 of the 2005 Act (power to respond to other eventualities)—

(a) in subsection (1), for “A relevant authority” substitute “SFRS”, and

(b) in subsection (2)(b), for “an authority” substitute “SFRS”.

106 Provision of other services

In section 14 of the 2005 Act (provision of other services)—

(a) in subsection (1)—

(i) for “A relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”, and

(b) in subsection (2), for “An authority” substitute “SFRS”.

107 Provision of centres for education and training

In section 15 of the 2005 Act (provision of centres for education and training)—

(a) for “A relevant authority” substitute “SFRS”, and

(b) for “relevant authorities have” substitute “it has”.

108 Charging

In section 16 of the 2005 Act (charging)—

(a) in subsection (1)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”,

(b) in subsection (2), for “the authority” substitute “SFRS”,

(c) in subsection (3), for the words from “the”, where it secondly occurs, to the end substitute “SFRS at sea beyond the low water mark”, and

(d) in subsection (4)—

(i) for “a relevant authority” substitute “SFRS is”,

(ii) after “description” insert “and it”, and

(iii) for “the authority”, in both places where it occurs, substitute “SFRS”.
Further amendments of 2005 Act

109 Assistance

In section 35 of the 2005 Act (the title of which becomes “Assistance”)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for securing the provision by that person of assistance for SFRS in the carrying out by SFRS of a relevant function.

(2) A person may provide assistance under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to provide assistance for SFRS in the carrying out by SFRS of the relevant function.”,

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

110 Delegation

In section 36 of the 2005 Act (power to make arrangements for delegating functions)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for the carrying out by that person of a relevant function.

(2) A person may carry out a relevant function under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to carry out the relevant function.

(2A) SFRS may enter into arrangements under this section in relation to its function of extinguishing fires only if the person employs fire-fighters.”,

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

111 Best value

Before section 40 of the 2005 Act (and the italic cross-heading immediately preceding it), insert—

“Best value

39A Best value

(1) It is the duty of SFRS to make arrangements which secure best value.

(2) Best value is continuous improvement in the carrying out of SFRS’s functions.

(3) In securing best value, SFRS must maintain an appropriate balance among—

(a) the quality of its carrying out of its functions,

(b) the cost to SFRS of that carrying out of its functions,
(c) the cost to persons of any service provided by SFRS for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, SFRS must have regard to—
   (a) efficiency,
   (b) effectiveness,
   (c) economy, and
   (d) the need to meet the equal opportunity requirements.

(5) SFRS must carry out its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of SFRS’s functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

39B Best value: further provision

(1) In carrying out its duties under section 39A, SFRS must have regard to the matters mentioned in subsection (2).

(2) The matters are—
   (a) any relevant guidance issued by the Scottish Ministers,
   (b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of section 39A(1) (or purposes which include those purposes).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—
   (a) SFRS, and
   (b) such other persons as they think appropriate.

(4) In the event of a conflict in any respect between the matter to which SFRS is to have regard under paragraph (a) of subsection (2) and the matter to which it is to have regard under paragraph (b) of that subsection, SFRS must in that respect have regard only to matters within paragraph (a).

(5) In this section “relevant guidance”—
   (a) means guidance on the carrying out of the duties imposed by section 39A,
   (b) includes in particular guidance on—
      (i) how to make and what is to be included in the arrangements mentioned in section 39A(1),
      (ii) how to implement the duty imposed by that section.
39C  **Examinations of SFRS by Auditor General**

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to SFRS, to include a reference to examinations into the arrangements made by SFRS under section 39A.”.

112  **Strategic plan**

After section 41 of the 2005 Act, insert—

"**CHAPTER 8A**

PLANNING, REPORTS AND INFORMATION

Strategic plan

41A  **SFRS’s first strategic plan**

(1)  SFRS must prepare a strategic plan.

(2)  A strategic plan is a plan—

(a)  setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the day appointed by order under subsection (6),

(b)  setting out outcomes by reference to which the carrying out of its functions may be measured, and

(c)  including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

(2A)  Before preparing the strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.

(2B)  When preparing the strategic plan, SFRS must—

(a)  have regard to the framework document,

(b)  send a copy of a draft plan to the persons mentioned in subsection (4),

(c)  invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and

(d)  have regard to any comments received within that period.

(4)  Those persons are—

(a)  each local authority,

(b)  such persons as SFRS considers represent local authorities,

(c)  such persons as SFRS considers represent employees of SFRS,

(d)  such other persons as SFRS considers appropriate.

(5)  SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Ministers for approval.

(6)  SFRS must use its best endeavours to secure the approval of the Scottish Ministers to the strategic plan (with or without modifications) before such day as the Scottish Ministers may by order appoint.
(7) If the Scottish Ministers approve the strategic plan, SFRS must—
   (a) publish the plan, and
   (b) lay before the Scottish Parliament a copy of the plan.

41B  Review of plan

(1) This section applies where—
   (a) a strategic plan is approved under section 41A, or
   (b) a new strategic plan is approved under subsection (4) or (6).

(2) SFRS may at any time review the plan.

(3) SFRS must review the plan—
   (a) if the Scottish Ministers make an order under section 40(4), and
   (b) before the end of the period of 3 years to which the plan relates.

(4) Following a review under subsection (2) or (3)(a), SFRS may prepare and
    submit to the Scottish Ministers for approval a new strategic plan.

(5) If, following a review under subsection (3)(a), SFRS decides not to prepare a
    new strategic plan, it must notify the Scottish Ministers of that fact.

(6) Following a review under subsection (3)(b), SFRS must, before the end of the
    period of 3 years mentioned in that subsection, prepare and submit to the
    Scottish Ministers for approval a new strategic plan.

(7) A new strategic plan is a plan—
   (a) setting out how SFRS proposes to carry out its functions during the
       period of 3 years beginning with the plan commencement day,
   (b) setting out outcomes by reference to which the carrying out of its
       functions may be measured, and
   (c) including such other material relating to its functions or to a period other
       than the period mentioned in paragraph (a) as SFRS thinks fit.

(7A) Before preparing a new strategic plan, SFRS must make arrangements for
      obtaining views on what the plan should contain from persons whom it
      considers likely to have an interest in how SFRS carries out its functions.

(7B) When preparing a new strategic plan, SFRS must—
   (a) have regard to the framework document,
   (b) send a copy of a draft plan to the persons mentioned in section 41A(4),
   (c) invite the recipients to comment on the draft plan within such reasonable
       period as SFRS may specify, and
   (d) have regard to any comments received within that period.

(9) SFRS must use its best endeavours to secure the approval of the Scottish
    Ministers to a new strategic plan (with or without modifications) before the
    plan commencement day for that plan.

(10) If the Scottish Ministers approve a new strategic plan, SFRS must—
    (a) publish the plan, and
(b) lay before the Scottish Parliament a copy of the plan.

(11) In this section, “plan commencement day” means—

(a) in the case of a strategic plan prepared under subsection (4), the day 8 weeks after the day on which SFRS submits a new strategic plan to the Scottish Ministers (or such earlier day as SFRS and the Scottish Ministers may agree),

(b) in the case of a strategic plan prepared under subsection (6), the day after the end of the period of 3 years to which the previous strategic plan relates.

41C Consideration

(1) This section applies where a strategic plan or a new strategic plan has been approved by the Scottish Ministers under section 41A or, as the case may be, section 41B.

(2) In carrying out its functions, SFRS must have regard to the strategic plan in so far as that plan is not inconsistent with the framework document.”.

113 Local fire and rescue plans

After section 41C of the 2005 Act (inserted by section 112), insert—

“Local fire and rescue plans

41D Provision of local services

(1) SFRS must ensure that there are adequate arrangements in place for the carrying out of its functions in each local authority area.

(2) SFRS must involve each local authority in determining priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions.

41E Local fire and rescue plans

(1) As soon as is reasonably practicable after a strategic plan is approved under section 41A, SFRS must prepare a local fire and rescue plan for each local authority area.

(2) A local fire and rescue plan is a plan setting out—

(a) priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions,

(b) the reasons for selecting each of those priorities and objectives,

(c) how SFRS proposes to deliver those priorities and objectives,

(d) in so far as is reasonably practicable, outcomes by reference to which delivery of those priorities and objectives can be measured,

(e) how those priorities and objectives are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning,
(f) such other matters relating to the carrying out of SFRS’s functions in the local authority’s area as SFRS thinks fit.

(3) In preparing the local fire and rescue plan, SFRS must—

(a) have regard to the framework document and the strategic plan approved under section 41A,

(b) consult—

(i) such persons as SFRS considers represent employees of SFRS, and
(ii) such other persons as SFRS considers appropriate.

(4) SFRS must submit a plan prepared under subsection (1) for approval to the local authority for the area to which the plan relates.

(5) If the plan is approved under subsection (4), SFRS must publish it.

(6) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

41F Power to review plan

(1) This section applies where a local fire and rescue plan is published under section 41E(5), subsection (4) or section 41G(5).

(2) SFRS may at any time review the plan.

(3) Following a review, SFRS may revise the plan.

(4) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) as they apply in relation to a plan prepared under subsection (1) of that section but subject to the modification in subsection (5).

(5) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

41G Mandatory review

(1) This section applies where a local fire and rescue plan is published under section 41E(5), section 41F(4) or subsection (5).

(2) SFRS must review the local fire and rescue plan if—

(a) the Scottish Ministers make an order under section 40(4),
(b) a new strategic plan is approved under section 41B, or
(c) the plan is not revised under section 41F(3) or subsection (3) during the period of 3 years beginning with the publication of the plan.

(3) Following a review under subsection (2)(a) or (b), SFRS may revise the plan.

(4) Following a review under subsection (2)(c), SFRS must revise the plan.

(5) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) or (4) as they apply in relation to a plan prepared under subsection (1) of that section (but subject to the modification in subsection (6)).
(6) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

41H Provision of information to local authority

SFRS must give to a local authority such information or reports relating to the carrying out of SFRS’s functions in the authority’s area (including reports given by reference to any local fire and rescue plan in force for the area) as the authority may reasonably request.

41J Local Senior Officers

(1) SFRS must designate an employee of SFRS as Local Senior Officer for each local authority area for the purpose of carrying out on behalf of SFRS the delegated functions.

(2) The delegated functions are—

(a) SFRS’s functions under sections 41E to 41H,

(aa) SFRS’s function in relation to the provision of feedback to it under section 41K(1),

(b) SFRS’s functions under section 16(1)(d) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning),

(c) any other functions of SFRS which SFRS delegates to the Local Senior Officer.

(3) The duty imposed on SFRS by subsection (1) must be carried out by the Chief Officer.

(4) A person may be designated under subsection (1) in relation to more than one local authority area.

(5) Subsection (1) does not affect—

(a) SFRS’s responsibility for the carrying out of the delegated functions,

(b) SFRS’s ability to carry out the delegated functions.

41K Monitoring by local authority

(1) A local authority may monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority’s area and (in particular) may provide to SFRS—

(a) its views on any matter concerning or connected to the manner in which SFRS carries out those functions in the authority’s area,

(b) any recommendations for improvements in the manner in which SFRS carries out those functions in the authority’s area that it thinks fit.

(2) A local authority may provide feedback by reference to any local fire and rescue plan in force for its area.”.
114 **Annual report**

After section 41K of the 2005 Act (inserted by section 113), insert—

“**41L Annual report**

(1) As soon as is reasonably practicable after the end of each reporting year, SFRS must—

(a) prepare and publish an annual report,

(aa) give a copy of the report to the Scottish Ministers, and

(b) lay a copy of the report before the Scottish Parliament.

(2) An annual report is a report setting out—

(a) an assessment of SFRS’s performance during the reporting year in acting in accordance with the framework document,

(b) an assessment of SFRS’s performance during the reporting year in achieving the outcomes set out in the strategic plan approved under section 41A or, as the case may be, 41B, and

(c) such other information as SFRS thinks fit.

(3) In this section, “reporting year” means—

(a) the period beginning on the day on which SFRS is established and ending—

(i) on 31 March next occurring, or

(ii) if that period is of less than 6 months’ duration, on 31 March next occurring after that, and

(b) each subsequent period of a year ending on 31 March.”.

115 **Provision of information**

After section 41L of the 2005 Act (inserted by section 114), insert—

“**41M Provision of information**

(1) SFRS must provide the Scottish Ministers with such reports, statistics and other information relating to SFRS or its functions as the Scottish Ministers may require.

(2) Information provided under this section may in particular relate to the outcomes of fires, events and other situations in relation to which SFRS makes provision or takes action.

(3) Information to be provided under this section must be provided at the times, and in the form, specified by the Scottish Ministers.”.

116 **Directions by Scottish Ministers**

After section 42 of the 2005 Act, insert—
“Directions

42A Directions

(1) The Scottish Ministers may give SFRS general or specific directions.

(2) SFRS must comply with a direction under this section.

(3) Directions under this section may vary or revoke earlier directions under this section.

(4) Directions under this section must be in writing.

(5) The Scottish Ministers must—

(a) publish a direction given under this section, and

(b) lay a copy of it before the Scottish Parliament.

(6) Nothing in this section enables the Scottish Ministers to give a direction in circumstances to which subsection (3) or (4) of section 41 applies.”.

117 Inspectors of SFRS

After section 43 of the 2005 Act, insert—

“CHAPTER 8B

INSPECTION

Inspectors of SFRS

43A Inspectors of SFRS

(1) Her Majesty may by Order in Council appoint—

(a) a Chief Inspector of the Scottish Fire and Rescue Service, and

(b) such number of Inspectors of the Scottish Fire and Rescue Service as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of the Scottish Fire and Rescue Service.

(3) The Scottish Ministers must pay to persons appointed under this section such remuneration as the Scottish Ministers may determine.

(4) The Scottish Ministers may authorise an Inspector to carry out any of the functions conferred on the Chief Inspector by or under this Act or any other enactment if—

(a) there is a temporary vacancy in the office of Chief Inspector, or

(b) the Scottish Ministers consider that the Chief Inspector is temporarily unable to carry out the Chief Inspector’s functions.

(5) A person who, immediately before the coming into force of section 117 of the Police and Fire Reform (Scotland) Act 2012 (asp 00), is by virtue of section 43—

(a) the Chief Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(a),

(b) an Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(b), and
(c) an Assistant Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (2).

(6) In this Act—

“Chief Inspector” means a person appointed under subsection (1)(a), and

“Inspector” means a person appointed under subsection (1) or (2).

43B Inquiries by Inspectors

(1) An Inspector may inquire into a matter mentioned in subsection (3).

(2) If directed to do so by the Scottish Ministers, an Inspector must inquire into a matter mentioned in subsection (3).

(3) The matters are—

(a) the state and efficiency of SFRS,

(b) whether in carrying out its functions SFRS is complying with its duty under section 39A to make arrangements which secure best value,

(c) the manner in which SFRS is carrying out any of its functions.

(4) In carrying out an inquiry under this section an Inspector may—

(a) require SFRS to provide any information or documents relating to the functions of SFRS that the Inspector may require,

(b) enter and inspect any premises which are used by SFRS,

(c) inspect any equipment which is used by SFRS.

(5) If an Inspector exercises a power of entry by virtue of subsection (4)(b), the Inspector may—

(a) take onto the premises—

(i) such other persons, and

(ii) such equipment,

as the Inspector considers necessary,

(b) require any person present on the premises to provide the Inspector with any information or documents that the Inspector may reasonably request.

(6) An Inspector may not under subsection (4)(b)—

(a) enter or inspect premises occupied as a private dwelling,

(b) enter premises by force.

(7) SFRS must provide such facilities, assistance and co-operation as an Inspector may reasonably request for the purposes of, or in connection with, an inquiry under this section.

43C Inquiries under section 43B(1): reports

(1) This section applies where an inquiry under section 43B(1) has been completed.

(2) The Chief Inspector must give SFRS a report of the inquiry.
(3) If a report given to SFRS under subsection (2) relates to a matter mentioned in section 43B(3)(a) or (b), the Chief Inspector must—

(a) as soon as is reasonably practicable after giving the report to SFRS, give the Scottish Ministers a copy of the report, and

(b) give the Scottish Ministers any other information relating to the inquiry that they may request.

(4) If a report given to SFRS under subsection (2) does not relate to a matter mentioned in section 43B(3)(a) or (b) the Chief Inspector —

(a) may give the Scottish Ministers a copy of the report if the Chief Inspector thinks fit,

(b) may give the Scottish Ministers any other information in relation to the report that the Chief Inspector thinks fit,

(c) must give the Scottish Ministers any information relating to the inquiry that the Scottish Ministers may request.


43D Inquiries under section 43B(2): reports

(1) This section applies where an inquiry under section 43B(2) has been completed.

(2) The Chief Inspector must give the Scottish Ministers—

(a) a report of the inquiry, and

(b) any other information relating to the inquiry that the Scottish Ministers may request.

(3) As soon as is reasonably practicable after giving the report to the Scottish Ministers under subsection (2)(a), the Chief Inspector must give a copy of the report to SFRS.

(4) The Scottish Ministers must lay before the Scottish Parliament a copy of the report given to them under subsection (2)(a).

43E Inquiry reports: SFRS consideration

In carrying out its functions, SFRS must have regard to a report given to it under section 43C(2) or 43D(3) and, having done so, must take such measures (if any) as it thinks fit in relation to the report.

43F Chief Inspector’s plan

(1) The Chief Inspector must prepare a plan setting out—

(a) priorities for inquiries to be carried out by Inspectors, and

(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The Chief Inspector—

(a) must keep the plan under review, and
(b) may from time to time revise the plan.

(3) The Chief Inspector must, in preparing a plan (and any revised plan), consult such persons as the Chief Inspector considers appropriate.

(4) The Chief Inspector must publish the plan (and any revised plan) in such manner as the Chief Inspector thinks fit.

Co-operation and information-sharing

43G Co-operation and information-sharing: Auditor General

(1) The Inspectors and the Auditor General must co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to SFRS.

(2) In particular, the Inspectors and the Auditor General must together make arrangements with a view to—

(a) securing the exchange of information between them about SFRS,

(b) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to SFRS.

(3) The duties imposed by subsections (1) and (2) do not apply in so far as compliance with them would prevent or delay any of the persons on whom they are imposed in taking any action which the person considers to be necessary as a matter of urgency.”.

117A Prohibition on employment of police

In section 51 of the 2005 Act (prohibition on employment of police), after “constable” insert “, other than a special constable appointed under section 9 of the Police and Fire Reform (Scotland) Act 2012 (asp 00),”.

General

118 Transfer of staff, property etc.

Schedule 5 makes provision about the transfer of staff, property, rights, liabilities and obligations.

118A Membership of SFRS: transitory provision

(1) Subsection (2) applies until the coming into force of section 99(1) for the purpose of inserting section 1A(2) into the 2005 Act.

(2) Despite paragraph 2(1) of schedule 1A to the 2005 Act, SFRS may consist of—

(a) the chairing member, or

(b) the chairing member and fewer than 6 other members.

119 Meaning of “the 2005 Act”

In this Part, “the 2005 Act” means the Fire (Scotland) Act 2005 (asp 5).
**PART 3**

**GENERAL**

120 **Subordinate legislation**

(1) Any power of the Scottish Ministers to make an order, regulations or rules under this Act includes power to make—

   (a) different provision for different purposes (for example, for different types or ranks of constable),

   (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.

(2) An order made under section 10(2) or 11(5) is subject to the affirmative procedure.

(3) An order made under section 121 or 122 containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.

(4) All other orders, and any regulations or rules, made under this Act are subject to the negative procedure.

(5) This section does not apply to an order made under section 124(2), paragraph 2(1)(b) of schedule 4 or paragraph 1 of schedule 5.

121 **Ancillary provision**

(1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.

(2) An order under this section may modify this or any other enactment.

122 **Transitional provision etc.**

(1) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

(2) An order under this section may modify this or any other enactment.

123 **Minor and consequential amendments and repeals**

(1) Schedule 6 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column in schedule 7, (which include enactments that are spent) are repealed to the extent set out in the second column.

124 **Commencement**

(1) This Part (other than section 123) comes into force on the day after Royal Assent.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.
125 **Short title**

The short title of this Act is the Police and Fire Reform (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 1)

THE SCOTTISH POLICE AUTHORITY

PART 1

STATUS, STRUCTURE AND GOVERNANCE

Status

1 (1) The Authority—
   (a) is not a servant or agent of the Crown, and
   (b) has no status, immunity or privilege of the Crown.

10 (2) The Authority’s property is not property of, or property held on behalf of, the Crown.

Membership

2 (1) The Authority is to consist of—
   (a) a person appointed by the Scottish Ministers to chair the Authority (“the chairing member”), and
   (b) not fewer than 6 nor more than 10 other members appointed by the Scottish Ministers.

15 (3) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority.

20 (4) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.

25 (4A) Members of the Authority may elect from their number a member to act as deputy to the chairing member.

Disqualification

3 A person is disqualified from appointment, and from holding office, as a member of the Authority if that person is or becomes—
   (a) a member of—
      (i) the Scottish Parliament,
      (ii) the House of Lords,
      (iii) the House of Commons, or
      (iv) the European Parliament,
   (b) disqualified from standing for election as a member of—
      (i) the Scottish Parliament,
      (ii) the House of Commons, or
      (iii) a local authority,
Police and Fire Reform (Scotland) Bill
Schedule 1—The Scottish Police Authority
Part I—Status, structure and governance

(c) a constable,

(d) a member of—

(i) a police force maintained under section 2 of the Police Act 1996 (c.16),

(ii) the metropolitan police force,

(iii) the City of London police force,

(iv) the Police Service of Northern Ireland,

(v) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(vi) the British Transport Police Force,

(vii) the Civil Nuclear Constabulary,

(viii) the States of Jersey Police Force,

(ix) the salaried police force of the Island of Guernsey, or

(x) the Isle of Man Constabulary,

(e) a member of police staff,

(f) a member of the Authority’s staff,

(g) the Police Investigations and Review Commissioner or any member of the Commissioner’s staff, and

(h) a person of such other description as may be prescribed by order made by the Scottish Ministers.

Tenure

4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.

(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(3) On ceasing to be a member, a person is eligible for reappointment.

(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

Removal from office

6 (1) The Scottish Ministers may remove a member from office if—

(a) the member is an undischarged bankrupt,

(c) the member has, without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months,

(d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of the Authority,

(e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,
(f) the member has failed to comply with the terms or conditions of the member’s appointment, or

(g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

(e) who has been adjudged bankrupt (and has not been discharged), or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

Staff of the Authority

7 (1) The Authority may appoint individuals to assist the Authority in the carrying out of its functions.

(2) Individuals appointed under sub-paragraph (1) may be—

(a) employed by the Authority,

(b) provided to the Authority under arrangements between the Authority and a third party, or

(c) engaged on temporary service with the Authority in accordance with arrangements made under paragraph 8(1).

Constables: temporary service with the Scottish Police Authority

8 (1) The Authority may make arrangements for a constable, or any person falling within sub-paragraph (2), to serve as a member of the Authority’s staff in order to assist it in the carrying out of its functions.

(2) A person falls within this sub-paragraph if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force,

(d) the Police Service of Northern Ireland,

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(f) the British Transport Police Force,
(g) the Civil Nuclear Constabulary,
(h) the States of Jersey Police Force,
(i) the salaried police force of the Island of Guernsey, or
(j) the Isle of Man Constabulary.

(3) An individual engaged on service with the Authority under arrangements made under this paragraph is under the direction and control of the Authority.

(4) The Authority is liable in respect of any unlawful conduct on the part of any individual to whom sub-paragraph (3) applies in the carrying out (or purported to carrying out) of that individual’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

Terms and conditions of the Authority’s staff

9 (1) A member of the Authority’s staff may be employed on terms and conditions determined by the Authority.

(2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of the Authority’s staff.

(3) The arrangements mentioned in sub-paragraph (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

Committees and sub-committees

10 (1) The Authority may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

(3) The members of any committee or subcommittee may include persons who are not members of the Authority but such persons are not entitled to vote at meetings.

(4) A committee or sub-committee must not consist entirely of persons who are not members of the Authority.

(5) The Authority may pay such remuneration, allowances and expenses as are determined by the Authority to a member of a committee or sub-committee who is not—

(a) a constable,

(b) a member of the Authority,

(c) a member of police staff, or

(d) a member of the Authority’s staff.

Procedure

11 (1) The Authority may regulate—

(a) its own procedure (including quorum), and
(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of the Authority is not affected by any—

(a) vacancy in its membership,

(b) defect in the appointment of a member, or

(c) disqualification of a person as a member after appointment.

Delegation of functions

12 (1) The Authority may authorise—

(a) any of its committees, or

(b) any member of the Authority’s staff,

to perform on behalf of the Authority such of its functions as it may determine to the extent so authorised.

(2) A committee of the Authority may authorise—

(a) any of its sub-committees, or

(b) any member of the Authority’s staff,

to perform on behalf of the committee such of its functions as it may determine to the extent so authorised.

(3) Sub-paragraphs (1) and (2) do not affect the Authority’s—

(a) responsibility for performance of delegated functions, or

(b) ability to perform delegated functions.

Location of principal offices

13 Any determination by the Authority as to the location of the principal office premises of its members or of the chief constable is subject to the approval of the Scottish Ministers.

PART 2

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

14 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Freedom of Information (Scotland) Act 2002 (asp 13)

15 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities) after paragraph 50 insert—

“50A The Scottish Police Authority.”.
In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

The Public Services Reform (Scotland) Act 2010 is amended as follows.

In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

In schedule 8 (information on exercise of public functions: listed public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

A police custody and security officer has power—

(a) to transfer persons in legal custody from one set of relevant premises to another,
(b) to have custody of persons held in legal custody on court premises (whether or not such persons would otherwise be in the custody of the court) and to produce them before the court,
(c) to have custody of persons temporarily held in legal custody in relevant premises while in the course of transfer from one set of such premises to another,
(d) to apprehend a person who was in the custody of the officer in relevant premises or in such course of transfer but who is unlawfully at large,
(e) to remove from relevant premises any person—
   (i) who the officer has reasonable grounds to believe has committed or is committing an offence, or
   (ii) who is causing a disturbance or nuisance,
(f) in any place to search any person who is in legal custody or is unlawfully at large,
(g) to search—
   (i) any relevant premises or any other place in which there is a person in the officer’s custody who is being transferred from one set of relevant premises to another,
(ii) any person in such premises or other place who the officer has reasonable grounds to believe has committed or is committing an offence or who is seeking access to a person in the officer’s custody or to relevant premises,

(h) in relevant premises, or in any other place in which a person in legal custody is or may be, to require any person who the officer has reasonable grounds for suspecting has committed or is committing an offence—

(i) to give the person’s name and address, and

(ii) either to remain there with the officer until a constable arrives or, where reasonable in all the circumstances, to go with the officer to the nearest police station,

but only if before imposing any such requirement the officer informs the person concerned of the nature of the suspected offence and of the reason for the requirement,

(i) in fulfilment of the officer’s duties under paragraph 2(1)(d), to apprehend any person and to detain that person in custody in the premises of the court in question,

(j) at a constable’s direction, to photograph or take relevant physical data from any person held in legal custody, and

(k) to use reasonable force (which may include the use of handcuffs and other means of restraint) where and in so far as it is requisite to do so in exercising any of the other powers,

and either (but not both) of the sets of premises mentioned in any of paragraphs (a), (c) and (g) may be situated in a part of the British Islands outwith Scotland.

2 (1) It is the duty of a police custody and security officer—

(a) to attend to the well-being of a person in the officer’s custody,

(b) to prevent such a person from escaping from custody,

(c) to prevent, or detect and report on, the commission or attempted commission by such a person of any other unlawful act,

(d) to act with a view to preserving good order in the premises of any court and in land connected with such premises,

(e) to ensure good order and discipline on the part of a person in the officer’s custody (whether or not in the premises of any court or in land connected with such premises), and

(f) to give effect to any order of a court.

(2) A police custody and security officer provided to the Authority by virtue of section 26(b) does not have the powers and duties mentioned in this schedule in the premises of any court or in land connected with such premises.

(3) In this schedule—

(a) “legal custody” has the meaning given by section 295 of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) “relevant physical data” has the meaning given by section 18(7A) of that Act, and

(c) “relevant premises” means—
(i) the premises of any court, prison, police station or hospital (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or

(ii) the premises of any other place from or to which a person may be required to be taken under that Act of 1995 or that Act of 2003.

SCHEDULE 3
(introduced by section 57)

POLICE APPEALS TRIBUNALS

Constitution and membership

1 (1) A police appeals tribunal is to consist of 3 members, one of whom is to be appointed to chair the tribunal.

(2) The Lord President of the Court of Session must—

(a) establish and maintain a panel of persons who may be appointed as members of a police appeals tribunal, and

(b) from that panel, appoint the members (including the chairing member) of the tribunal.

(3) Every member of the panel must be, and have been for the period of 5 years immediately prior to the member’s appointment, either—

(a) a solicitor holding a practising certificate in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c.46), or

(b) a member of the Faculty of Advocates practising as an advocate in Scotland.

Member remuneration, allowances and expenses

2 The Authority is to pay to the members of a police appeals tribunal such remuneration, allowances and expenses as the Scottish Ministers may determine.

Expenses of proceedings

3 (1) The appellant is liable for the expenses incurred by the appellant in making an appeal.

(2) But the police appeals tribunal may direct that some or all of the appellant’s expenses must be paid by the Authority.

(3) The other expenses of the appeal (including the expenses of the respondent) must be paid by the Authority.

Police appeals tribunal rules

4 The Scottish Ministers may make rules about the procedure on appeals to a police appeals tribunal including, in particular, provision about—

(a) the notices required to start an appeal,

(b) the identity of the respondent, and

(c) holding hearings in private.
SCHEDULE 3A
(introduced by section 95(1))

PERIOD BEFORE ESTABLISHMENT OF POLICE SERVICE

1 This schedule applies during the period before the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6).

2 An appointment under section 7 has effect only where the individual has made the declaration set out in section 10 before a sheriff or justice of the peace.

3 An individual appointed under section 7—
   (a) holds the office of constable,
   (b) is to hold and vacate office on such terms and conditions as the Scottish Ministers may determine,
   (c) has power to do anything that the individual considers appropriate in anticipation of—
      (i) the establishment of the Police Service, or
      (ii) the coming into force of any provision of this Act, and
   (d) in the case of the chief constable, is accountable to the Authority.

4 Sections 18, 19, 21(1) and (2), 22 and 23 apply in relation to an individual who is so appointed as if those sections were in force.

5 Despite paragraph 2(1) of schedule 1, the Authority may consist of—
   (a) the chairing member, or
   (b) the chairing member and fewer than 6 other members.

6 It is for the Authority to hold the chief constable to account for the performance of senior officers’ functions.

7 The Authority may—
   (a) pay remuneration and allowances to, and reimburse expenses reasonably incurred by, senior officers, and
   (b) provide and maintain anything necessary or desirable in connection with the functions of senior officers.

8 The reference in section 4(1) to the Authority’s functions includes a reference to any functions which the Authority anticipates having by virtue of the coming into force of any provision of this Act.

SCHEDULE 4
(introduced by section 95)

TRANSFER OF CONSTABLES, STAFF AND PROPERTY ETC.

Interpretation

1 In this schedule—
   “appointed day” has the meaning given by paragraph 2,
“joint police board” means a joint police board constituted by an amalgamation scheme made under the 1967 Act,

“member of the Authority’s staff” means a member of police staff appointed to assist the Authority in the carrying out of its functions,

“police authority” has the same meaning as in the 1967 Act,

“police force” means a police force maintained under the 1967 Act,

“police member of the SCDEA” means an individual appointed in accordance with paragraph 7 of schedule 2 to the 2006 Act,

“SCDEA” means the Scottish Crime and Drug Enforcement Agency,

“SPSA” means the Scottish Police Services Authority,

“the 1967 Act” means the Police (Scotland) Act 1967 (c.77),

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

**Appointed day**

2 (1) The “appointed day”, for the purposes of this schedule, means—

(a) the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6), or

(b) such other day as the Scottish Ministers may by order appoint.

(2) An order under sub-paragraph (1)(b) may appoint different days for different purposes.

**Constables to continue to hold office and rank**

3 (1) Sub-paragraphs (2) to (6) apply to an individual who, immediately before the appointed day, holds the office of constable by virtue of being appointed in accordance with the 1967 Act (including any individual who, immediately before that day, is engaged in service which is “relevant service” for the purposes of section 38A of the 1967 Act).

(2) An individual to whom this sub-paragraph applies is, on and after the appointed day—

(a) to hold the office of constable,

(b) to be treated as having made the declaration required by section 10, and

(c) to otherwise be treated as having been appointed in accordance with this Act as a constable of the Police Service.

(3) Paragraphs 5 to 7 make provision for the transfer of an individual to whom this sub-paragraph applies on the appointed day.

(4) Subject to paragraph 4(2), (4) and 7(4B), an individual to whom this sub-paragraph applies is, on the appointed day, to be transferred in accordance with this schedule at the same rank as the individual holds immediately before the appointed day.

(5) Sub-paragraph (4) does not affect any temporary promotion arrangements which are in place immediately before the appointed day.
(6) Any contractual terms on which an individual to whom this sub-paragraph applies is appointed to serve as a constable to a police force (for example, in relation to fixed periods of tenure of constables holding the rank of superintendent or above) are, on and after the appointed day, to have effect as if the appointment were originally an appointment to serve as a constable of the Police Service.

Senior officers appointed under section 7

3A An individual who, immediately before the appointed day, holds the office of chief constable, deputy chief constable or assistant chief constable by virtue of appointment in accordance with section 7 is, on and after the appointed day, to serve as a constable of the Police Service.

Senior officers

4 (1) Sub-paragraph (2) applies to an individual who—
   (a) holds the rank of chief constable immediately before the appointed day,
   (b) is not appointed to the office of chief constable of the Police Service in accordance with section 7, and
   (c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.

(2) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of deputy chief constable in accordance with section 7 (and accordingly to hold the rank of deputy chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the chief constable of the police force which has ceased to exist.

(3) Sub-paragraph (4) applies to an individual who—
   (a) holds the rank of deputy chief constable immediately before the appointed day,
   (b) is not appointed to the office of chief constable, or to the office of deputy chief constable, of the Police Service in accordance with section 7, and
   (c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.

(4) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the deputy chief constable of the police force which has ceased to exist or, as the case may be, the Director General of the SCDEA.

(5) An individual who is, in accordance with this schedule, transferred to serve as a constable of the Police Service at the rank of assistant chief constable is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.
Constables serving in police forces

5 Any individual serving as a constable of a police force immediately before the appointed day (including anyone on temporary service from another police force) is, on the appointed day, to transfer to serve as a constable of the Police Service.

Constables serving in SPSA or SCDEA

6 (1) An individual who, immediately before the appointed day, is the Director General or Deputy Director General of, or is a police member of, the SCDEA is, on the appointed day, to transfer to serve as a constable of the Police Service.

(2) Sub-paragraph (1) does not apply to a police member of the SCDEA serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act (see sub-paragraphs (5) and (6)(a) below).

(3) Sub-paragraph (4) applies where, immediately before the appointed day, an individual—

(a) is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(2) of schedule 1 to the 2006 Act, and

(b) is not a police member of the SCDEA.

(4) Where this sub-paragraph applies, it is for the Scottish Police Authority to determine whether the individual concerned is, on the appointed day, to transfer—

(a) to serve as a constable of the Police Service, or

(b) to be engaged on temporary service as a member of the Authority’s staff.

(5) Sub-paragraph (6) applies where, immediately before the appointed day, an individual is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act.

(6) Where this sub-paragraph applies, the arrangement is, on and after the appointed day, to have effect as if made by the Scottish Police Authority under section 16 and—

(a) where the individual concerned is a police member of the SCDEA, the individual is, on the appointed day, to transfer to be engaged on temporary service as a constable of the Police Service, or

(b) where the individual concerned is not a police member of the SCDEA, it is for the Scottish Police Authority to determine whether the individual is, on the appointed day, to transfer—

(i) to be engaged on temporary service as a constable of the Police Service, or

(ii) to be engaged on temporary service as a member of the Authority’s staff.

Constables – temporary service arrangements

7 (1) Sub-paragraph (2) applies where, by virtue of any arrangement made or consent given, an individual is, immediately before the appointed day, engaged in service as a constable of a police force.

(2) Where this sub-paragraph applies—
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(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service as a constable of the Police Service, and

(b) the individual concerned is, on the appointed day, accordingly to transfer to be engaged in such service.

(3) Sub-paragraph (4) applies where, by virtue of any arrangement made or consent given, a constable of a police force is, immediately before the appointed day, engaged in service outwith that force which is “relevant service” for the purposes of section 38A of the 1967 Act.

(4) Where this sub-paragraph applies—

(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service outwith the Police Service,

(b) the individual concerned is, on the appointed day, accordingly to continue to be engaged in such service, and

(c) the individual’s rights under section 38A(3)(a) of the 1967 Act are, on and after the appointed day, to be treated as having arisen under section 15 of this Act.

(4A) Sub-paragraph (4B) applies to an individual who—

(a) is to revert to the Police Service by virtue of sub-paragraph (4)(c),

(b) would have (but for this paragraph) reverted to the individual’s police force at the rank of deputy chief constable, and

(c) is not appointed to the office of deputy chief constable of the Police Service in accordance with section 7.

(4B) An individual to whom this sub-paragraph applies, on and after the date that the individual reverts to the Police Service by virtue of sub-paragraph (4)(c), to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly is to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be a deputy chief constable of the police force which has ceased to exist.

(5) An individual who reverts to the Police Service by virtue of sub-paragraph (4)(c) at the rank of assistant chief constable is, on and after the day of reversion, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.

(6) This paragraph does not apply in relation to an individual transferred under paragraph 5 or 6.

Acts done before transfer

8 (1) Anything done before the appointed day by or in relation to a police authority, a joint police board, the SPSA or the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.
(2) Anything done before the appointed day by or in relation to a chief constable of a police force or the Director General of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the chief constable of the Police Service.

(3) Anything done before the appointed day by or in relation to a constable of a police force or a police member of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to a constable of the Police Service.

Limitation on mobility of transferred constables

9 (1) Sub-paragraph (2) applies to a constable of the Police Service who, immediately before the appointed day, is a constable of a police force (including any such constable who is, at that time, engaged in service outwith that force).

(2) A constable to whom this sub-paragraph applies must not be assigned duties which, in the opinion of the Scottish Ministers, would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist.

(3) Sub-paragraph (2) does not apply to a constable who, immediately before the appointed day, is engaged in service outwith that constable’s force until—

(a) in the case of a constable who is not, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the constable reverts to so serve, and

(b) in the case of a constable who is, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the chief constable may determine.

(4) Sub-paragraph (2) ceases to apply to a constable if, on or after the appointed day, the constable—

(a) is or becomes a senior officer of the Police Service,

(b) is promoted to a higher rank,

(c) gives the chief constable written consent to the lifting of the limitation imposed by sub-paragraph (2).

Transfer of police staff

10 (1) An individual is a “police employee” for the purposes of this paragraph if the individual—

(a) is employed, immediately before the appointed day—

(i) by a joint police board under section 9 of the 1967 Act (or is otherwise employed by a joint police board),

(ii) by the SPSA under paragraph 9(1) or 10(1) of schedule 1 to the 2006 Act, or

(b) being an employee of a local authority, is identified by a staff transfer scheme made under paragraph 11 as an individual, or type of individual, who is to be treated as a police employee.

(2) A police employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and the Scottish Police Authority.
(3) It is for the Scottish Police Authority to determine whether a police employee is, on and after the appointed day, to be treated as having been appointed as a member of the police staff under section 26 or as a member of the Authority’s staff under paragraph 7 of schedule 1.

(4) The rights, powers, duties and liabilities of the relevant authority under or in connection with the contract of employment are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(5) Anything done before the appointed day by or in relation to the relevant authority in respect of the contract of employment or the police employee is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

(6) If, before the appointed day, a police employee informs the relevant authority that the person does not wish to become an employee of the Scottish Police Authority—

(a) sub-paragraphs (2), (4) and (5) do not apply in relation to the police employee, and

(b) the employee’s contract of employment is terminated on the appointed day.

(7) A police employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.

(8) Nothing in this paragraph affects any right of a police employee to terminate the police employee’s contract of employment if a substantial detrimental change in the police employee’s working conditions is made.

(9) No such right arises by reason only that, by virtue of this paragraph, the identity of the police employee’s employer changes.

(10) In this paragraph “relevant authority” means the joint police board or authority which employs the individual concerned immediately before the appointed day.

Staff transfer scheme

11 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme which—

(a) identifies or prescribes methods for identifying individuals, or types of individuals, employed by local authorities who are to be treated as police employees for the purposes of paragraph 10,

(b) makes such further provision (including any incidental, consequential, supplementary, transitional, transitory or saving provision) for or in connection with the transfer of individuals identified by or under the scheme to the Scottish Police Authority as the Scottish Ministers think fit.

(3) Before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

Police staff appointed under contract for services

12 (1) A contract for services entered into by a police authority or a joint police board for the purposes of section 9(1)(b) of the 1967 Act has effect on and after the appointed day as if originally entered into by the Scottish Police Authority.
(2) Accordingly, any individual who, immediately before the appointed day, is appointed by a police authority or a joint police board under section 9(1)(b) of the 1967 Act is, on and after the appointed day, to be treated as having been provided to the Scottish Police Authority in accordance with arrangements made by virtue of section 26(b).

(3) The rights, powers, duties and liabilities of the police authority or the joint police board under or in connection with the contract for services are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(4) Anything done before the appointed day by or in relation to the police authority or the joint police board in respect of the contract for services or an individual falling with subparagraph (2) is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

**Police cadets**

13 An individual who, immediately before the appointed day, is a police cadet by virtue of appointment under section 8 of the 1967 Act is, on and after the appointed day, to be treated as having been appointed in accordance with section 25 of this Act.

**Police custody and security officers**

14 An individual who is, immediately before the appointed day, certified as a police custody and security officer under section 9(1A) of the 1967 Act is, on and after the appointed day, to be treated as having been certified as such an officer under section 28(1).

**Her Majesty’s inspectorate of constabulary in Scotland**

15 (1) An individual who, immediately before the day on which section 71 comes into force, holds office as an inspector of constabulary by virtue of appointment under section 33 of the 1967 Act is, on and after that day, to be treated as having been appointed under section 71.

(2) An individual who, immediately before the day on which section 72 comes into force, is an assistant inspector of constabulary by virtue of appointment under section 34(1) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 72.

(3) An individual who, immediately before the day on which section 73 comes into force, is a staff officer to the inspectors of constabulary by virtue of appointment under section 34(2) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 73.

**Police property transfer scheme: transfers to Scottish Police Authority**

16 (1) The Scottish Ministers may make a police property transfer scheme.

(2) A police property transfer scheme is a scheme making provision for or in connection with the transfer to the Scottish Police Authority of property, rights, liabilities and obligations of—

(a) the Scottish Ministers,

(b) a local authority,
(c) a joint police board, or
(d) the SPSA.

(3) A police property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to the Authority’s functions or police functions.

(3A) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a police property transfer scheme.

(4) On the transfer date—

(a) any property or rights to which a police property transfer scheme applies transfers to and vests in the Scottish Police Authority,

(4A) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the Scottish Police Authority.

(5) A police property transfer scheme may make provision for the payment by the Scottish Police Authority of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer scheme: transfers to local authorities

17 (1) The Scottish Ministers may make a local authority property transfer scheme.

(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a joint police board.

(2A) A joint police board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.

(3) On the transfer date—

(a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

Property transfer schemes: general

18 (1) This paragraph applies in relation to a scheme under paragraph 16 or 17.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—
(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to the use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a police property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may make provision about the continuation of legal proceedings.

(9) The scheme may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

Transfer of liabilities of chief constables etc.

19 By virtue of this paragraph, any liabilities of a chief constable of a police force under section 39 of the 1967 Act and of the Director General of the SCDEA under section 22 of the 2006 Act are, on and after the appointed day, to be treated as liabilities of the chief constable of the Police Service under section 24 of this Act.

SCHEDULE 5
(introduced by section 118)

TRANSFER OF STAFF, PROPERTY ETC.

Interpretation

1 In this schedule—

“appointed day” means such day as the Scottish Ministers may by order appoint (and different days may be appointed for different purposes),

“joint board” means a joint fire and rescue board constituted by a scheme made under section 2(1) of the 2005 Act,

“relevant employer”, in relation to—

(a) a person employed by a local authority, means the local authority with which the person has a contract of employment,

(b) a person who is a member of the staff of the Scottish Ministers, means the Scottish Ministers,
“transfer day”, in relation to a person, means the day on which a staff transfer scheme comes into force in relation to the person.

“transferring employee” means a person who, immediately before the appointed day, is an employee of a joint board.

**Joint board staff**

2 (1) A transferring employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and SFRS.

(2) The rights, powers, duties and liabilities of the joint board under or in connection with the contract of employment are by virtue of this paragraph transferred to SFRS on the appointed day.

(3) Anything done before the appointed day by or in relation to the joint board in respect of the contract of employment or the transferring employee is to be treated on and after that day as having been done by or in relation to SFRS.

(4) If, before the appointed day, a transferring employee informs the joint board that the person does not wish to become an employee of SFRS—

(a) sub-paragraphs (1) to (3) do not apply in relation to the transferring employee, and

(b) the transferring employee’s contract of employment is terminated on the appointed day.

(5) A transferring employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.

(6) Nothing in this paragraph affects any right of a transferring employee to terminate the employee’s contract of employment if a substantial detrimental change in the employee’s working conditions is made.

(7) No such right arises by reason only that, by virtue of this paragraph, the identity of the transferring employee’s employer changes.

**Local authority staff and civil servants**

3 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to SFRS of persons who are—

(a) employed by a local authority, or

(b) members of the staff of the Scottish Ministers.

(3) A staff transfer scheme may in particular—

(a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,

(b) provide that specified persons, or classes of specified person, are to become employees of SFRS.

(4) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of functions conferred on SFRS by or under the 2005 Act or any other enactment.
(5) In this paragraph, “specified” means specified in a staff transfer scheme.

Transfers under paragraph 3: effect on contract of employment

4 (1) This paragraph applies where—

(a) a person is to be transferred by virtue of a staff transfer scheme, and

(b) immediately before the transfer day the person has a contract of employment

with a relevant employer.

(2) The contract of employment has effect on and after the transfer day as if originally made

between the person and SFRS.

(3) The rights, powers, duties and liabilities of the relevant employer under or in connection

with the contract of employment are by virtue of this paragraph transferred to SFRS on

the transfer day.

(4) Anything done before the transfer day by or in relation to the relevant employer in

respect of the contract of employment or the person is to be treated on and after that day

as having been done by or in relation to SFRS.

(5) If, before the transfer day, the person informs the relevant employer that the person does

not wish to become an employee of SFRS—

(a) sub-paragraphs (2) to (4) do not apply in relation to the person, and

(b) the person’s contract of employment is terminated on the day before the transfer

   day.

(6) A person is not to be treated for any purpose as being dismissed by reason of the

   operation of any provision of this paragraph in relation to the person.

(7) Nothing in this paragraph affects any right of a person to terminate the person’s contract

   of employment if a substantial detrimental change in the person’s working conditions is

   made.

(8) No such right arises by reason only that, by virtue of this paragraph, the identity of the

   person’s employer changes.

(9) Before making a staff transfer scheme under paragraph 3, the Scottish Ministers must

   consult any local authority or other person whose rights, liabilities and obligations (or

   any of them) are to be transferred by virtue of the scheme.

Property transfer scheme: transfers to SFRS

5 (1) The Scottish Ministers may make an SFRS property transfer scheme.

(2) An SFRS property transfer scheme is a scheme making provision for or in connection

   with the transfer to SFRS of property, rights, liabilities and obligations of—

   (a) the Scottish Ministers,

   (b) a local authority,

   (c) a joint board.

(3) An SFRS property transfer scheme may make provision by virtue of sub-paragraph (2)

   only in so far as the property, rights, liabilities and obligations relate to functions of

   SFRS conferred by or under the 2005 Act or any other enactment.
(3A) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of an SFRS property transfer scheme.

(4) On the transfer date—

(a) any property or rights to which an SFRS property transfer scheme applies transfers to and vests in SFRS,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of SFRS.

(5) An SFRS property transfer scheme may make provision for the payment by SFRS of compensation in respect of property and rights transferred by virtue of the scheme.

**Property transfer scheme: transfers to local authorities**

6 (1) The Scottish Ministers may make a local authority property transfer scheme.

(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a specified joint board.

(2A) A joint board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.

(3) On the transfer date—

(a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

**Property transfer schemes: general**

7 (1) This paragraph applies in relation to a scheme under paragraph 5 or 6.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of obligations or liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of the scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may in particular make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

A staff transfer scheme or a property transfer scheme under paragraph 5 or 6 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

SCHEDULE 6
(introduced by section 123(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS RELATING TO PART 1

Police (Scotland) Act 1967 (c.77)

1 (1) The Police (Scotland) Act 1967 is amended as follows.

(2) In section 32A (grants for expenditure on safeguarding national security), in subsection (1), for “a police authority or joint police board” substitute “the Scottish Police Authority”.

(3) In section 42 (causing disaffection)—

(a) in subsection (1), for “any police force” substitute “the Police Service of Scotland”,

(b) in subsection (3), for “any police force” substitute “the Police Service of Scotland”.

Health and Safety at Work etc. Act 1974 (c.37)

1A In section 51A of the Health and Safety at Work etc. Act 1974 (application of Part to police)—

(a) in subsection (2E), for paragraph (a) substitute—

“(a) section 24 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”
(b) in subsection (3)(b), for “each chief officer of police in Scotland” substitute “the chief constable of the Police Service of Scotland”.

**Rehabilitation of Offenders Act 1974 (c.53)**

1B  In section 9B of the Rehabilitation of Offenders Act 1974 (unauthorised disclosure of spent alternatives to prosecution: Scotland), in subsection (1)(a)(ii), after “court,” insert “the Police Service of Scotland or another”.

**Slaughter of Animals (Scotland) Act 1980 (c.13)**

1C  In section 22 of the Slaughter of Animals (Scotland) Act 1980 (interpretation), in the definition of “constable” for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”.

**Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 (c.55)**

1D  In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part I, in Group B—

(a) after paragraph (f) insert—

“(fa) members and staff of the Scottish Police Authority;”,

(b) for paragraph (i) substitute—

“(i) constables of the Police Service of Scotland (including constables engaged on temporary service within the meaning of section 15 of the Police and Fire Reform (Scotland) Act 2012 (asp 00));”,

(c) for paragraph (n) substitute—

“(n) persons appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012;”,

(d) after paragraph (w) insert—

“(wza) persons who, at any time within the 5 years immediately preceding the date at which the eligibility, in terms of section 1 of this Act, for jury service is being considered, were members or employees of the Scottish Police Services Authority;”.

**Civic Government (Scotland) Act 1982 (c.45)**

1E(1)  The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 8 (interpretation of Parts 1 and 2)—

(a) for paragraph (a) of the definition of “authorised civilian employee” substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00); and”,

(b) for the definition of “chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland;”.

(3) In section 61(2) (protection of insecure premises), for “police authority” substitute “Scottish Police Authority”.

(4) In section 62(12) (notification of processions), for the definition of “chief constable” substitute—

““chief constable” means the chief constable of the Police Service of Scotland; and”.

(5) In section 77(1) (financial provisions relating to lost or abandoned property) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(6) In section 79 (interpretation of Part 4), for the definition of “chief constable” substitute—

““chief constable” means the chief constable of the Police Service of Scotland;”.

(7) In section 85(1) (financial provisions: property of persons in custody) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(8) In section 86(1) (interpretation of Part 7 etc.) for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.

(9) In section 86D (duty of care etc.), for “the proviso to section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”.

(10) In section 86F (retention of relevant property by police authority)—

(a) in subsection (1)—

(i) for “a chief constable” substitute “the chief constable”,

(ii) for “police authority” substitute “Scottish Police Authority”,

(b) the title of the section becomes “Retention of relevant property by Scottish Police Authority”.

(11) In section 86J (references in Part 7A to “chief constable”), for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.

(12) In paragraph 3 of Schedule 2 (definitions)—

(a) in the definition of “authorised civilian employee”, for paragraph (a) substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00), and”,

(b) for the definition of “chief constable” substitute—

““chief constable” means the chief constable of the Police Service of Scotland;”.

(13) In Schedule 2A (retention and disposal of certain property)—

(a) in paragraph 3, for the words “the proviso in section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”,

(b) in paragraph 8, for the definition of “chief constable” substitute—
“chief constable” means the chief constable of the Police Service of Scotland;”.

Roads (Scotland) Act 1984 (c.54)

1F (1) The Roads (Scotland) Act 1984 is amended as follows.

(2) In section 33(2) (snow gates), in the entry beginning with “constable” for the words from “sections” to “(interpretation)” substitute “section 97 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(3) In section 37(1)(a) (consultation and local inquiries as regards road humps), for the words from “officer” to “situated” substitute “constable of the Police Service of Scotland”.

(4) In section 59(5) (control of obstructions in roads), for “police authority” substitute “Scottish Police Authority”.

(5) In section 86 (removal of builders’ skips causing danger or obstruction)—

(a) in subsection (4), for “police authority” substitute “Scottish Police Authority”,

(b) in subsection (5), for “police authority” (in both places where it occurs) substitute “Scottish Police Authority”,

(c) in subsection (6), for “police authority” substitute “Scottish Police Authority”.

(6) In section 98 (control of stray and other animals on roads)—

(a) in subsection (2), for “police authority” substitute “Scottish Police Authority”,

(b) in subsection (3), for “police authority” substitute “Scottish Police Authority”,

(c) in subsection (4), for “police authority” substitute “Scottish Police Authority”.

(7) After section 120, insert—

“120A Delegation by the Scottish Police Authority

(1) The Scottish Police Authority may delegate to the chief constable of the Police Service of Scotland any of its functions under the sections mentioned in subsection (2).

(2) The sections are—

(a) section 59;

(b) section 86; and

(c) section 98.”.

Prisons (Scotland) Act 1989 (c.45)

IG In section 14 of the Prisons (Scotland) Act 1989 (legalised police cells)—

(a) in subsection (1)—

(i) for “a police authority” substitute “the Scottish Police Authority”,

(ii) for “police authority” where it second occurs substitute “Scottish Police Authority”,
(b) in subsection (3), in the proviso, for “police authority” substitute “Scottish Police Authority”,
(c) in subsection (4), for “police authority” substitute “Scottish Police Authority”,
(d) in subsection (5), for the words from “police” to “cells” substitute “Scottish Police Authority”.

Criminal Justice and Public Order Act 1994 (c.33)

1H (1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(2) In section 102(5) (arrangements for the provision of prisoner escorts), for “prescribed under section 9(1A)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “under section 28 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”).

(3) In section 163 (local authority powers to provide closed-circuit television)—
(a) in subsection (3), after “area” insert “or, in Scotland, the local commander designated for the local authority’s area”,
(b) in subsection (4), after the definition of “local authority” insert—

““local commander” has the meaning given by section 45 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”.

Local Government etc. (Scotland) Act 1994 (c.39)

1I In section 150(1) of the Local Government etc. (Scotland) Act 1994 (traffic signs), for “chief officer of police for the area concerned” substitute “chief constable of the Police Service of Scotland”.

Children (Scotland) Act 1995 (c.36)

1J (1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 78 (powers of arrest etc. in relation to exclusion order)—
(a) in subsection (4)—

(i) paragraphs (a) and (b) are repealed, and
(ii) after “delivered” insert “to the chief constable of the Police Service of Scotland”,
(b) in subsection (5), for “each chief constable specified in subsection (4) above” substitute “the chief constable of the Police Service of Scotland”.

(3) In section 93(1) (interpretation of Part II), in the definition of “constable” for “a police force within the meaning of the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Criminal Procedure (Scotland) Act 1995 (c.46)

3 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 12 (instructions by Lord Advocate as to reporting of offences)—
(a) for first “a” substitute “the”,

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(b) the words from “within” to “therewith” are repealed.

(3) In section 18(4)(b) (prints, samples etc. in criminal investigations), for “any police force” substitute “the Police Service of Scotland”.

(4) In section 18A (retention of samples etc.: prosecutions for sexual and violent offences)—

(a) in subsection (5), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (11), the definition of “the relevant chief constable” is repealed.

(5) In section 18C (section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences)—

(a) in subsection (2), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (11), the definition of “the relevant chief constable” is repealed.

(6) In section 18F (retention of samples etc. relating to children: appeals)—

(a) in subsection (1), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (10), the definition of “the relevant chief constable” is repealed.

(7) In section 19(4)(b) (prints, samples etc. in criminal investigations: supplementary provisions), for “police force which instructed the analysis” substitute “Police Service of Scotland”.

(8) In section 19C (use of certain samples etc.)—

(a) in subsection (1)(e)—

(i) for paragraph (i) substitute—

“(i) the Police Service of Scotland (“the Police Service”),”,

(ii) in paragraph (ii), for “Services Authority” substitute “Authority (“the Authority”),”,

(iii) in paragraph (iii), for “a police force” substitute “the Police Service or the Authority”,

(b) in subsection (4), for the words from “a” where it first occurs to “force” where it third occurs substitute “the Police Service, the Authority or a person acting on behalf of the Police Service or the Authority, the Police Service”,

(c) in subsection (5), for the words from “A” to “force” where it second occurs substitute “The Police Service, the Authority or a person acting on behalf of the Police Service or the Authority”.

(9) In section 194I(4) (power of Scottish Criminal Cases Review Commission to obtain documents), in the definition of “public body”, for paragraph (a) substitute—

“(a) the Police Service of Scotland,”.

(10) In section 307(1) (interpretation)—

(a) in the definition of “constable”, for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”,


(b) in the definition of “officer of law”, for paragraph (c) substitute—

“(c) any person who is appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012 who is either authorised by the chief constable of the Police Service of Scotland in relation to such service and execution or is a police custody and security officer;”.

(11) In Schedule 9 (certificates as to proof of certain routine matters), in the entry for the Firearms Act 1968 (c.27), in the second column, for “police force maintained for the authority’s area” substitute “Police Service of Scotland”.

Police Act 1996 (c.16)

3A(1) The Police Act 1996 is amended as follows.

(2) In section 59(2) (police federations), for “section 26(2A) of the Police (Scotland) Act 1967” substitute “under section 49 of the Police and Fire Reform (Scotland) Act 2012 in so far as relating to the matters described in section 53 of that Act,.”.

(3) In section 60(2) (regulations for police federations)—

(a) in paragraph (c), for “police authorities” substitute “the Scottish Police Authority”,

(b) in paragraph (d), for “police authorities” substitute “the Scottish Police Authority”,

(c) in paragraph (e), for “26 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

(4) In section 62(1A)(a) (functions of the Board with respect to regulations), for “26 or 27 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

(5) In section 99(1) (jurisdiction of metropolitan police officers), for “a police force maintained under the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Police Act 1997 (c.50)

3B(1) The Police Act 1997 is amended as follows.

(2) In section 93 (authorisations to deal with property etc.)—

(a) in subsection (3)—

(i) after paragraph (za) insert—

“(zb) if the authorising officer is within subsection (5)(d), by a constable of the Police Service of Scotland;”

(ii) in paragraph (a), for “(5)(d) to” substitute “(5)(e),”,

(iii) after paragraph (e) insert—

“(ea) if the authorising officer is within subsection (5)(ia), by a staff officer of the Police Investigations and Review Commissioner;”,

(b) after subsection (3A) insert—
“(3ZA) An authorisation under this section may be given by the authorising officer within subsection (5)(ia) only where it relates to the taking of action in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”;

(c) in subsection (5)—

(i) for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland, or any deputy chief constable or assistant chief constable of the Police Service of Scotland who is designated for the purposes of this paragraph by the chief constable;”;

(ii) after paragraph (i) insert—

“(ia) the Police Investigations and Review Commissioner.”.

(d) in subsection (6)(b), for the words from “of” to “maintained” substitute “or (ia) of subsection (5), means Scotland”.

(2) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (1)(b), for “, (c) or (d)” substitute “or (c)”,

(b) in subsection (2), after paragraph (g) insert—

“(ga) where the authorising officer is within paragraph (ia) of that subsection, by a staff officer of the Police Investigations and Review Commissioner who is designated by the Commissioner for the purposes of this section;”.

(3) In section 95 (authorisations: form and duration etc.)—

(a) in subsection (6), for “or (c),” substitute “(d), (e),”

(b) in subsection (7), for “, (c), (d) or (j)” substitute “or (c)”.

(4) In section 105(3) (appeals), for “, (c) or (d)” substitute “or (c)”.

(5) In section 107(4) (supplementary provisions)—

(a) in paragraph (a), for “police authority” substitute “the Scottish Police Authority”,

(b) after paragraph (b) insert—

“(bza) the functions of the Police Investigations and Review Commissioner under section 33A(1)(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”.

(6) In section 120A(4) (refusal and cancellation of registration), for “A chief constable of a police force in Scotland” substitute “The chief constable of the Police Service of Scotland”.

(7) In section 126 (interpretation of Part 5)—

(a) in the definition of “chief officer”, for sub-paragraph (ii) substitute—

“(ii) the chief constable of the Police Service of Scotland, and”;

(b) in the definition of “police authority”, for sub-paragraph (i) substitute—

“(i) the Scottish Police Authority, and”.
(1) The Regulation of Investigatory Powers (Scotland) Act 2000 is amended as follows.

(2) In section 5 (lawful surveillance etc.), in subsection (3)(b), for “a police force” substitute “the Police Service”.

(3) In section 8(3) (entitlement to grant authorisations)—

(a) for paragraph (a) substitute—

“(aa) the Police Service;”;

(b) after paragraph (c) insert—

“(ca) the Police Investigations and Review Commissioner;”.

(4) In section 10(1A) (persons who may authorise intrusive surveillance)—

(a) in paragraph (a), for “every police force” substitute “the Police Service and any other senior officer of the Police Service who is designated by the chief constable for the purposes of this section”;

(b) after paragraph (a) insert—

“(aa) the Police Investigations and Review Commissioner;”.

(5) In section 11 (rules for grant of authorisations)—

(a) in subsection (1)—

(i) for “a police force” substitute “the Police Service”,

(ii) for “member of the same force” substitute “constable of the Police Service”,

(aa) for subsection (2) substitute—

“(2) An authorisation for the carrying out of intrusive surveillance shall not be granted by the chief constable or any other senior officer of the Police Service except on an application by a constable of the Police Service.”.

(c) after subsection (2) insert—

“(2A) The Police Investigations and Review Commissioner shall not grant an authorisation for the carrying out of intrusive surveillance except—

(a) on an application by one of the Commissioner’s staff officers, and

(b) where the intrusive surveillance is to be carried out in relation to an investigation carried out in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

(d) in subsection (4)—

(i) in paragraph (a)—

(A) for the words from “by” to “Agency” substitute “—

(i) by, or on the application of, a constable of the Police Service;”,

(B) after the words inserted by paragraph (A) insert—

“(ii) by the Police Investigations and Review Commissioner; or
(iii) by, or on the application of, a staff officer of the Police Investigations and Review Commissioner”;

(ii) in paragraph (b)(i), for the words from “member” to “or” substitute “constable of the Police Service, the Police Service, or

(ia) where that individual is the Police Investigations and Review Commissioner or a staff officer of that Commissioner, the Commissioner”.

(7) After section 12 insert—

“12ZA Grant of authorisation in cases of urgency: Police Investigations and Review Commissioner

(1) This section applies in the case of an application to the Police Investigations and Review Commissioner for an authorisation for the carrying out of intrusive surveillance where the case is urgent.

(2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Police Investigations and Review Commissioner, the application may be made to and considered by any staff officer of the Commissioner whom the Commissioner designates for the purposes of this section.”.

(8) In section 14(5)(a) (approval required for authorisations to take effect), for the words from “member” to “and” substitute “constable of the Police Service, the chief constable of the Police Service; and

(aa) in relation to an authorisation granted on an application by a staff officer of the Police Investigations and Review Commissioner, the Police Investigations and Review Commissioner.”.

(9) In section 16 (appeals against decisions by Surveillance Commissioners)—

(a) in the opening words of subsection (1), for the words from “A” to “Agency” substitute “A person who granted an authorisation for the carrying out of intrusive surveillance”,

(b) in subsection (1)(a), for the words from “an”, where second occurring, to “surveillance” substitute “the authorisation”,

(c) in subsection (1)(b), for “such an” substitute “the”,

(d) after subsection (1) insert—

“(1A) Where an authorisation for the carrying out of intrusive surveillance is granted by a senior officer of the Police Service designated by the chief constable under section 10(1A)(a), the chief constable shall also be entitled to appeal under this section.

(1B) Where an authorisation for the carrying out of intrusive surveillance is granted by a staff officer designated by the Police Investigations and Review Commissioner under section 12ZA(2), the Commissioner shall also be entitled to appeal under this section.”.

(10) In section 18 (information to be provided to the Surveillance Commissioners)—

(a) in paragraph (a), for “member of a police force” substitute “constable of the Police Service”,
(b) after that paragraph insert—

“(aa) the Police Investigations and Review Commissioner and every staff officer of the Commissioner,”.

(10A) In section 20 (cancellation of authorisations)—

(a) after subsection (2) insert—

“(2A) Where an authorisation under this Act was granted or, as the case may be, last renewed by a senior officer of the Police Service and it is not reasonably practicable for that senior officer to cancel it under subsection (1) above, any senior officer of the Police Service designated by the chief constable for the purposes of section 10 above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(2B) Where an authorisation under this Act was granted or, as the case may be, last renewed by the Police Investigations and Review Commissioner and it is not reasonably practicable for the Commissioner to cancel it under subsection (1) above, any person designated by the Commissioner for the purposes of section 12ZA above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.”.

(12) In section 23(5)(b) (complaints to the Tribunal)—

(a) for “a police force” substitute “the Police Service”,

(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,

(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(13) In section 24(2)(b) (issue and revision of codes of practice)—

(a) for “a police force” substitute “the Police Service”,

(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,

(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(14) In section 26(4)(c) (effect of codes of practice)—

(a) for “a police force” substitute “the Police Service”,

(b) after the words inserted by sub-paragraph (a) insert “or the Police Investigations and Review Commissioner”.

(15) In section 31 (interpretation)—

(a) in subsection (1), for the definition of “police force” substitute—

“Police Service” means the Police Service of Scotland;”,

(aa) after the definition of “residential premises” insert—

““‘senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012 (asp 00);”

(b) after subsection (4) insert—

“(4A) References in this Act to a staff officer of the Police Investigations and Review Commissioner are references to any person who—
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(a) is a member of the Commissioner’s staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or

(b) is a member of the Commissioner’s staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.

Transport (Scotland) Act 2001 (asp 2)

5 (1) The Transport (Scotland) Act 2001 is amended as follows.

(2) In section 5(4) (consultation as to proposed quality partnership scheme), for paragraph (f) substitute—

“(fa) the chief constable of the Police Service of Scotland;”.

(3) In section 15(3) (consultation as to proposed quality contract scheme), for paragraph (g) substitute—

“(ga) the chief constable of the Police Service of Scotland;”.

International Criminal Court (Scotland) Act 2001 (asp 13)

6 In section 15(2) of the International Criminal Court (Scotland) Act 2001 (service of process), for “for the area in which the person appears to be” substitute “of the Police Service of Scotland”.

Protection from Abuse (Scotland) Act 2001 (asp 14)

7 In section 3 of the Protection from Abuse (Scotland) Act 2001 (notification to police), in the closing words of subsection (1), for the words from “any” to “recalled.” substitute “the Police Service of Scotland.”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

8 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In schedule 2 (listed authorities), for paragraph 32A substitute—

“32A The Police Investigations and Review Commissioner.”.

(3) In paragraph 1 of schedule 4 (matters which the Ombudsman must not investigate) for sub-paragraph (c) substitute—

“(c) by the Police Investigations and Review Commissioner;”.

Freedom of Information (Scotland) Act 2002 (asp 13)

9 (1) In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities)—

(za) in paragraph 6, for “Chief Inspector” substitute “Inspectors”,

(a) in paragraph 50, for “a police force in Scotland” substitute “the Police Service of Scotland”,
(b) for paragraph 75A (as inserted by paragraph 11(b) of schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 and relating to the Police Complaints Commissioner for Scotland), substitute—

“75AB The Police Investigations and Review Commissioner.”.

5 **Criminal Justice (Scotland) Act 2003 (asp 7)**

10 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 56(4) (retaining sample or relevant physical data where given voluntarily)—

(a) in paragraph (a), for the words from “police” to “provided;” substitute “Police Service of Scotland;”;

(b) in paragraph (b)—

(i) in the opening words, repeal the words “within the area of that force”,

(i) in sub-paragraph (i), repeal the words “of the force”.

11 In section 3 of the Dog Fouling (Scotland) Act 2003 (exceptions to offence), in subsection (1)(c)—

(a) for “Forces,” substitute “Forces or”, and

(b) for “the police force for any area” insert “by a constable of the Police Service of Scotland”.

12 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 8(3) (duty to bring specific matters to attention of Scottish Ministers and others etc.), for paragraph (l) substitute—

“(la) the Police Service of Scotland;”.

(3) In section 17(2) (duties of the Scottish Ministers, local authorities and others as respects Commission), for paragraph (f) substitute—

“(fa) the Police Service of Scotland;”.

(4) In section 35(2)(a) (warrants relating to inquiries into individual cases), for sub-paragraph (iii), substitute—

“(iiiia) any constable of the Police Service of Scotland,”.

(5) In section 292(3) (warrant to enter premises for purposes of taking patient)—

(a) in paragraph (a), for sub-paragraph (iii) substitute—

“(iiiia) any constable of the Police Service of Scotland,”;

(b) in paragraph (b), for the words from “of” where it first occurs to “situated” substitute “of the Police Service of Scotland”.

(6) In section 293(3) (removal to place of safety), in paragraph (a), for paragraph (iii) substitute—
“(iii) any constable of the Police Service of Scotland.”.

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

13 (1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.

(2) In section 1 (antisocial behaviour strategies)—
   (a) in subsection (1), for “relevant” substitute “the”,
   (b) in subsection (11), for the entry for “relevant chief constable” substitute—
       “‘chief constable’ means the chief constable of the Police Service of Scotland.”.

(3) In section 2(6) (reports and information), for “relevant chief constable” substitute “chief constable”.

(4) In section 15(4) (records of orders), for paragraph (d) substitute—
   “(d) the chief constable of the Police Service of Scotland;”.

(5) In section 18 (interpretation), in the entry for “relevant consultees”—
   (a) in paragraph (a), for sub-paragraphs (i) and (ii) substitute—
       “(ia) the chief constable of the Police Service of Scotland;”,
   (b) in paragraph (b)—
       (i) for sub-paragraph (i) substitute—
           “(i) the chief constable of the Police Service of Scotland;”,
       (ii) in sub-paragraph (ii), for “that person” substitute “the person in respect of whom the order is sought or made”.

(6) In section 31(4) (enforcement), for “for the area in which the premises are situated” substitute “of the Police Service of Scotland”.

(7) In section 35 (reimbursement of expenditure)—
   (a) in subsection (1), for “a police authority” substitute “the Scottish Police Authority”,
   (b) in subsection (3)(a)—
       (i) in sub-paragraph (i), for the words from “police” to “situated;” substitute “Scottish Police Authority;”,
       (ii) in sub-paragraph (ii), for “a police authority” substitute “the Scottish Police Authority”.

(8) In section 119(4) (records of antisocial behaviour orders made in criminal courts), for paragraph (d) substitute—
   “(d) the chief constable of the Police Service of Scotland;”.

(9) In section 139(5) (disclosure and sharing of information), for paragraph (b) substitute—
   “(b) the chief constable of the Police Service of Scotland;”.
14 In the Emergency Workers (Scotland) Act 2005, for section 7 (saving for certain other offences) substitute—

“7A Interaction with offence of assaulting or impeding police

Nothing in this Act affects (or is affected by) section 87(1) of the Police and Fire Reform (Scotland) Act 2012 (assaulting or impeding police).”.

15 (1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 is amended as follows.

(2) In section 2(1) (risk of sexual harm orders: applications, grounds and effect)—

(a) for “a police force” substitute “the Police Service of Scotland”,
(b) repeal the words from “who” where it first occurs to the word “area” where it second occurs.

(3) In section 4 (RSHOs: variations, renewals and discharges)—

(a) in subsection (2), after paragraph (a) insert—

“(aa) the chief constable of the Police Service of Scotland.”,
(b) in subsection (3)(a)—

(i) repeal the words from “, except” to “above”,
(ii) for the word “that” where it second occurs substitute “the”,
(c) in subsection (3)(b), for the words “any of the other persons” insert “the other person”.

16 In section 86(2) of the Charities and Trustee Investment (Scotland) Act 2005 (local authority consents), for “police force for the area” substitute “Police Service of Scotland”.

17 In section 10(7) of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders), for paragraph (a) substitute—

“(a) the chief constable of the Police Service of Scotland;”.

18 (1) The Licensing (Scotland) Act 2005 is amended as follows.

(2) In each of the provisions mentioned in subsection (3), for each occurrence of the expression “appropriate chief constable” substitute “chief constable”.

(3) The provisions are—
section 6(5)(a),
section 7(4)(a),
section 21(1)(d), (2)(a), (3),
section 22(2A),
section 23(6)(a) and (b),
section 24(5)(b), (6) and (10)(a),
section 24A(1) and (2),
section 26(3),
section 27A(9)(b)(i),
section 33(4), (5) and (7),
section 40A(3),
section 44(2), (3), (6) and (7),
section 47(4A),
section 48(2A),
section 49(2A),
section 51(1)(b),
section 56(10),
section 57(1)(a),
section 61(1)(b),
section 67(4)(a)(i),
section 69(1)(a) and (2),
section 70(1)(a) and (4)(b),
section 73(1), (2) and 73(4),
section 74(2)(b), (5)(b), (5A)(b) and (7),
section 75(4)(b) and 75(5),
section 79(2)(b),
section 83(2), (3), (5), (6), (7), (8)(b)(ii) and (10)(b).

(4) In section 12A(1) (chief constables’ reports to Licensing Boards and Local Licensing Forums)—

(a) for “Every” substitute “The”,
(b) repeal the words “whose area falls within the police area of the chief constable”.

(5) The title to section 12A becomes “Chief constable’s reports to Licensing Boards and Local Licensing Forums”.

(6) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives)—

(a) in subsection (1), for “a chief constable” substitute “the chief constable”,

section 12A(1) (chief constables’ reports to Licensing Boards and Local Licensing Forums)—
(b) in subsection (2), for “a chief constable” substitute “the chief constable”.

(7) In section 105(3) (purchase of alcohol by or for a child or young person), for “A chief constable” substitute “The chief constable”.

(8) In section 147(1) (interpretation), for the entry for “appropriate chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland.”.

(9) In section 148 (index of defined expressions) for the words “appropriate chief constable” substitute “chief constable”.

(10) In paragraph 2(6) of schedule 2 (membership of local licensing forums), for paragraph (b) substitute—

“(ba) the chief constable,”.

Housing (Scotland) Act 2006 (asp 1)

19 In section 166 of the Housing (Scotland) Act 2006 (interpretation of Part relating to houses in multiple occupation), for the entry for “chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland.”.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

20 In section 62(1) of the Edinburgh Tram (Line Two) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Edinburgh Tram (Line One) Act 2006 (asp 7)

21 In section 62(1) of the Edinburgh Tram (Line One) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

22 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

(2) In section 34 (“relevant complaint” and “person serving with police”)—

(a) in subsection (1), after “is” insert “made,”,
(b) in subsection (2)—

(i) for “written statement” substitute “statement (whether oral, written or electronic)”,

(ii) for paragraphs (a) to (e) substitute—

“(a) by the Authority;
(b) by the Police Service; or”,

(c) after subsection (2), insert—

“(2A) A “complaint” may relate to—

(a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;

(b) the standard of any service which the subject of the complaint has provided or failed to provide.”.

(3) In section 35 (examination of manner of handling of complaint)—

(za) in subsection (3), after paragraph (b) insert “; and

(c) if the Commissioner considers it appropriate to do so, publish the report drawn up under paragraph (b) in such manner as the Commissioner considers appropriate.”,

(a) in subsection (8)(b), for the words from “any” to “authority” substitute “the Authority where the appropriate authority is the chief constable”,

(b) in subsection (10), for the words from “proceedings” to “procedures)” substitute “procedures made by regulations made under section 49 of the Police and Fire Reform (Scotland) Act 2012 for dealing with constables whose standard of behaviour or performance is unsatisfactory”.

(3A) In section 36—

(a) in subsection (1), after “subsection” insert “(1A) or”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a complaint handling review if—

(a) it relates or, if it took place, would relate to a relevant complaint in respect of which the appropriate authority in relation to the complaint—

(i) has concluded its consideration of the complaint; and

(ii) has communicated its findings to the complainer;

(b) a period of 3 months or longer has elapsed between the date on which those findings were so communicated and the date on which the Commissioner was requested to carry out the complaint handling review; and

(c) the Commissioner is not satisfied that there are exceptional circumstances which justified the delay in requesting the review.”.

(4) After section 40, insert—

“40A Arrangements for handling relevant complaints

(1) The Commissioner must—
(a) keep under review all arrangements maintained by the Commissioner, the Authority and the chief constable for the handling of relevant complaints; and

(b) seek to secure that those arrangements—

(i) are efficient and effective;
(ii) contain and manifest an appropriate degree of independence; and
(iii) are adhered to.

(2) The Commissioner may make such recommendations, or give such advice, for the modification of—

(a) the arrangements mentioned in subsection (1); or
(b) the practice of the Authority or the chief constable in relation to other matters,

as appear from the carrying out of the Commissioner’s other functions to be necessary or desirable.”.

(5) In section 41 (appropriate authority in relation to complaint), for paragraphs (a) to (j) of subsection (1) substitute—

“(a) the Authority in cases where the complaint is about an act or omission by—

(i) the Authority;
(ii) a senior officer of the Police Service; or
(iii) a member of the Authority’s staff; and

(b) the chief constable in cases where the complaint is about an act or omission by—

(i) the Police Service;
(ii) a constable of the Police Service who is not a senior officer; or
(iii) a member of the police staff.”.

(6) In section 43 (reports to Scottish Ministers)—

(a) in subsection (4), for “42(d)” substitute “40A(2)”,

(b) in subsection (6)—

(i) in paragraph (a), for the words from “all” to “Act” substitute “the Authority, the chief constable and the inspectors of constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012”;

(ii) in paragraph (b), for “all relevant authorities and to” substitute “the Authority, the chief constable and”,

(c) after subsection (7) insert—

“(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1).”.

(7) In section 44 (provision of information to the Commissioner)—
(a) in subsection (1), for “A relevant authority” substitute “The Authority and the chief constable”,
(b) in subsection (2)—
  (i) for “A relevant authority” substitute “The Authority and the chief constable”,
  (ii) for “that person” (in paragraph (a)) substitute “the Authority or, as the case may be, the chief constable”,
(c) in subsection (3), for “any person” substitute “the Authority or the chief constable”,
(d) in subsection (4)—
  (i) for “a relevant authority” substitute “the Authority or the chief constable”,
  (ii) for “the authority” substitute “the Authority or, as the case may be, the chief constable”.
(8) In section 45 (power of Commissioner to issue guidance)—
(a) in subsection (1)(a), for “relevant authorities” substitute “the Authority or the chief constable”,
(b) in subsection (2), for paragraph (a) substitute—
  “(a) the Authority and the chief constable;”.
(9) In section 46, after subsection (5) insert—
  “(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to such disclosure).”.
(10) For section 47 substitute—
  “47 Interpretation of Chapter 2
In this Chapter—
  “appropriate prosecutor” means the Lord Advocate or procurator fiscal,
  “the Authority” means the Scottish Police Authority;
  “chief constable” means the chief constable of the Police Service;
  “the Commissioner” means the Police Investigations and Review Commissioner;
  “constable” means a constable of the Police Service;
  “financial year” means each yearly period ending with 31 March;
  “firearm” has the meaning given by section 57(1) of the Firearms Act 1968;
  “member of the Authority’s staff” and “member of the police staff” have the same meanings as in the Police and Fire Reform (Scotland) Act 2012;
  “person serving with the police” means—
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(a) a constable of the Police Service;
(b) a member of the police staff; or
(c) a member of the Authority’s staff;

“Police Service” means the Police Service for Scotland;

“relevant complaint” has the meaning given by section 34;

“senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012.”.

(10A) In section 52(1) (application for football banning order)—

(a) in the opening words, for “a police force” substitute “the Police Service of Scotland”;

(b) paragraphs (a) and (b) are repealed.

(10B) In section 57(3) (variation of football banning order)—

(a) in paragraph (b), for the words from “police” to “resides” substitute “Police Service of Scotland”;

(b) paragraphs (c) and (d) are repealed.

(10C) In section 69(1) (interpretation), in the definition of “the football banning orders authority”, for the words from “police force” to “area” substitute “Police Service of Scotland”.

(11) In section 103(4)(a) (subordinate legislation)—

(a) “or”, where second occurring, is repealed, and

(b) after “schedule 2” insert “or paragraph 7A(8) or 7B(4) of schedule 4 or regulations under section 41D(1)”.

(12) For the title of schedule 4 substitute—

“THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER”.

(13) In schedule 4—

(a) in paragraph 2—

(i) in sub-paragraph (1)(b), for “a police force” substitute “the Police Service (or of a police force previously maintained under the 1967 Act)”;

(ii) after sub-paragraph (d) insert—

“(da) is or has been a member of the Authority;”,

(iii) in sub-paragraph (e), after “Authority” insert “or has been a member of staff of the body which was known as the Scottish Police Services Authority”;

(iv) in paragraph (g) after “been” insert “employed as a member of police staff or as a member of the Authority’s staff or has been”,

(aa) in paragraph 3—

(i) in sub-paragraph (2)(a), for “3” substitute “5”;

(ii) in sub-paragraph (2)(b), for “2” substitute “3”,

(ii)
(b) after paragraph 7 insert—

“Staff officers

7A (1) The Commissioner may make arrangements for constables of the Police Service to be appointed to serve as members of the Commissioner’s staff.

(2) The Commissioner may make arrangements for a person falling within sub-paragraph (3) to be appointed to serve as a member of the Commissioner’s staff.

(3) A person falls within this sub-paragraph if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c. 16);

(b) the metropolitan police force;

(c) the City of London police force;

(d) the Police Service of Northern Ireland;

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c. 4);

(f) the British Transport Police Force;

(g) the Civil Nuclear Constabulary;

(h) the States of Jersey Police Force;

(i) the salaried police force of the Island of Guernsey; or

(j) the Isle of Man Constabulary.

(4) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2) is to be appointed on such terms and conditions (including as regards remuneration, allowances and expenses) as the Commissioner determines.

(5) The Commissioner’s determination under sub-paragraph (4) may be made by reference to provision made by regulations made under section 49 of the Police and Fire Reform (Scotland) Act 2012.

(6) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2)—

(a) has all the powers and privileges of a constable throughout Scotland, and

(b) is subject to the direction and control of the Commissioner.

(7) The Commissioner is liable in respect of any unlawful conduct on the part of any constable or other person appointed under arrangements made under sub-paragraph (1) or (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.
(8) The Scottish Ministers may by order apply any provision of the Police and Fire Reform (Scotland) Act 2012 or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).

Staff involved in investigations

7B (1) The Commissioner may designate—

(a) any member of the Commissioner’s staff appointed under paragraph 7 or 7A to take charge of any investigation on behalf of the Commissioner; and

(b) other members of the Commissioner’s staff to assist the member designated to take charge.

(2) This sub-paragraph applies to a person who is a member of the Commissioner’s staff appointed under paragraph 7 and is designated under sub-paragraph (1).

(3) A person to whom sub-paragraph (2) applies—

(a) has all the powers and privileges of a constable throughout Scotland, but

(b) is not as a result of the designation to be treated as being in police service for the purposes of—

(i) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992; or

(ii) section 200 of the Employment Rights Act 1996.

(4) Ministers may by order apply any enactment relating to the investigation of offences by constables (subject to such modifications as they consider appropriate) in relation to investigations carried out in pursuance of paragraph (b)(i) of section 33A(1) by a member of the Commissioner’s staff designated under sub-paragraph (1)."

(c) in paragraph 11—

(i) the existing text becomes sub-paragraph (1),

(ii) after that text insert—

“(2) Nothing in this paragraph requires or authorises the provision of any information or document relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to disclosure of the information or document).”.

Animal Health and Welfare (Scotland) Act 2006 (asp 11)

23 In section 49(6) of the Animal Health and Welfare (Scotland) Act 2006 (vets, inspectors and constables), for the words “a police force” substitute “the Police Service of Scotland”.
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Adult Support and Protection (Scotland) Act 2007 (asp 10)

24 (1) The Adult Support and Protection (Scotland) Act 2007 is amended as follows.

(2) In section 5(1) (co-operation), for paragraph (e) substitute—

“(e) the chief constable of the Police Service of Scotland.”.

(3) In section 27(3) (notification to police), for the words from “police” to “situated.” substitute “Police Service of Scotland.”.

(4) In section 42(3) (adult protection committees), for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland.”.

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

24A(1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.

(2) In section 18 (police information etc.)—

(a) in subsection (1)—

(i) the words “of a police force or the Scottish Crime and Drug Enforcement Agency” are repealed,

(ii) the words “or the Scottish Crime and Drug Enforcement Agency” (where second occurring) are repealed,

(b) in subsection (2)—

(i) for “A person” substitute “The chief constable”,

(ii) for “person”, where second occurring, substitute “chief constable”,

(c) in subsection (3), for “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(3) In section 38 (police access to lists of individuals barred from regulated work)—

(a) in subsection (1), for the words from “chief” to “Agency” substitute “the chief constable”,

(b) in subsection (2), for the words from “police” to “Agency” substitute “constables of the Police Service of Scotland”.

(4) In section 75 (sources of information)—

(a) in subsection (2), for the words from “A” to “Agency” substitute “The chief constable”,

(b) in subsection (3)—

(i) for “A person” substitute “The chief constable”,

(ii) for “person”, where second occurring, substitute “chief constable”,

(c) in subsection (4), for the words “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(5) In section 76 (police access to scheme information)—

(a) in subsection (1)—
(i) in the opening words, for the words from “chief” to “Agency” substitute “the chief constable”,
(ii) in paragraph (c), for the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”,
(b) in subsection (2) the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”.
(6) In section 97 (interpretation)—
(a) in the definition of “chief constable”, for “a police force in Scotland” substitute “the Police Service of Scotland”,
(b) the definition of “police authority” is repealed.

Edinburgh Airport Rail Link Act 2007 (asp 16)
25 In section 38(5) of the Edinburgh Airport Rail Link Act 2007 (traffic regulation), for “Lothian and Borders Police” substitute “the Police Service of Scotland”.

Glasgow Commonwealth Games Act 2008 (asp 4)
26 (1) The Glasgow Commonwealth Games Act 2008 is amended as follows.
(2) In section 30(1) (compensation and recovery of losses), in paragraph (b), for “chief constable of the constable’s police force” substitute “Scottish Police Authority”.
(3) In section 37(2) (transport plan), for paragraph (c) substitute—
“(c) the chief constable of the Police Service of Scotland.”.

Marine (Scotland) Act 2010 (asp 5)
27 In paragraph 12(2)(b) of schedule 2 to the Marine (Scotland) Act 2010 (disclosure of information), for “a police force in Scotland” substitute “the Police Service of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)
28 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.
(2) In section 114 (scrutiny: duty of co-operation)—
(a) in subsection (2)—
(i) the word “and” at the end of paragraph (b) is repealed, and
(ii) after paragraph (c) insert “, and
(d) policing.”,
(b) in subsection (3)(a)—
(i) the word “or” at the end of sub-paragraph (ii) is repealed, and
(ii) after sub-paragraph (iii) insert—
“(iv) policing, or”,
(c) in subsection (10)—
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(i) for “or health services” substitute “, health services or policing”, and
(ii) after “services”, where last occurring, insert “or, as the case may be, policing”,
(d) in subsection (11), after the definition of “local authorities” insert—

“policing” has the same meaning as in Part 1 of the Police and Fire Reform (Scotland) Act 2012;.”.

(3) In section 115(6) (joint inspections), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(4) In schedule 5 (improvement of public functions: listed bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(5) In schedule 8 (information on exercise of public functions: listed public bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(6) In schedule 19 (scrutiny functions: persons etc. subject to user focus duty), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(7) In schedule 20 (scrutiny functions: persons etc. subject to duty of co-operation), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

Control of Dogs (Scotland) Act 2010 (asp 9)

29 In section 13 of the Control of Dogs (Scotland) Act 2010, after the entry for “local authority” insert—

““police” means the Police Service of Scotland.”.

Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)

30 (1) The Criminal Justice and Licensing (Scotland) Act 2010 is amended as follows.

(2) In section 117(4)(a) (meaning of “investigating agency”), for “a police force” substitute “the Police Service of Scotland”.

(3) In section 164(3) (persons to have regard to code of practice on disclosure), for paragraph (a) substitute—

“(a) constables of the Police Service of Scotland,”.

Alcohol etc. (Scotland) Act 2010 (asp 18)

32 (1) The Alcohol etc. (Scotland) Act 2010 is amended as follows.

(2) In section 14 (licence holders: social responsibility levy)—
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(a) in subsection (3)(b), for “appropriate” substitute “the”, and
(b) in subsection (5), for the entry for “appropriate chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland,”.

(3) In section 15(3) (further provision about regulations relating to the social responsibility level), after paragraph (b), insert—

“(ba) the chief constable,”.

Children’s Hearings (Scotland) Act 2011 (asp 1)

33 In section 61(3) of the Children’s Hearings (Scotland) Act 2011 (constable’s duty to provide information to Principal Reporter), for “section 17(1)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “section 20(1)(d) of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

Public Records (Scotland) Act 2011 (asp 12)

34 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

PART 2
AMENDMENTS RELATING TO PART 2

Gas Act 1965 (c.36)

35 In section 17(5) of the Gas Act 1965 (notification of accidents)—

(a) in paragraph (a) the words “fire and rescue authority,” are repealed, and
(b) after that paragraph insert—

“(aza) for the Scottish Fire and Rescue Service if it appears to them that the Scottish Fire and Rescue Service will or may have duties to discharge, or will or may have to take precautionary or preventative action in any such event,”.

Transport Act 1968 (c.73)

36 In section 102(4) of the Transport Act 1968 (exemption for police and fire), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Pensions (Increase) Act 1971 (c.56)

37 In paragraph 44 of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.
Health and Safety at Work etc. Act 1974 (c.37)

38 In section 23(4)(b) of the Health and Safety at Work etc. Act 1974 (consultation requirements relating to notices), for “relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated” substitute “Scottish Fire and Rescue Service”.

Control of Pollution Act 1974 (c.40)

39 In section 62(2)(a) of the Control of Pollution Act 1974 (exemption from control of loudspeakers in roads), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Water (Scotland) Act 1980 (c.45)

40 (1) The Water (Scotland) Act 1980 is amended as follows.

(2) In section 9A(1)(a) (exemption from Scottish Water charges), for “a fire authority” substitute “the Scottish Fire and Rescue Service”.

(3) In section 19 of Schedule 4 (undertakers to fix and maintain fire hydrants), for “fire authority concerned” substitute “Scottish Fire and Rescue Service”.

(4) In section 20 of Schedule 4 (undertakers to deposit keys of hydrants), for “fire authority”, in both places where it occurs, substitute “Scottish Fire and Rescue Service”.

(5) In section 21 of Schedule 4 (cost of hydrants), for “fire authority” substitute “Scottish Fire and Rescue Service”.

(6) In section 21A of Schedule 4 (regulations on recovery of costs of hydrants), for “fire authorities” substitute “the Scottish Fire and Rescue Service”.

Zoo Licensing Act 1981 (c.37)

41 In section 3(3) of the Zoo Licensing Act 1981 (appropriate authority for purposes of representations on an application)—

(a) for paragraph (a)(ii) substitute—

“(ii) the Scottish Fire and Rescue Service, if it is not the enforcing authority”, and

(b) in paragraph (b) for “relevant authority in whose area the zoo or any part of it is, or is to be, situated” substitute “Scottish Fire and Rescue Service”.

Civic Government (Scotland) Act 1982 (c.45)

42 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 54(4)(a) (use of loudspeaker exempt from offence), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

(3) In section 89(4A) (safety of platforms etc.), in the words after paragraph (b) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

(4) In section 93 (fire precautions in common stairs etc.)—
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(a) for “appropriate relevant authority”, where it occurs in each of subsections (3), (4) and (7), substitute “Scottish Fire and Rescue Service”, and
(b) in subsection (6) for “an appropriate relevant authority” substitute “the Scottish Fire and Rescue Service”.

5 (5) In section 98 (luminous tube signs)—
(a) in subsection (1) for “appropriate relevant authority”, where it occurs in each of paragraphs (a), (b) and (c), substitute “Scottish Fire and Rescue Service”, and
(b) in subsection (1A) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

6 (6) In schedule 1 (licensing - further provision as to the general system), for “appropriate relevant authority”, where it occurs in each of paragraphs 2(1)(b), 5(5)(d), 7(3)(a)(ii), 9(5)(b), 9(7)(b), 10(2)(a), 10(2A), 10(4)(b), 11(7)(d), 12(4)(b), 12(7)(b), 17(4)(c)(ii) and 17(4)(d)(ii), substitute “Scottish Fire and Rescue Service”.

7 (7) In schedule 2 (control of sex shops), for “appropriate relevant authority”, where it occurs in each of paragraphs 8(1)(b), 10(1)(d), 13(5)(d), 14(5)(b), 14(7), 15(2)(a), 15(2A), 15(5) and 23(4)(b)(ii), substitute “Scottish Fire and Rescue Service”.

Road Traffic Regulation Act 1984 (c.27)

43 In section 87(1)(a) of the Road Traffic Regulation Act 1984 (exemptions from speed limits), for “a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005” substitute “the Scottish Fire and Rescue Service”.

Cinemas Act 1985 (c.13)

44 (1) The Cinemas Act 1985 is amended as follows.

(2) In section 3(10) (definition for purposes of the Act), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

(3) In section 8(2) (definition for purposes of the section), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

Housing (Scotland) Act 1987 (c.26)

45 In section 61(11) of the Housing (Scotland) Act 1987 (persons providing houses for purpose of occupation requirement for exercise of right to purchase), for paragraph (k) substitute—

“(k) the Scottish Fire and Rescue Service or its statutory predecessors,“.

Strathclyde Regional Council Order Confirmation Act 1991 (c.xx)

46 In section 3(8)(a) of the schedule to the Strathclyde Regional Council Order Confirmation Act 1991, for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

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Vehicle Excise and Registration Act 1994 (c.22)

46A In Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt vehicles)—
   (a) in paragraph 4(2)(b), for “a relevant authority (as defined in section 6 of the Fire
   (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and
   (b) in paragraph 5—
      (i) for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act
      2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and
      (ii) for “authority’s” substitute “Scottish Fire and Rescue Service’s”.

Merchant Shipping Act 1995 (c.21)

47 In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at
night), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005
(asp 5))” substitute “the Scottish Fire and Rescue Service”.

Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (c.xii)

48 In section 6(9) of the schedule to the Scottish Borders Council (Jim Clark Memorial
Rally) Order Confirmation Act 1996 (entry to closed public roads), for “a relevant
authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute
“the Scottish Fire and Rescue Service”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

49 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved
public bodies), after the entry for “Scottish Environmental Protection Agency” insert—
“The Scottish Fire and Rescue Service”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

50 In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities),
   for paragraph 13 substitute—
   “13 The Scottish Fire and Rescue Service.”.

Freedom of Information (Scotland) Act 2002 (asp 13)

51 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public
authorities)—
   (a) for paragraph 9 substitute “Her Majesty’s Chief Inspector of the Scottish Fire
   and Rescue Service”, and
   (b) after paragraph 85 insert—
   “85ZA The Scottish Fire and Rescue Service.”.
52 Local Government in Scotland Act 2003 (asp 1)

In section 16(1) of the Local Government in Scotland Act 2003 (duty to participate in community planning), for paragraph (d) substitute—

“(d) the Scottish Fire and Rescue Service,”.

53 Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

54 Fire and Rescue Services Act 2004 (c.21)

(1) The Fire and Rescue Services Act 2004 is amended as follows.

(2) For subsection (10) of section 34 (pensions etc.) substitute—

“(10) In this section “Scottish fire authority”—

(a) means the Scottish Fire and Rescue Service, and

(b) except in subsections (2)(e) and (h), includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5) (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00))”.

(3) In subsection (6) of section 35 (definitions for purpose of information in connection with pensions etc.), after the definition of “prescribed” add—

““Scottish fire authority”—

(b) means the Scottish Fire and Rescue Service, and

(c) in subsection (5) includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5) (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00))”.

55 Emergency Workers (Scotland) Act 2005 (asp 2)

In section 1(3) of the Emergency Workers (Scotland) Act 2005 (definition of capacity for the purpose of section 1(1) offence)—

(a) in paragraph (zb) for the words from “a relevant” to “authority’s functions” substitute “the Scottish Fire and Rescue Service while discharging any of the Service’s functions”, and

(b) in paragraph (b) for the words from “a relevant” to “on the authority” substitute “the Scottish Fire and Rescue Service for the purpose of carrying out any of the functions conferred on the Service”.

56 Fire (Scotland) Act 2005 (asp 5)

(1) The Fire (Scotland) Act 2005 is amended as follows.
(2) For the title of Part 1 of the 2005 Act and the italic cross heading immediately preceding section 1 of that Act, substitute—

“The Scottish Fire and Rescue Service”.

(3) In section 17 (duty to secure water supply)—

(a) in subsection (1)—

(i) for “A relevant authority” substitute “SFRS”, and

(ii) for “the authority’s” substitute “its”, and

(b) in subsection (2), for “the authority”, where it occurs in each of paragraphs (a), (e) and (f), substitute “SFRS”.

(4) In section 18 (use of water)—

(a) in subsection (1) for “a relevant authority” substitute “SFRS”, and

(b) in subsection (2) for “A relevant authority” substitute “SFRS”.

(5) In section 19 (agreements in relation to water supply), for “a relevant authority”, where it occurs in each of subsections (1) and (3), substitute “SFRS”.

(6) In section 20(1) (emergency supply by Scottish Water) for “a relevant authority” substitute “SFRS”.

(7) In section 21 (fire hydrants: provision etc.)—

(a) in subsection (4) for “the relevant authority in whose area the hydrant is located” substitute “SFRS”, and

(b) in subsection (6) for “a relevant authority) the relevant authority in whose area the hydrant is located” substitute “SFRS) SFRS”.

(8) In section 23(2)(b) (use of fire hydrants exempt from offences) for “a relevant authority” substitute “SFRS”.

(9) In section 24 (notice of works affecting water supply and fire hydrants)—

(a) in subsection (1)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”, and

(b) in subsection (3) for “the relevant authority in whose area the hydrant is situated” substitute “SFRS”.

(10) In section 25 (powers of authorised employees in relation to emergencies), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”, and

(b) for “the authority”, in both places where it occurs, substitute “SFRS”.

(11) In section 27 (powers of authorised employees in relation to obtaining information), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”,

(b) for “the authority” substitute “SFRS”, and

(c) for “the authority’s” substitute “SFRS’s”.


(12) In section 29 (powers of authorised employees in relation to investigating fires), in subsection (1)—

(a) for “a relevant authority” substitute “SFRS”, and
(b) for “the authority” substitute “SFRS”.

(13) In section 30 (exercise of authorised employee powers) for “a relevant authority” substitute “SFRS”.

(14) In section 39 (assaulting or impeding employees discharging certain functions)—

(a) in subsection (1)—

(i) in paragraph (a) for “a relevant authority” substitute “SFRS”, and
(ii) in paragraph (b) for “the authority” substitute “SFRS”,
(b) in subsection (2)—

(i) for “a relevant authority” substitute “SFRS”, and
(ii) for “that authority” substitute “SFRS”, and
(c) in subsection (3) for “a relevant authority” substitute “SFRS”.

(15) In section 40 (framework document)—

(a) in subsection (1)—

(i) in paragraph (a) for “relevant authorities” substitute “SFRS”,
(ii) in paragraph (a) for “their functions” substitute “its functions under this Act or any other enactment,”, and
(iii) in paragraph (b)(ii) for “those authorities” substitute “SFRS”,
(b) in subsection (3)—

(i) in paragraph (b) for “fire and rescue authorities” substitute “SFRS”, and
(ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and
(ba) for subsection (6), substitute—

“(6) Those persons are—

(a) SFRS,
(b) such persons as the Scottish Ministers consider represent employees of SFRS,
(c) such persons as the Scottish Ministers consider represent local authorities, and
(d) such other persons as the Scottish Ministers consider appropriate.”.

(16) In section 41 (adherence to framework document)—

(a) for subsection (1), substitute—

“(1) In carrying out its functions, SFRS must have regard to the framework document.”,
(b) in subsection (2)—

(i) for “a relevant authority” substitute “SFRS”, and
(ii) for “document prepared under section 40(1)” substitute “framework document”,

(c) in subsection (4), for “the authority”, in both places where it occurs, substitute “SFRS”,

(d) in subsection (5)—

(i) in paragraph (b) for “the authority” substitute “SFRS”, and

(ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and

(e) in subsection (6), for “the authority in respect of which it is proposed to be made” substitute “SFRS”.

(17) For the italic cross-heading immediately preceding section 45, substitute—

“CHAPTER 8C

EQUIPMENT, FACILITIES AND SERVICES”.

(18) In section 47(1) (provision of equipment etc. by Scottish Ministers) for “relevant authorities” substitute “SFRS”.

(19) In section 51 (prohibition on employment of police)—

(a) for “A relevant authority” substitute “SFRS”, and

(b) for “the authority” substitute “it”.

(20) In section 52 (interpretation of Part 2), in the appropriate place in alphabetical order insert the following definitions—

“Chief Inspector” has the meaning given by section 43A(6),”,

“Chief Officer” means the person appointed under paragraph 8 of schedule 1A,”,

“framework document” means the document prepared under, and having effect by virtue of, section 40,”,

“Inspector” has the meaning given by section 43A(6),”.

(21) In section 59(1) (application of power to make further provision for protection of firefighters) for “relevant authorities” substitute “SFRS”.

(22) In section 79 (interpretation of Part 3) in the definition of “relevant person” for “a relevant authority” substitute “SFRS”.

(23) In section 80 (inquiries), for “a relevant authority”, where it occurs in each of paragraphs (a) and (b)(iii), substitute “SFRS”.

(24) In section 81(2) (inquires about which Ministers may not make regulations) for “44” substitute “43B”.

(25) In section 85(1) (false alarms), for “a relevant authority” substitute “SFRS”.

(26) In section 86 (disposal of land), for “A relevant authority” substitute “SFRS”.

(27) Before section 87, insert—

“86A Interpretation

(1) In this Act—

"
“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and “area” in relation to a local authority, means the local government area for which the authority is constituted,

“SFRS” has the meaning given by section 1A(1).

(2) References in this Act to the area of SFRS are to be construed as references to Scotland, but taking the seaward boundary of the area to be the low water mark.”.

Gambling Act 2005 (c.19)

57 In section 157 of the Gambling Act 2005 (responsible authorities in relation to premises), for paragraph (f) substitute—

“(f) the Scottish Fire and Rescue Service,”.

Housing (Scotland) Act 2006 (asp 1)

58 In paragraph 4 of schedule 2 to the Housing (Scotland) Act 2006 (duty to consult on provision for detecting fires), for “fire and rescue authority for the area in which the house concerned is situated” substitute “Scottish Fire and Rescue Service”.

Corporate Manslaughter and Corporate Homicide Act 2007 (c.19)

58A In section 6(2) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care for certain organisations in emergencies), for paragraph (b) substitute—

“(b) the Scottish Fire and Rescue Service;”.

Public Services Reform (Scotland) Act 2010 (asp 8)

59 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies)—

(a) for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service”, and

(b) after the entry for “Scottish Environmental Protection Agency” insert —

“Scottish Fire and Rescue Service”.

(4) In schedule 19 (persons subject to user focus duty), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)” substitute—
“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”.

Public Records (Scotland) Act 2011 (asp 12)

60 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of the Act applies), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities (appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5))” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”.

PART 3
AMENDMENTS RELATING TO BOTH PARTS

Pipe-lines Act 1962 (c.58)

61 In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) to the Scottish Fire and Rescue Service and the chief constable of the Police Service for Scotland,”

(b) in subsection (2)—

(i) after “by” (where it occurs in the opening words), insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(ii) after “furnish” insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(iii) in paragraph (a), for “a fire and rescue authority or police authority” substitute “the Scottish Fire and Rescue Service or the chief constable of the Police Service for Scotland”.

Local Government etc. (Scotland) Act 1994 (c.39)

62 In section 43(4) of the Local Government etc. (Scotland) Act 1994 (consultation on guidance as to exercise of traffic powers)—

(a) after “consult” insert—

“(a)”, and

(b) for the words from “and”, where it first occurs, to the end substitute—

“(b) the chief constable of the Police Service of Scotland,
(c) the Scottish Fire and Rescue Service, and
(d) the authorities for the areas to which the guidance relates.

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### SCHEDULE 7
(introduced by section 123(2))

#### REPEALS

### PART I

#### REPEALS RELATING TO PART I

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### Police and Fire Reform (Scotland) Bill

#### Schedule 7—Repeals

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<tr>
<td>Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)</td>
<td>In schedule 2 (specified authorities), the entry “Scottish Police Services Authority”. Section 75.</td>
</tr>
<tr>
<td>Criminal Justice (Scotland) Act 2003 (asp 7)</td>
<td>In section 76, subsections (1) to (9).</td>
</tr>
<tr>
<td>Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)</td>
<td>In section 1, the word “relevant” at each place it occurs in subsections (3)(f)(i), (ii) and (iii), (4), (8) and (10). In section 2, the word “relevant” at each place it occurs in subsections (1)(a) and (2)(a). In section 20(3)(b), the words “whose police area includes the relevant locality and”.</td>
</tr>
<tr>
<td>Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)</td>
<td>In section 4(2), paragraphs (b), (c) and (d).</td>
</tr>
<tr>
<td>Edinburgh Tram (Line Two) Act 2006 (asp 6)</td>
<td>In section 62(5), the entry beginning “chief officer of police”.</td>
</tr>
<tr>
<td>Edinburgh Tram (Line One) Act 2006 (asp 7)</td>
<td>In section 62(5), the entry beginning “chief officer of police”.</td>
</tr>
<tr>
<td>Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)</td>
<td>Sections 1 to 32. Sections 34(7). Sections 41(2) to (5). Sections 42. Sections 48 to 50. In section 99, the entry for “the 1967 Act”. Schedules 1 to 3. In schedule 4, paragraph 2(1)(f). In schedule 6, paragraphs 1, 7, 11 and 12.</td>
</tr>
<tr>
<td>Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)</td>
<td>In schedule 1, the entries for “constable”, “police area”, “police authority” and “police force”.</td>
</tr>
<tr>
<td>Public Services Reform (Scotland) Act 2010 (asp 8)</td>
<td>In schedule 5, the entry for “Scottish Police Services Authority”. In schedule 8, the entry for “Scottish Police Services Authority”.</td>
</tr>
<tr>
<td>Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)</td>
<td>Section 31(7).</td>
</tr>
<tr>
<td>Alcohol etc. (Scotland) Act 2010 (asp 18)</td>
<td>Section 15(3)(b)(ii).</td>
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### Part 2

**Repeals relating to Part 2**

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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</thead>
<tbody>
<tr>
<td><strong>Gas Act 1965 (c.36)</strong></td>
<td>In section 28(1) (interpretation of Part 2), the definition of “fire and rescue authority”.</td>
</tr>
<tr>
<td><strong>Local Government (Scotland) Act 1973 (c.65)</strong></td>
<td>Section 63A.</td>
</tr>
<tr>
<td><strong>Water (Scotland) Act 1980 (c.45)</strong></td>
<td>In section 109(1), the definition of “fire authority”. In section 1(1) of Schedule 4, the definition of “fire authority”.</td>
</tr>
<tr>
<td><strong>Local Government, Planning and Land Act 1980 (c.65)</strong></td>
<td>Section 2(1)(h).</td>
</tr>
<tr>
<td><strong>Civic Government (Scotland) Act 1982 (c.45)</strong></td>
<td>In section 8, the definition of “appropriate relevant authority”. Section 89(4A)(b) and the word “and” immediately preceding it. Section 89(4B). Section 93(9). In section 98(2), the definition of “appropriate relevant authority”. In paragraph 3 of schedule 2, the definition of “appropriate relevant authority”.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 1987 (c.26)</strong></td>
<td>In section 82, the definition of “fire authority”.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 1988 (c.43)</strong></td>
<td>Section 43(3)(a)(vii) and the word “or” immediately preceding it. Section 45(4)(g).</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2001 (asp 10)</strong></td>
<td>In paragraph 2 of schedule 1, the words from “A tenancy”, where they first occur, to “such an authority”.</td>
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### Enactment

<table>
<thead>
<tr>
<th>Bill</th>
<th>Extent of repeal</th>
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<tbody>
<tr>
<td><strong>Local Government in Scotland Act 2003</strong> (asp 1)</td>
<td>In section 22(9), the words “Subject to section 16(3) of the Fire (Scotland) Act (asp 5),” and paragraph (c). In section 61, paragraph (a) and, in paragraph (c), the words “a joint fire board”, in each place where they occur.</td>
</tr>
<tr>
<td><strong>Fire (Scotland) Act 2005</strong> (asp 5)</td>
<td>Section 1. Sections 2 to 7. Section 12. Section 16(5) and (6). Sections 33 and 34. Section 37. Section 41(7). Sections 42 and 43. Sections 44 to 46. Sections 48 to 50. Section 61(4) and (5). Section 67(2). In section 79(1), the definition of “local authority”. Section 88(4)(a). Schedule 1.</td>
</tr>
<tr>
<td><strong>Housing (Scotland) Act 2006</strong> (asp 1)</td>
<td>In section 194(1), the definition of “chief officer of the fire and rescue authority”.</td>
</tr>
<tr>
<td><strong>Public Services Reform (Scotland) Act 2010</strong> (asp 8)</td>
<td>In schedule 20, the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)”</td>
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### PART 3

### REPEALS RELATING TO BOTH PARTS

<table>
<thead>
<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pipe-lines Act 1962</strong> (c.58)</td>
<td>Section 37(4)(a).</td>
</tr>
<tr>
<td><strong>Local Government etc. (Scotland) Act 1994</strong> (c.39)</td>
<td>Section 8(5). In Section 8(7), the definitions of “fire personnel” and “police personnel”. Section 55(7). In section 55(12), the words from “any” to “1967”.</td>
</tr>
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### Schedule 7—Repeals

#### Part 3—Repeals relating to both Parts

<table>
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<tr>
<th>Enactment</th>
<th>Extent of repeal</th>
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Police and Fire Reform (Scotland) Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

Introduced by: Kenny MacAskill
On: 16 January 2012
Supported by: Roseanna Cunningham
Bill type: Executive Bill
POLICE AND FIRE REFORM (SCOTLAND) BILL

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Police and Fire Reform (Scotland) Bill (introduced in the Scottish Parliament on 16 January 2012) as amended at Stage 2. Text has been added or deleted as necessary to reflect amendments made to the Bill at Stage 2 and these changes are indicated by sidelining in the right margin.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The purpose of the Bill is to create a single police service and a single fire and rescue service. The Bill sets out the governance arrangements and framework for the new services. In addition, it provides:
   - a modern purpose for the police service and updated oath for constables. For fire, the Scottish Government intends that a new purpose will be included in a new fire and rescue framework;
   - a statutory framework for the delivery of police and fire and rescue services and appropriate scrutiny and oversight arrangements; and
   - arrangements for the transfer of existing officers and staff to both services.

5. The Bill also places the arrangements for independent custody visiting in Scotland on a statutory footing. It ensures that independent custody visiting in Scotland complies with the Optional Protocol to the Convention against Torture.
6. To facilitate the establishment of single services the Bill abolishes the existing unitary police and fire authorities (Fife and Dumfries and Galloway) and the 6 joint police and joint fire boards which are established by amalgamation schemes made under the provisions of the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005 by bringing together a number of local authorities (who are individual police and fire authorities under the enabling legislation) to form joint boards.

7. A more detailed explanation of the Bill’s purpose can be found in the Policy Memorandum, which also explains the thinking and policy intentions that underpin it.

8. The Bill is in 3 parts. Part 1 deals with police, and has 17 Chapters and 101 sections. Part 2 deals with fire and rescue, and has 23 sections and Part 3 deals with general provisions with 6 sections. The Bill also includes 8 schedules setting out the detailed arrangements in relation to a number of areas covered by the Bill.

**Part 1 Police Reform**

9. **Part 1** largely replaces the legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, and puts in place a new modernised framework for policing. The Bill also repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland to rename it and extend the provisions in that part to provide for more robust scrutiny of policing. Specifically, it makes provision for:

- The establishment and way of working of the Scottish Police Authority (SPA), responsible for the governance, oversight and maintenance of the Police Service, for holding the Chief Constable to account, and for providing forensic services. The Bill will also give the Scottish Ministers power to direct the SPA, but not the Chief Constable (**Chapters 1 and 3 and schedule 1**);

- The responsibilities of the Chief Constable for the direction and control and day to day administration of the Police Service of Scotland (the Police Service), the allocation and deployment of resources received from the SPA, and ensuring adequate arrangements for the policing of each local authority area. The Bill also makes clear that the Chief Constable must account to the SPA (**Chapter 2**);

- An updated oath, a restatement and reframing of the functions and duties of constables, and provision for the terms and conditions of service of constables and police cadets, as well as that of police staff, police custody and security offices and constables from another jurisdiction on temporary service with the Police Service (**Chapter 2 and schedule 2**). In addition, the Bill gives the Scottish Ministers power to make regulations on a range of issues concerning the governance, administration and conditions of service of constables and police cadets (**Chapter 8**);

- A statement of the policing principles to which the Scottish Ministers, SPA and the Chief Constable must have regard when setting the strategic direction for the service and commanding constables, as well as detailed arrangements for the strategic police plan and annual police plan. (**Chapter 4**);
• A statutory duty on the SPA and the Chief Constable to make arrangements which secure best value for the SPA and the Police Service (Chapter 5);
• Reporting on and examining policing matters, including placing specific obligations on the SPA to produce an annual report. It also provides for the preparation and submission of accounts and arrangements for audit, enables the Auditor General for Scotland to initiate examinations into the delivery of best value, and places a duty on the Auditor General and Her Majesty’s Inspectors of Constabulary in Scotland (HMICS) to work together (Chapter 6);
• The Chief Constable to make arrangements for local policing, including establishing a new formal statutory relationship with each local authority (Chapter 7);
• Arrangements for police appeals tribunals in disciplinary cases where the processes of review or appeal have been exhausted (Chapter 9 and schedule 3);
• A new independent investigatory capacity outside the Police Service (the Police Investigations and Review Commissioner (PIRC)) to deal with the most serious cases and where it is in the public interest to have an independent investigation (Chapter 10);
• Inspection of the SPA and the Police Service by HMICS, which will retain its existing powers and also be able to examine the delivery of best value. It also requires the Scottish Ministers to lay HMICS inspection or inquiry reports before the Scottish Parliament (Chapter 11);
• A requirement on the SPA and the Police Service, and on the HMICS, Auditor General and PIRC to work together (Chapter 12);
• The Scottish Ministers to pay a grant directly to the Scottish Police Authority (Chapter 14). The SPA and Chief Constable will also be able to charge for goods and services provided by the SPA or police service (Chapter 13);
• A number of offences (Chapter 15);
• Independent Custody Visiting (Chapter 16); and
• The transfer of officers, staff and assets from the existing unitary authorities, joint boards and SPSA to the new service (Chapter 17 and schedule 4).

Part 2 Fire Reform

10. Part 2 amends the Fire (Scotland) Act 2005 to establish the Scottish Fire and Rescue Service and transfers to it fire-fighting, fire safety and other functions under that Act. Specifically, it makes provision for:
• The establishment and way of working of the Scottish Fire and Rescue Service (SFRS), responsible for the delivery of fire and rescue functions, and for employing the Chief Officer, fire-fighters and other staff. The Bill will also give the Scottish Ministers power to direct SFRS. (Sections 99, inserting new schedule 1A, and 116);
• Fire and rescue functions in the Fire (Scotland) Act 2005 and the Fire (Additional Function) Scotland Order 2005 to be the responsibility of SFRS, and for SFRS to carry out those functions (Sections 100 – 110);
This document relates to the Police and Fire Reform (Scotland) Bill as amended at Stage 2 (SP Bill 8A)

- SFRS to have a specific statutory duty to make arrangements which secure best value (Section 111);
- SFRS to produce, publish and review a strategic plan (Section 112);
- SFRS to make arrangements for local fire and rescue services, including establishing a formal statutory relationship with each local authority (Section 113);
- Monitoring and scrutiny of fire and rescue matters, including placing a specific duty on SFRS to produce an annual report, to prepare and submit for audit accounts and to provide information to the Scottish Ministers. (Sections 99 (paragraph 16 of inserted schedule 1A), 114 and 115);
- Inspection of SFRS by newly established Inspectors of the Scottish Fire and Rescue Service. It also provides for reports by the Chief Inspector to SFRS, the Scottish Ministers and the Scottish Parliament (Section 117); and
- The transfer of fire-fighters and other staff and assets from the existing unitary authorities, joint boards and the Scottish Ministers to the new service (Section 118 and schedule 5).

Part 3: General

11. Part 3 makes a number of general provisions relating to subordinate legislation, minor and consequential amendments to other legislation and commencement.

PART 1 – POLICE REFORM

CHAPTER 1 - THE SCOTTISH POLICE AUTHORITY

12. Section 1 provides for the establishment of a new corporate body the Scottish Police Authority (SPA) or, in Gaelic, Ùghdarras Poilis na h-Alba.

13. Schedule 1 to the Bill, which is introduced by section 1, establishes the SPA as independent from the Crown, and makes provision regarding its constitution, membership, remuneration and location. Paragraphs 2 – 6 provide that the SPA will consist of a chairing member and between 6 and 10 other members, though that number may be varied by order made by the Scottish Ministers which would be subject to negative procedure in the Scottish Parliament. Members must be appointed by Ministers on the basis of relevant skills and expertise to govern the Police Service and hold the Chief Constable to account. All appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Scottish Ministers are to be responsible for appointing the Chair of the SPA, and members of the SPA may elect one of them to act as Deputy. These paragraphs also set out the length of term members and the chairing member can serve; that Ministers can remove members under certain circumstances; and provide a list of people disqualified from membership of the SPA.

14. Paragraphs 7 – 9 of schedule 1 make provision for the SPA to appoint staff to assist in carrying out its functions, and to second police officers from police services across the United Kingdom to assist in carrying out its functions. They also make provision regarding the terms
and conditions on which the SPA’s staff are employed. **Paragraphs 10 – 13 of schedule 1** set out rules regarding the establishment of committees and sub-committees by the SPA, its procedures, delegation of functions (although the SPA will still retain responsibility for the performance of those functions and remain able to perform them), and location of SPA and Police Service office Headquarters (which are subject to the approval of the Scottish Ministers). **Part 2 of schedule 1** makes consequential amendments flowing from the establishment of the SPA as a new Scottish public body.

15. **Section 2** sets out that the SPA’s main functions are to maintain the Police Service of Scotland (the Police Service), to promote and support continuous improvement in, and hold the Chief Constable to account for, the policing of Scotland. The SPA will also have additional functions conferred on it by this, or any other, enactment. The SPA must try to carry out these functions in a way that is proportionate, accountable and transparent and consistent with best practice.

16. On the first of these roles, **Section 3** provides that the SPA has a specific obligation to pay constables pay, allowances and expenses, in accordance with the regulations made under **section 49** of the Bill. It also gives the SPA a broad power to provide and maintain anything necessary or desirable for carrying out police functions.

17. **Section 4** allows the SPA to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The powers to borrow money, purchase land compulsorily and form or promote companies are subject to Ministerial consent and, in relation to borrowing money and forming or promoting companies, the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of case.

18. **Section 5** places an obligation on the SPA to comply with any direction given by the Scottish Ministers. The Scottish Ministers may not give directions in relation to specific policing operations. The Ministerial direction must be published and laid before the Scottish Parliament. Ministers will also have powers to vary or revoke such directions, which must be published and laid in the same way.

**CHAPTER 2 – THE POLICE SERVICE OF SCOTLAND**

19. This Chapter makes a number of provisions relating to the Police Service of Scotland. Police officers are office holders not employees and their terms and conditions of service are set out in statute rather than being governed primarily by employment law. It is for this reason that the legislation has to set out detailed arrangements for the establishment of the Police Service and the appointment etc. of constables, and the provisions in this Chapter largely replicate those in the 1967 Act relating to the appointment of constables. Any differences in approach are set out below. **Section 6** establishes the Police Service of Scotland or, in Gaelic, Seirbheis Phoilis na h-Alba as a constabulary comprising a constable holding the office of Chief Constable, one or more holding the office of deputy chief constable, one or more holding the office of assistant chief constable, and constables. It makes detailed provision for the terms and conditions of
members of the constabulary. It sets out the ranks a constable may hold, and makes provision for the appointment, role, functions, jurisdiction, duties, and powers of senior officers, regular constables and special constables, as well as making provision for dealing with offences committed by constables, such as failure to perform duty and failure to return equipment, and for the removal from office of senior officers in the interests of efficiency or effectiveness.

**Constable: appointment, ranks and terms of office**

20. **Section 7** requires the SPA to appoint the Chief Constable of the Police Service, one or more deputy chief constables and one or more assistant chief constables. The Chief Constable appointment is subject to approval by the Scottish Ministers. The SPA is required to consult the Chief Constable before appointing a deputy or assistant chief constable. Regular constables (i.e. any constables aside from senior officers) will be appointed by the Chief Constable (**Section 8**), who may also appoint special constables (**Section 9**). Special constables are not paid, but may be entitled to allowances and other payments, which will be set out in regulations made under **section 49**. The main differences from the 1967 Act are that the Bill provides the flexibility to have more than one deputy chief constable and Ministerial agreement is only required before the SPA appoints the Chief Constable rather than all senior officers.

21. **Section 10** provides that, in order to be appointed as a constable, an individual has to have made a declaration before a Sheriff or Justice of the Peace. **Section 10(1)** sets out the new wording of the declaration, which is included on the face of the legislation for the first time, having previously been included in Police Regulations. The wording of the oath can be modified by the Scottish Ministers by order, which would be subject to affirmative procedure in the Scottish Parliament.

22. **Section 11** makes provision for constable ranks. It lists the ranks a constable may hold, and gives the Scottish Ministers a power to make regulations (which would be subject to affirmative resolution in the Scottish Parliament) to add or remove any rank below that of chief constable. The Scottish Ministers may also make provisions, in the regulations, which are appropriate as a consequence of the addition or removal of a rank. **Section 11(6)** lists the people the Scottish Ministers must consult before doing so. The order making power is a new provision intended to make it easier to add or remove ranks if either is necessary for operational efficiency. **Section 11(2)** provides that constables appointed to the offices of Chief Constable, deputy chief constable or assistant chief constable under **section 7** hold the same rank as the office to which they have been appointed. The Chief Constable is responsible for assigning and promoting individuals to ranks below that of assistant chief constable. A constable can only be demoted if the constable consents or it is done in accordance with the regulations made under **section 49**. **Section 12** provides that a constable holds and vacates office in accordance with those regulations, or any other enactment which makes such provision.

23. **Section 13** provides the SPA with a power to pay rewards to any constable below the rank of Chief Constable who it considers has performed their functions with exceptional diligence, or in an especially meritorious manner, or to any person who it deems to have contributed substantially to Scotland’s policing. Such rewards are made on the recommendation of the Chief Constable.
24. **Section 14** provides the SPA with a power to require a Chief Constable, deputy chief constable or assistant chief constable to resign, or where appropriate, retire in the interests of efficiency or effectiveness of the Police Service. Before calling for this, the SPA must: give the senior officer a written explanation of its reasons, provide the senior officer with an opportunity to make written representations, and consider any written representations made. Where a senior officer has made written representations, the SPA must provide written reasons for the decision calling for the officer to resign or retire. In the case of the Chief Constable, it must consult the Scottish Ministers. A senior officer called on to resign or retire in this way must do so from the date set by the SPA, or an earlier date agreed between them and the SPA.

25. **Section 15** makes provision for constables to be engaged on temporary service outwith the Police Service, with the consent of the Chief Constable. Constables on temporary service continue to hold the office of constable. Unless stated otherwise in regulations made by the Scottish Ministers under subsection (2) or other enactments, they: retain their functions, powers and privileges, and are under the direction and control of the Chief Constable in relation to performing policing functions. Under subsection (2) the Scottish Ministers can prescribe types of temporary service and make whatever further provision they consider appropriate in regulations. Following such a period of temporary service, constables are entitled to return to service in the Police Service at the rank they held previously. Their time spent on temporary service is treated as time served as a constable of the Police Service for pay purposes. These are only applicable if the constable does not become eligible for a pension, allowance or gratuity by virtue of regulations made under the Police Pensions Act 1976 during the period of temporary service. Constables can be promoted during their time on temporary service, in which case they would return to the Police Service at the promoted rank and are treated as having served in that rank from the time of promotion for pay purposes. Although this provision largely repeats the current arrangements for temporary service it seeks to make it easier for officers to serve outwith the Police Service.

26. **Section 16** allows officers from the rest of the UK and the Crown Dependencies to carry out temporary service as officers in the Police Service, provided they take the oath (section 10). Such individuals are under the direction and control of the Chief Constable, and have all the powers, privileges and functions of a constable in Scotland. This is a new provision to facilitate the inward secondment of officers from outwith Scotland for short term postings.

**Chief Constable**

27. **Section 17** makes it clear that the Chief Constable is responsible, and must account to the SPA, for the policing of Scotland. The Chief Constable has the following responsibilities:

- Direction and control of the Police Service;
- The day to day administration of the Police Service and the allocation and deployment of resources received from the SPA;
- Involvement in the preparation of the strategic police plan, and SPA’s annual report;
- Preparing annual police plans;
- Seeking to secure continuous improvement in the policing of Scotland;
28. When directing constables, police cadets and police staff, the Chief Constable must comply with any lawful instruction given by the appropriate prosecutor in relation to the investigation of offences, the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995, the Lord Justice General or the sheriff principal for the area concerned. He or she must also seek to ensure that Scotland’s policing is carried out with due regard to the policing principles set out at section 32 and the recommendations made or guidance issued by the SPA on Scotland’s policing, and in accordance with the strategic police priorities, any strategic police plan approved under section 34, and the most recent annual police plan published under section 35. Any recommendations or guidance made by the SPA must not be inconsistent with the strategic police priorities, the latest approved strategic police plan and any guidance or instructions issued to the Chief Constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences. This section largely brings together the current responsibilities of Chief Constables, updated to reflect the establishment of the Police Service and the new planning and reporting regime established in this Bill. It also makes clear that the Chief Constable is accountable to the SPA for the policing of Scotland.

29. Section 18 provides that the Chief Constable can delegate any of his or her functions to any other constable. He or she is however still responsible for the performance of those functions and remains able to perform them. The SPA is required to designate a deputy chief constable to perform the Chief Constable’s functions if that office is vacant or if he or she is unable to perform their duties due to absence, illness or suspension. Only one deputy chief constable can be designated to take on the functions of the Chief Constable at any particular time. This provision does not affect any restriction on delegation of the Chief Constable’s functions contained in any other enactment.

Functions of Constables

30. Sections 19 to 23 set out the functions, jurisdiction and duties of constables, including command and control. Section 19 sets out that constables will have all of the functions conferred on them by this or any other enactment or by rule of law, and all the powers and privileges of a constable throughout Scotland. It also provides that senior officers and local commanders also have all of the additional functions conferred on them by this or any other enactment or by rule of law. Section 20 sets out constables’ general duties. These are largely a restatement of the duties placed on constables under the 1967 Act, restated and reframed to better reflect the role of modern policing. When taking lawful measures to bring offenders to justice, a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

31. Section 21 makes clear that constables are subject to the direction and control of the Chief Constable in relation to the performance of their duties, as are police staff and police cadets (who may also be dismissed by the Chief Constable). A constable must carry out lawful orders and punctually and promptly perform all of the duties which fall to him or her.
32. **Section 22** updates two offences committed by constables: absence from duty without reasonable excuse or neglect or violation of duty (this also applies to police custody and security officers). **Section 23** provides for the offence of failing to return any relevant item requested to the SPA without reasonable excuse or the SPA’s permission. An offence of failing to return any item on ceasing to be a constable, without reasonable excuse or the SPA’s permission, is also provided. **Section 23** also creates a power for a Sheriff or Justice of the Peace to grant a warrant for the search and removal of any relevant items. A relevant item is anything issued to a constable for the carrying out of the constable’s functions, e.g. police uniform. The penalty for the offences of being absent from duty and failure to return equipment is imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale. The offence of neglect or violation of duty is subject to a maximum sentence of 2 years imprisonment or to a fine or to both if tried on indictment, or on summary conviction to imprisonment for a maximum term of 12 months or to a fine at the statutory maximum or both. This offence was only subject to summary proceedings under the 1967 Act.

**Liability for Unlawful Conduct**

33. **Section 24** provides for liability for unlawful conduct by constables in line with the provisions currently included in the 1967 Act. This is needed because police officers are office holders, not employees, and the usual liability arrangements whereby employers are liable for unlawful acts on the part of their employees do not apply. Specifically it provides that the Chief Constable will be liable for any unlawful conduct in the carrying out of their functions by (a) a constable under his or her direction and control or (b) a member of an international joint investigation team who is not a constable or member of SPA staff or police staff. The SPA must pay any damages or expenses awarded against the Chief Constable (or the person carrying out his or her functions if the office of Chief Constable is vacant) in any proceedings under this section, any expenses incurred by the Chief Constable and any sum required in relation to the settlement of any claim against the Chief Constable which has or might have given rise to such proceedings. The SPA can, if and to the extent that it thinks fit, pay any damages or expenses awarded against a constable in relation to unlawful conduct by them, any expenses incurred by them, and any sum required in connection with the settlement of any claim which has or may have given rise to such proceedings.

**Police Cadets**

34. **Section 25** allows the Chief Constable to appoint police cadets to undergo training with a view to becoming constables. Such cadets are to be treated as employees of the SPA as they are not attested officers under section 10 of the Bill and do not have the powers of a constable. They are however under the direction and control of the Chief Constable and are subject to regulations made under **section 49** in relation to their terms and conditions of service in line with the provisions in the 1967 Act.

**Police Staff**

35. **Sections 26 and 27** of this Chapter make provision for police staff. **Section 26** provides the SPA with a power to appoint police staff to assist in the carrying out of police functions. The Chief Constable has power to make such appointments on behalf of the SPA. Police staff can be employed by the SPA or provided to the SPA under contract with a third party. Under **section**
27 police staff may be employed on terms and conditions determined by the SPA and the SPA may pay or make arrangements for contributing to and paying pensions of police staff.

**Police Custody and Security Officers**

36. **Sections 28-30 and schedule 2** set out the arrangements for police custody and security officers and for their certification, and put in place penalties for any person who knowingly provides false or misleading information in relation to certification. These provisions replicate those in the 1967 Act relating to police custody and security officers.

37. Under **section 28** the Chief Constable can certify a member of police staff to be authorised as a police custody and security officer. By virtue of **section 29(1)**, the Chief Constable can only do so if he or she is satisfied that the member of police staff is a fit and proper person to perform those functions and they have received suitable training to do so. The Chief Constable can suspend or revoke a certificate if it appears to him or her that the officer is not fit and proper, otherwise the certificate continues until the specified date. The powers and duties of police custody and security officers are as set out in **schedule 2**, as introduced by **section 28(3)**, and any other enactment or rule of law. They must be readily identifiable as such officers. **Section 30** makes it an offence for anyone to provide information enabling themselves or any other individual to be certified as a police custody and security officer if they know that or are reckless as to whether the information is false or misleading. The maximum sentence for anyone guilty of such an offence is a fine not exceeding level 4 on the standard scale.

**CHAPTER 3 – FORENSIC SERVICES**

38. This Chapter places a duty on the SPA to provide forensic services to the Police Service of Scotland, the Lord Advocate and procurators fiscal and the Police Investigations and Review Commissioner.

**CHAPTER 4 – PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS**

39. **Chapter 4** sets out the policing principles and new arrangements for setting priorities, objectives and planning. **Section 32** sets out the policing principles. The first principle, set out in **section 32(a)**, is that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland. **Section 32(b)** states that the Police Service, working with others as appropriate, should seek to achieve that purpose by carrying out its functions in a way that (i) engages with, and is accessible to, local communities and (ii) promotes measures to prevent crime, harm and disorder.

40. **Section 33** allows the Scottish Ministers to determine strategic priorities for the SPA in relation to Scotland’s policing or to the carrying out of the SPA’s functions. **Sections 33(3) and 33(4)** provide, respectively, that, before doing so, the Scottish Ministers must consult the SPA, the chief constable, persons whom they consider represent local authorities and any other persons they consider appropriate; and that they must have regard to the policing principles when determining strategic priorities. The Scottish Ministers are required to publish the strategic police priorities and lay a copy of them before the Scottish Parliament.
41. **Section 34** obliges the SPA to prepare a strategic police plan setting out the main objectives for the SPA and for Scotland’s policing. That plan must be approved by the Scottish Ministers. It must: explain why each objective has been selected; describe what the SPA thinks it or the Police Service should do in order to achieve them; where reasonably practicable identify the outcomes against which they can be measured; and include any other material relating to the SPA or Police Service considered appropriate.

42. **Sections 34(3) and 34(4)** set out the process for consulting on the draft plan, and list those who must be consulted on it (local authorities, the inspectors of constabulary and any others the SPA considers likely to have an interest in the plan). Under **section 34(3A)** the SPA must involve the Chief Constable in the preparation of the strategic police plan, and the Chief Constable has an obligation to provide such assistance the SPA may reasonably require in this regard. The SPA must invite consultees to respond within a set period and must have regard to comments received. Once that process has been completed, the draft plan must be submitted to Ministers for approval. Once it has been approved, it must be published and laid before the Scottish Parliament. The plan must be reviewed at least once every 3 years or where there has been a significant revision to the strategic police priorities. The modified plan following that review should follow the same process of consultation, approval and publication as the original.

43. **Section 35** obliges the Chief Constable to prepare an annual police plan. The plan is to set out the proposed arrangements for the policing of Scotland in each year, and how the arrangements are expected to contribute towards the achievement of the main objectives for the policing of Scotland as set out in the strategic police plan. It should also include any other information, connected with policing, which the Chief Constable considers appropriate. The chief constable must send the SPA a copy of the draft plan for comment, publish the annual plan before the start of the year to which it relates and lay a copy of it before the Scottish Parliament.

44. **Section 37** specifies that, in carrying out their respective functions in relation to the formulation and publication of the strategic police plan and each annual police plan, the SPA and Chief Constable must have regard to the policing principles; must have regard to, and ensure that the plan is consistent with, the strategic police priorities; and ensure the annual plan is consistent with the most recently approved strategic police plan.

**CHAPTER 5 - BEST VALUE**

45. **Section 38** places a statutory duty on the SPA and the Chief Constable to make arrangements which secure best value for the SPA and Police Service respectively. This replaces the current duty of best value on police authorities and joint boards under Section 1 of the Local Government in Scotland Act 2003 and places a duty on the Chief Constable for the first time. Best value is defined as meaning a continuous improvement in the performance of their respective functions. **Section 39** provides that, in carrying out their duties in regard to best value, they must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties in **sections 38(1) and 38(2)**, including, in particular, guidance on how to make, and what is to be included in, the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult the SPA, the
Chief Constable and anyone else they consider appropriate. Where there is conflict between (a) and (b), the SPA and Chief Constable should have regard only to (a).

46. In making arrangements to secure best value, the SPA and Chief Constable are required to balance the quality of carrying out their functions, the cost of doing so, and the cost to persons of any service provided by the SPA or Chief Constable on a wholly or partly chargeable basis. In maintaining that balance, they must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (as set out in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46)). Both the SPA and the Chief Constable are to discharge their duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of their functions, regard should be taken of the extent to which the outcomes of that performance have improved.

CHAPTER 6 – ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

47. This Chapter sets out new arrangements for reporting on and examining policing matters. Section 40 obliges the SPA to prepare an annual report relating to the carrying out of its functions and policing as soon as practicable after the end of the reporting year. It must contain (a) an assessment of the SPA’s and Police Service’s performance in achieving the main objectives set out in the most recently approved strategic police plan, and (b) an assessment of the performance by the Police Service during the reporting year in implementing the arrangements set out in the annual police plan. It may also include any other matters relating to the SPA’s functions and policing that the SPA considers appropriate. The SPA must publish the annual police report, provide a copy to Ministers and lay a copy before the Scottish Parliament. Section 40 also places obligations on the Chief Constable to provide the SPA with a report which assesses the Police Service’s performance in the policing of Scotland during that reporting year. In particular, this report must include an assessment of the Police Service’s progress towards achieving the main objectives set out in the strategic police plan and implementing proposed arrangements in the annual police plan. The Chief Constable must also provide the SPA with other reasonable assistance in preparing the annual report.

48. The Chapter also makes provision for the preparation and submission of accounts and arrangements for audit. Section 41 obliges the SPA to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts as soon as practicable after the end of the year ending 31 March. It also obliges the Chief Constable to provide whatever assistance or information the SPA requires for these purposes. The form and content of that statement of accounts is to be set by the Scottish Ministers.

49. Under section 42 the SPA must send a copy of the statement of accounts to the Auditor General for auditing.

50. Sections 43 to 44 deal with examinations by the Auditor General outwith the annual audit of the SPA’s statement of accounts. Section 43 provides that the Auditor General may, at any time, initiate an examination into the economy, efficiency, and effectiveness of the Police Service, and the arrangements made by the Chief Constable to secure best value for the Police Service (section 38(2)). It is for the Auditor General personally to initiate such an examination and to decide who is to carry it out, although he or she must take into account any proposals
made by the Scottish Parliament. The examiner appointed by the Auditor General may consider
the appropriateness of any criteria used to assess the use of resources available to the Police
Service but cannot question the merits of the Police Service’s policy objectives. The examiner -
if the Auditor General themselves is not carrying out the examination - must report to the
Auditor General, who may report to the Scottish Parliament and SPA. The results can be
published. Section 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000
apply to any examination under this section, as they apply to examinations in relation to
economy, efficiency and effectiveness generally. Section 43 makes it clear that section 23 of that
Act includes, in relation to the SPA, a reference to examinations into the arrangements made by
the SPA under section 38(1).

CHAPTER 7 – LOCAL POLICING

51. This Chapter sets out the arrangements for local policing, including the new relationship
between the Police Service and each local authority. Under section 45 the Chief Constable is
under a duty to ensure that there are adequate arrangements in place for policing within each
local authority area. The Chief Constable is required to designate a constable as local
commander for each local authority area, although one local commander can cover more than
one local authority area.

52. Section 46 requires local commanders to involve local authorities in setting priorities and
objectives for the carrying out of police functions in the local authority area. The local
commander is required to provide the local authority with any reports that it requests on the
carrying out of police functions in its area; statistical information on police complaints in its
area; and any other information about the policing of its area that the local authority might
reasonably require. Where a local commander considers that complying with such a requirement
would or might prejudice the carrying out of any operation by the Police Service, or the
prosecution of offenders, the local commander may refer the matter to the Chief Constable. It is
for the Chief Constable to confirm whether the referred requirement has effect and the relevant
information should be provided. Section 46 also enables the local authority to monitor and
provide feedback, including recommendations for improvement, to the local commander on the
policing of the local area. This feedback may be provided with reference to local plans in force
for the area. Under section 47 the Chief Constable is placed under a statutory duty to participate
in community planning, and this duty must be delegated by the Chief Constable to the local
commander for each local authority area. However, this does not affect the Chief Constable’s
responsibility for carrying out these functions or the Chief Constable’s ability to carry them out.
This replaces the existing statutory duty on the Chief Constable.

53. Section 48 of the Bill requires the local commander to submit a local police plan to the
local authority for its approval, once the first strategic plan has been approved under section 34.
When preparing the plan, the local commander must have regard to the strategic police plan and
consult the joint central committee of the Police Federation for Scotland, persons who appear to
be representative of senior officers, superintendents and police staff, and others as appropriate.
Once it is approved by the local authority, the local commander must publish the plan in a form
and manner specified by the SPA. The local commander must review the local police plan
where a new strategic police plan is approved under section 34, and may prepare and submit a
replacement plan to the local authority for approval. The local commander must also review the
local police plan where it has not been replaced or modified within 3 years from the date it was
published and, in this case, must prepare and submit a replacement plan to the local authority for approval. The plan can be modified at any time if the local commander and local authority agree to do so. Replacement and modified plans follow the same procedure for preparation, approval, publication and review as the plans which are being replaced or modified. The plan must set out:

- the main priorities and objectives for policing the local authority area (and, where reasonably practicable, the outcomes by reference to which achievement of the priorities and objectives can be measured);
- the reasons for selecting the priorities and objectives;
- the proposed arrangements for policing the local authority area including how those proposals will meet the stated priorities and objectives;
- how the priorities, objectives and arrangements for policing will help deliver any other relevant local outcomes identified through community planning; and
- any other information linked to policing the local area that the local commander thinks relevant.

CHAPTER 8 – GOVERNANCE AND ADMINISTRATION OF POLICE

54. This Chapter gives the Scottish Ministers powers to make regulations for the governance, administration and conditions of service of constables and police cadets. It then sets out in more detail the areas in which regulations can be made. These provisions are necessary as police officers are office holders and not employees. Their terms and conditions of service are therefore largely set in secondary legislation rather than through a contract of employment governed by employment law. Although cadets are not police officers they are appointed with a view to becoming officers. Their terms and conditions are therefore broadly equivalent and are provided for in a similar way (through legislation). These provisions largely replicate the regulation making powers in the 1967 Act but have been re-ordered and provide more detail than that Act does on the areas that regulations may cover.

55. **Section 49** sets out that the Scottish Ministers must make regulations covering the governance, administration and conditions of service of constables and police cadets. **Sections 50 – 54** set out in more detail what these regulations may cover. **Section 50** provides that regulations may be made for appointment and promotions, including the eligibility and procedure for appointment and for promotion; periods of service on probation; the efficiency and effectiveness of constables and cadets; restrictions on their private lives or business interests; and resignation and retirement. Regulations may provide for appointing senior officers (i.e. at the rank of assistant chief constable or above) for fixed terms, but cannot provide for fixed term appointment to any lower rank.

56. **Section 51** provides that regulations may be made which relate to conditions of service including: pay, allowances and expenses; public holidays and leave; the supply and return of police clothing and equipment; and, the remuneration of special constables. Such regulations may make retrospective provision about pay and allowances but cannot retrospectively reduce any pay or allowance payable to or in respect of any person. **Under section 52**, regulations may be made in relation to officer duties, including provisions about what duties are or are not to be carried out by constables or police cadets, hours of duty and the treatment as police duty of time spent attending meetings of police representative bodies.
57. **Section 53** provides that regulations must establish or provide for the establishment of procedures for handling unsatisfactory performance or behaviour. The regulations can set out standards of performance and behaviour which, if breached, might be treated as misconduct or unsatisfactory performance, as well as any other circumstances in which a constable’s behaviour or performance may be treated in this way. Regulations may permit constables to be suspended from duty pending an investigation into alleged misconduct (and when suspended a constable is not permitted to carry out any police functions). The regulations may also provide for how misconduct or unsatisfactory behaviour or performance are to be dealt with, including (but not limited to) admonition, suspension, dismissal or demotion in rank, and permit an officer to be suspended from duty whilst an allegation of misconduct is being considered. Functions may be conferred on the Police Investigations and Review Commissioner in relation to misconduct. The regulations must provide for the SPA to determine (but otherwise in accordance with procedures and sanctions set out in the regulations) cases which relate to standards of behaviour or performance of a senior officer.

58. **Section 54** provides that the regulations may also make provision for the compilation and retention of personal records about constables and police cadets and the taking of, retention, use and destruction of fingerprints and samples from such officers.

59. Under **section 55**, the Scottish Ministers must, before making regulations under **section 49**, consult, share a draft with, and consider representations from: the joint central committee of the Police Federation for Scotland; any bodies representing senior officers; any bodies representing superintendents; the Chief Constable; the SPA; and others as they see fit. When making regulations about any matter (other than pensions) contained in Section 61(1) of the Police Act 1996, which deals with the areas to be considered by the Police Negotiating Board for the UK (PNB), the draft must also be shared with the PNB.

60. **Section 56** allows for regulations made under **section 49** to provide for delegation of functions to the Scottish Ministers, the SPA, the Chief Constable, a local commander, the Police Investigations and Review Commissioner or any other person and to authorise or allow any persons to delegate functions.

**CHAPTER 9 – POLICE APPEALS TRIBUNALS**

61. This Chapter makes provision for the continuation of the Police Appeals Tribunal (the tribunal), describing its role in disciplinary cases where an officer has been dismissed or demoted in rank and the processes of review or appeal set out in regulations made using powers under **Section 49** have been exhausted. This Chapter largely replicates the provisions in the 1967 Act although they have been re-ordered and updated to provide appropriate independence.

62. **Section 57** gives a constable a right of appeal to a tribunal against dismissal or demotion in rank following the conclusion of misconduct or unsatisfactory behaviour or performance proceedings. **Schedule 3** makes further provision about these tribunals, including that the Scottish Ministers can make rules relating to appeals. It provides that the tribunal must consist of three members (one of whom is to act as the chairing member) qualified to practice law in Scotland for 5 years and selected by the Lord President of the Court of Session. The Lord President must establish and maintain a panel of persons from whom these members will be
appointed. The SPA must meet all the expenses of the appeal including the tribunal members’ remuneration, except the appellant’s expenses; however the tribunal has the power to direct the SPA to meet these costs too. The Scottish Ministers can make further rules and provision about the appeals procedure including the appeal notices, the identity of the respondent and holding private hearings.

63. **Section 58** provides that a tribunal must, before considering the appeal, consider any written or oral representations made by either the person bringing the disciplinary action to bear (the respondent) or the constable who is appealing it (the appellant). Either party can require representations to be made by oral hearing, and either party can elect to be represented by another person. **Section 59** provides that the tribunal can either confirm the decision being appealed or replace it with any less severe decision that could have been made by the person who made the decision against which the appeal was made. Any decision overturning the original decision has effect from the date of the original decision. A substituted decision has effect for the purposes of pensionable service as though it was made at the time of the decision against which the appeal was made. The tribunal has the option of treating the substituted decision in the same way for the purposes of pay. The tribunal can deal with any other matters that it deems appropriate to the case including any relevant periods where the constable was suspended from duty.

64. Under **section 60**, the chairing member of the tribunal has specific powers to require appropriate persons (including the appellant and the respondent) to provide information to aid it in its deliberations by attending and giving oral evidence at hearings or by providing relevant documents or information. It is an offence liable to a fine on summary conviction not exceeding level 2 on the standard scale to (without reasonable excuse): fail to attend hearings as required by citation; refuse or fail to answer any question at the hearing or to give the tribunal any document or information required. Knowingly or recklessly making a false statement in respect of any information required by the tribunal or deliberately altering, suppressing or destroying documents so required also constitutes an offence subject to the same maximum penalty. There is no defence of reasonable excuse in these circumstances. However, these powers do not require information to be disclosed which the person would be entitled to withhold in civil proceedings in the Court of Session.

**CHAPTER 10 – COMPLAINTS AND INVESTIGATIONS**

65. This Chapter amends Part 1, Chapter 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act) to rename the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC) and to extend the PIRC’s remit. **Section 61** places a number of requirements on the SPA and the Chief Constable in terms of dealing with relevant complaints, whose definition is the same as in 2006 Act. Those requirements are as follows:

- the SPA and Chief Constable must maintain suitable arrangements for the handling of relevant complaints, and must seek the views of others on what those arrangements should be;
- the SPA must keep itself informed about how the Chief Constable is dealing with relevant complaints in order to satisfy itself that those arrangements are suitable; and
- the Chief Constable must provide the SPA with whatever information about relevant complaints it reasonably requires, and must seek to ensure that sufficient information is kept for that purpose.

66. **Section 62** renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC).

67. **Section 63** inserts section 33A into the 2006 Act, setting out the general functions of the PIRC. The PIRC is required to:

- ensure that the SPA and the Chief Constable make and maintain suitable arrangements for the handling and examination of complaints about police constables and staff and the reconsideration of such complaints as set out in sections 34 to 41 of the 2006 Act (section 33A(1)(a));

- when directed by a prosecutor to do so, investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence and the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (section 33A(1)(b));

- where requested by the SPA or Chief Constable, investigate and report on deaths, serious injuries or firearms incidents where constables and police staff are involved (section 33A(1)(c)); and

- investigate other matters relating to the Police Service or SPA that it considers are in the public interest (section 33A(1)(d)).

68. **Sections 64 to 69** insert new sections 41A to 41F into the 2006 Act which describe in more detail the PIRC’s powers, duties and functions. **Section 64** inserts new section 41A of the 2006 Act which requires the Commissioner to comply with any lawful instruction given by the prosecutor in relation to investigating and reporting alleged serious criminal offences or fatal accidents involving a person serving with the police. Amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to provide for the investigatory powers which the PIRC will have are set out in paragraph 4 of schedule 6.

69. **Sections 65 and 66** insert new sections 41B and 41C of the 2006 Act which explain further the definition of deaths or serious injuries, incidents involving firearms and other weapons, and other matters in the public interest which the Commissioner may investigate using powers in new sections 33A(1)(c) and (d) of the 2006 Act. **Section 41B** provides that the “serious incidents” that the PIRC may investigate include deaths and serious injuries when the person was detained by and had contact with the police and that contact may have caused or contributed to their death or injury, and incidents where a person serving with the police has used a firearm or other prescribed weapon. The Scottish Ministers may by regulation prescribe other circumstances which constitute a “serious incident”. Such regulations would be subject to negative parliamentary procedure. Provision is made in subsection (2) about matters which are not serious incidents. **Section 41C** outlines that the PIRC may investigate matters where there is an indication that the SPA, Police Service or a person serving with the police has been involved, and the PIRC believes to be in the public interest to do so. However, the PIRC cannot use these powers to investigate: cases which the Commissioner is investigating in pursuance of paragraph
(b)(i) of section 33A(1); where criminal proceedings have been brought following an investigation by the Commissioner; or a matter which is being, or has been, investigated by the Commissioner in pursuance of paragraph (b)(ii) or (c) of section 33A(1) or by someone else under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

70. **Section 67** inserts section 41D which gives the Scottish Ministers powers to make, by regulations, further provisions about PIRC investigations under sections 33A(1)(c) or (d) of the 2006 Act. The Scottish Ministers must consult the PIRC, the SPA, the Chief Constable, persons appearing to be representatives of senior officers, persons appearing to be representatives of superintendents (including chief superintendents), the joint central committee of the Police Federation for Scotland and any other relevant people before making such regulations, which are subject to affirmative parliamentary procedure. The regulations may make provision about: the form, procedure, restrictions and time limits for investigations; the circumstances in which an investigation may be discontinued; requirements on the SPA and Chief Constable to refer matters to the Commissioner and to assist and co-operate with investigations; and the delegation of functions to PIRC.

71. **Section 68** inserts new section 41E of the 2006 Act which requires the Commissioner to provide a report following an investigation under paragraph (c) or (d) of new section 33A(1). That report should not enable the identity of any person other than the SPA and Police Service to be revealed unless the PIRC considers that it is necessary to do so on the grounds of public interest. The PIRC must provide a copy of it to the person who requested the investigation, the SPA and any other person the PIRC considers appropriate. If it considers it appropriate to do so, the PIRC must publish the report in such a manner as it considers appropriate.

72. **Section 69** inserts a new section 41F into the 2006 Act allowing the Court of Session to investigate whether an individual, who is obstructing the PIRC in carrying out a complaint handling review or investigation, should be treated as though they are a person who has committed a contempt of court in relation to the Court of Session.

73. **Section 70** inserts a new section 42A into the 2006 Act to put in place arrangements for the handling of complaints against the PIRC and to seek the views of others as to what those arrangements should be. **Section 70A** also inserts a new section into the 2006 Act so that certain statements made by the PIRC have absolute privilege from defamation, as defined in the Defamation Act 1996. Statements made to the PIRC, in relation to an investigation, also have absolute privilege and statements made to the PIRC in relation to a complaint or complaint handling review are privileged unless made with malice.

**CHAPTER 11 – HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND**

74. This Chapter describes the role, powers and functions of Her Majesty’s inspectors of constabulary in Scotland (HMICS), which will retain its existing powers and take on an additional power to examine the delivery of best value. **Section 71** continues the existence of HMICS. Her Majesty can by Order in Council appoint and dismiss such number of inspectors as determined by the Scottish Ministers. The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary, and set levels of remuneration or allowances.
The Scottish Ministers may appoint and set pay levels and terms and conditions for assistant inspectors under section 72. Subsection (2) provides that constables engaged on service as assistant inspectors are under the direction and control of the inspectors of constabulary. Subsection (3) provides that Scottish Ministers are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an assistant inspector of constabulary in relation to the exercise of that constable’s functions. Under section 73, inspectors can appoint staff officers to assist them, and set their terms and conditions of employment. Subsection (2) provides that a constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary. Subsection (3) provides that the inspectors are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an inspector of constabulary in relation to the exercise of the constable’s functions.

Section 74 provides that the Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the SPA or Police Service. The inspectors of constabulary may make such other inquiries as they think fit about the state, efficiency and effectiveness of the SPA and the Police Service, and the arrangements made by the SPA and the Chief Constable under their duty to secure best value. Under section 74A, the inspectors of constabulary must prepare and publish a plan setting out their priorities for inquiries, and information on how inquiries will be carried out in a proportionate, accountable and transparent way. The plan must be reviewed and may, from time to time, be revised. Appropriate persons must be consulted when the plan, or revised plan, is being prepared.

Under section 75 the inspectors of constabulary are given general powers to do anything considered necessary or expedient in carrying out their functions, and may delegate these functions to any assistant inspector or staff officer, although they will still retain responsibility for the performance of those functions and remain able to perform them. Section 76 provides that the SPA and Chief Constable must assist and cooperate with the inspectors of constabulary.

Section 77 provides that as soon as possible after reporting to the Scottish Ministers, the inspectors of constabulary must give a copy of the report to the SPA and, where the report relates to the Police Service, to the Chief Constable, and publish it. The Scottish Ministers must then lay the report before the Scottish Parliament. Section 77A provides that where the inspectors of constabulary have completed an inquiry under section 74(2), about the efficiency and effectiveness of the SPA or the Police Service or the arrangements made by the SPA and the Chief Constable under their duty to secure best value, the report must be given to the SPA and, if the report relates to the Police Service, to the Chief Constable. The inspectors of constabulary must also lay a copy of the report before Parliament, provide a copy to Scottish Ministers and publish it. Under section 77B, the SPA and the Chief Constable must have regard to such reports, and take appropriate measures, when carrying out their functions. Under section 78, where such a report states that the inspectors of constabulary do not consider that the SPA or Police Service are efficient or effective, or will cease to be efficient or effective unless remedial action is taken, or that they are not achieving best value, the Scottish Ministers can direct the SPA to take remedial measures. The SPA must comply with any such direction.

The inspectors of constabulary are required under section 79 to prepare and submit an annual report to the Scottish Ministers and the SPA, to publish it and lay it before parliament.
CHAPTER 12 – CO-OPERATION, EXCHANGE OF INFORMATION, ETC

79. This Chapter describes the new arrangements for interaction and co-operation between the SPA and Police Service, and the inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner.

80. **Section 80** provides that the SPA and Chief Constable can make arrangements under which the SPA and Police Service provide assistance to each other. This includes the ability for their respective staff or constables to provide services to each other.

81. **Section 81** places a duty on the SPA to comply with any requirement made by the Scottish Ministers to provide reports, statistics or other information to them on any matter connected with the SPA, Police Service and the state of crime. The Chief Constable must do the same in relation to the Police Service for any request made by the SPA. The Chief Constable can however refer to the Scottish Ministers any such requirement made by the SPA if he or she considers that compliance would or could prejudice the carrying out of a police operation or the prosecution of offenders. If this happens, the requirement will only have effect if it is confirmed by the Scottish Ministers. The Chief Constable can also be required by the Lord Justice General or a sheriff principal (in relation to policing in the sheriff principal’s jurisdiction) to provide such reports relating to policing as may reasonably be required.

82. **Section 81(8)** places a duty on the Chief Constable to try to ensure that sufficient information about the state of crime is kept to enable compliance with any such request. **Section 81(9)** also places a duty on the clerk of any court with criminal jurisdiction to provide any information they have to the Chief Constable to enable him or her to meet that obligation.

83. **Section 82** places a duty on the inspectors of constabulary, Auditor General and Police Investigations and Review Commissioner to work together in order to improve the carrying out of their functions. In particular, arrangements must be made to ensure the effective exchange of information between them about the SPA and Police Service and to prevent any unnecessary duplication of effort. This requirement does not apply where a matter requires urgent action. In complying with this duty, the inspectors and the PIRC must comply with any direction or guidance given by the Scottish Ministers. Such directions or guidance may relate to all functions of the inspectors and the PIRC, or only to specified functions, and may be varied or revoked by the Scottish Ministers.

CHAPTER 13 – PROVISION OF GOODS AND SERVICES

84. This Chapter sets out new arrangements to allow the SPA to charge for certain services provided by the Police Service or the SPA. Under **section 83**, the SPA can authorise the Chief Constable to make arrangements, at the request of any person, to provide and charge for police services. **Subsection (9)** defines police services as services in connection with the maintenance of order or the protection of persons or property from harm which are provided on or in relation to land owned or occupied by the person who requests the services. An authorisation may be of a general or specific nature and may in particular set out a scale of charges (**subsection (2)**) and the charges may only cover the cost of providing the services (**subsection (7)**). This section also allows the Scottish Ministers to issue a code about charging for police services that the SPA must comply with. The Police Service has to ensure all money received from charging is paid to
the SPA. No charge may be made in respect of the carrying out of police functions otherwise than in accordance with an authorisation under this section, unless it is authorised by another enactment or rule of law (subsection (8)). Under subsection (7) the SPA is only allowed to charge for the cost of the service provided although subsection (3) makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service.

85. Under section 84 the SPA may provide goods and services to any other public body or office holder. It may also provide such goods and services of a type described in an order made by the Scottish Ministers to other persons or types of persons described in such an order (subsection (1)). The SPA may, with the consent of the Chief Constable, make similar arrangements for the provision of goods and services by the Police Service (subsection (3)). Subsection (5) allows the SPA to charge for any goods and services it provides, or which it authorises the Chief Constable to provide, including any costs it incurs, or expects to incur, indirectly as a result of the provision of those goods and services. Subsection (6) makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service. However, subsection (7) prevents the SPA from charging for forensic services it is required to provide to the Police Service, Lord Advocate and procurators fiscal and the PIRC. Goods and services may be provided by the SPA for such purposes as it considers appropriate and consistent with the proper carrying out of its functions (subsection (2)) and by the Police Service for such purposes as the SPA considers to be appropriate and consistent with the proper carrying out of police functions. The goods and services which may be provided include, but are not limited to:

- information technology systems and equipment;
- the inspection, testing and maintenance or repair of vehicles; and
- any other type of corporate support service provided by the SPA or Police Service in connection with the carrying out of SPA or police functions.

CHAPTER 14 – GRANTS

86. This Chapter provides for the payment of grants and replaces the current arrangement whereby funding of the police is shared between the Scottish Ministers and local authorities. Section 85 allows the Scottish Ministers to make grants to the SPA. Such grants may be subject to conditions. Section 86 allows grants or financial assistance to other persons for the purposes of providing services to or otherwise assisting or supporting the SPA or the Police Service in the carrying out of the SPA’s functions or police functions. A grant or financial assistance may only be given under this section where it would be necessary or expedient for promoting the efficiency or effectiveness of, or securing best value for, the SPA or the Police Service, and is subject to any conditions specified by the Scottish Ministers.

CHAPTER 15 - OFFENCES

87. This Chapter re-enacts in a modern form the specific offences in the 1967 Act in relation to impeding a member of the police from carrying out their duties. Section 87 makes it an offence to assault a person serving with the Police Service, a member of a police force mentioned in subsection (4) who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. It
is also an offence to resist, obstruct or hinder them. **Section 88** provides for an offence of aiding escape from or removing a person from the custody of a constable of the Police Service, a police custody and security officer, a constable of a police force mentioned in **section 87(4)** who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. Both offences have penalties of imprisonment for up to twelve months and/or a fine not exceeding the statutory maximum on summary conviction, which is unchanged from the 1967 Act.

88. **Section 89** makes it an offence for someone who is not a police constable to impersonate a constable with intent to deceive or to do anything calculated to suggest that they are a constable. It is also an offence to possess articles of police clothing without the permission of the SPA (**subsection (2)**). A person has a defence to a charge under **section 89(2)** if he or she can prove that the articles of clothing were obtained lawfully and were in the person’s possession for a lawful purpose. **Subsection (4)** makes it an offence for a person who is not a constable to wear, without the permission of the SPA, an article of police uniform which so nearly resembles that of a constable as to be calculated to deceive. The penalty on summary conviction of an offence under this section is imprisonment of up to three months or a fine not exceeding level 4 on the standard scale which is unchanged from the 1967 Act.

**CHAPTER 16 – INDEPENDENT CUSTODY VISITING**

89. This Chapter places the arrangements for independent custody visiting in Scotland on a statutory footing for the first time, ensuring that it is compliant with the United Nations Optional Protocol to the Convention Against Torture (OPCAT). **Section 90** sets out the purpose of the provisions in Chapter 16, namely pursuance of the objective of OPCAT. **Section 91** places a duty on the SPA to make arrangements to ensure that independent custody visitors can visit detainees and access information relevant to and monitor their treatment and conditions of detention. **Subsection (2)** provides that it must do that by providing for the appointment of independent custody visitors (ICVs), who are independent of both the SPA and Chief Constable, by authorising ICVs to do anything they require to enable them to visit detainees and monitor their treatment and conditions of detention, and by providing for the reporting of visits. **Subsection (3)** sets out specific action which ICVs may be authorised to take, including accessing any place of detention without notice, examining records relating to the detention of people there, meeting them and such other persons as they consider relevant to discuss the treatment and conditions of detainees, and inspecting those conditions. Access to a detainee can only be refused if an officer of inspector rank or above considers grounds for refusal of access contained in a Ministerial determination have been satisfied and any other procedural requirements set by the SPA have been met (**subsection (4)**). The SPA is required to keep these arrangements under review and to prepare and publish any reports required by the Scottish Ministers.

90. Ministers may issue guidance about independent custody visiting, to which the SPA, independent custody visitors and police must have regard. Before issuing such guidance, or making a determination about when access to detainees should be denied, the Scottish Ministers must consult with the SPA, the Chief Constable, ICVs or a representative body, and any others they consider appropriate. Such guidance or determinations must be laid before the Scottish Parliament.
91. Under section 92 the SPA must also make arrangements to allow members of the Subcommittee on the Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or punishment (SPT) established under OPCAT to visit detainees, to access information relevant to their detention and to monitor their treatment and the conditions they are held in. It also describes the arrangements that may be made (subsection (3)) and provides that access may only be refused where the Scottish Ministers have notified the SPA that there are urgent and compelling grounds of public safety, natural disaster or serious disorder that temporarily prevent the carrying out of a visit (subsection (4)). The SPA must keep the arrangements under review and it and its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits (subsections 5 and 6).

92. Section 93 sets out the definitions of the terms used in Chapter 16.

CHAPTER 17 – MISCELLANEOUS AND GENERAL

93. This Chapter makes a number of miscellaneous provisions.

94. Section 94 provides for the dissolution of the Police Advisory Board for Scotland.

95. Section 95 introduces schedule 3A which makes specific provision for the period before section 6 comes into force and the Police Service is established. During this period, senior officers have powers to take appropriate action in anticipation of the establishment of the Police Service or the coming into force of this Act. The Chief Constable is accountable to the SPA, and the SPA has powers in relation to pay and providing and maintaining anything necessary or desirable connected with the functions of senior officers. Section 95 also introduces schedule 4 which sets out the arrangements for the transfer of officers and staff working in the 8 police forces, SPSA and SCDEA to the new Police Service of Scotland and for the transfer of the assets and liabilities currently held by the joint boards and unitary authorities and SPSA. It also makes a number of transitional and transitory provisions to assist in the transition to the new service. Paragraph 1 defines terms used in this schedule, and paragraph 2 sets out that the appointed day is the day the new Police Service is established or such other day as Ministers may appoint. There is no parliamentary procedure attached to this.

96. Paragraphs 3 – 9 cover arrangements for the transfer of police officers. Paragraph 3 makes clear that any person who is a constable immediately before the appointed day holds the office of constable on and after that day, is treated as having made the oath under section 10, and is to be treated as having been appointed in accordance with the provision in the Bill as a constable of the Police Service. Officers transfer at their current rank, except where they are on temporary promotion in which case they transfer at their substantive rank although the temporary promotion remains in place. Any specific contractual terms, for example fixed term contracts, continue to have effect as if they were made by the Police Service. Under paragraph 3A, those appointed under section 7 and who hold the office of Chief Constable, Deputy Chief Constable or Assistant Chief Constable, immediately before the appointed day, are to serve as a constable of the Police Service on and after the appointed day.

97. Paragraph 4 sets out the arrangements that are to apply to senior officers who are not appointed to positions in the Police Service but who exercise their right to transfer. Paragraph
5 makes clear that any constable of a police force mentioned there transfers to serve as a constable of the Police Service, and paragraph 6 covers the arrangements for constables serving in SCDEA or SPSA immediately before the appointed day. Paragraph 7 sets out the arrangements for police officers who are on temporary service outwith their force immediately before the appointed day. Where the temporary service is to another force, the officer transfers to the Police Service. Where it is to another organisation the temporary service continues and the officer has a right to return to the Police Service at the end of the temporary service. Paragraph 8 makes clear that where there is any outstanding liability that the liability transfers to the SPA. Paragraph 9 provides safeguards for officers who transfer to the new service. An officer must not be assigned to duties which would necessitate the officer moving home to a place outwith what was the area of the police force that has ceased to exist. Where a constable is engaged on service outwith their home force area on the date of transfer this safeguard only applies on his return to his “home” force area. The safeguard ceases to apply where the constable is or becomes a senior officer, is promoted to a higher rank or the officer consents to the lifting of the limitation.

98. Paragraphs 10 – 15 cover the arrangements for the transfer of staff and others. Under paragraph 10, a police employee is defined as a person employed by a joint board as a civilian, a member of staff at SPSA and an employee of a local authority who is included in a staff transfer scheme made under paragraph 11. It further applies that a police employee’s contract of employment has effect on or after the appointed day as if originally made between the employee and the SPA. It is for the SPA to determine whether the individual is to be regarded as a member of police staff under section 26 who is under the direction and control of the Chief Constable or as a member of the SPA’s staff under paragraph 7 of schedule 1. Paragraph 10 also makes a number of provisions concerning employees who are subject to a staff transfer order. Sub-paragraphs (4) and (5) establish that contract rights and obligations transfer from the former employer to the SPA on the transfer date. Sub-paragraph (6) provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. Sub-paragraph (8) provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

99. Paragraph 11 makes provision for a staff transfer scheme for staff employed in the unitary police authorities who are to be treated as police employees for the purposes of paragraph 10. Paragraph 12 covers staff who are appointed under a contract for services. Paragraph 13 covers police cadets and paragraph 14 makes additional provision for Police Custody and Security Officers who will have transferred to the SPA under paragraph 10. Paragraph 15 makes clear that any individuals who are an inspector of constabulary, an assistant inspector of constabulary or a staff officer to the inspector of constabulary on the date sections 71- 73 come into force remain in post.

100. Paragraphs 16 – 18 cover property transfers. Paragraph 16 allows Ministers to make a police property transfer scheme. This is a scheme making provision for the transfer to the SPA of property, rights, liabilities and obligations of Ministers, a local authority, a joint police board or the SPSA. Paragraph 17 allows Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a
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joint board. Scottish Ministers must be provided with information or assistance reasonably required for the transfer schemes under paragraphs 16 and 17. Paragraph 18 makes general provisions in relation to schemes made under paragraphs 16 and 17.

101. Section 97 provides a list of definitions of terms used in the Bill. Section 98 deals with the issue of Crown application, providing in particular that the Crown may not be made criminally liable for a contravention of a provision of the Bill (but that the Court of Session may make a declarator in respect of any such unlawful act or omission) and that the power of compulsory purchase in section 4(2)(d) does not apply to Crown land.

PART 2 – FIRE REFORM

SECTION 99 – THE SCOTTISH FIRE AND RESCUE SERVICE

102. Section 99 introduces a new section 1A into the Fire (Scotland) Act 2005 (the 2005 Act) to provide for the establishment of a new statutory body corporate, the Scottish Fire and Rescue Service (SFRS) or, in Gaelic, Seirbhise Smàlaidh agus Teasairginn na h-Alba to replace the current 2 unitary authorities and 6 joint fire and rescue boards. SFRS has the functions conferred by the 2005 Act, as amended by the Bill, and additional functions conferred on it by this, or any other, enactment.

103. Section 99 also inserts schedule 1A into the 2005 Act, which sets out the SFRS’s governance and finance arrangements, general powers and accounting requirements. Paragraph 1 provides that SFRS is established as independent from the Crown. Paragraphs 2 – 7 provide that SFRS will consist of a chair and between 6 and 10 other members, although that number can be varied through secondary legislation by the Scottish Ministers which would be subject to negative procedure in the Scottish Parliament. Members of SFRS will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the fire and rescue service. The Scottish Government intends that the appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland ("the Code"). The Scottish Ministers will be responsible for appointing the Chair, and members of SFRS. Members of SFRS may elect a member to act as Deputy Chair. The schedule sets out the length of term members and the Chair can serve (paragraph 4); that Ministers can remove members in certain circumstances (paragraph 6); and provides a list of people disqualified from membership of SFRS (paragraph 3).

104. Paragraphs 8 – 9 make provision for the SFRS to employ the Chief Officer, fire-fighters and other staff. The first Chief Officer is to be appointed by the Scottish Ministers with subsequent appointments made by SFRS subject to the agreement of the Scottish Ministers. Paragraphs 10 – 11 set out the rules regarding the establishment of committees and procedure of SFRS. Paragraph 11A sets out governance and accountability in relation to SFRS members. Paragraph 12 sets out SFRS’s general powers and allows SFRS to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The power to borrow money, form or promote companies and to purchase land compulsorily is subject to Ministerial consent, and in relation to borrowing money and forming or promoting companies the Scottish Ministers can set any conditions they consider appropriate, and their
agreement can be given in relation to a particular case or class of case. **Paragraph 13** makes provision for the delegation of functions to the Chief Officer and other SFRS staff and any committees established by SFRS although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them. **Paragraph 14** requires the Scottish Ministers’ approval for the location of the administrative headquarters used by SFRS board members and the Chief Officer. **Paragraph 15** allows the Scottish Ministers to provide grants to SFRS. **Paragraph 16** makes provision for the preparation and submission of accounts and arrangements for audit. It places a duty on SFRS to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts for that year as soon as possible after the end of the year ending 31 March. The Scottish Ministers have a power to direct the form and content of that statement of accounts, as well as the accounting methods and principles to be applied. SFRS must send a copy of the statement of accounts to the Auditor General for auditing.

**SECTIONS 100-108 – FUNCTIONS**

105. **Sections 100 – 108** amend Chapters 2 and 3 of Part 2 of the 2005 Act and Chapter 2 of Part 3 of that Act, replacing references in that Act to “relevant authority” (unitary authority or joint fire and rescue boards) with references to the Scottish Fire and Rescue Service. Functions and responsibilities in the amended sections which were previously with joint boards and unitary authorities will now rest with SFRS. This includes the following areas: promotion of fire safety; fire safety enforcement; responding to fires, road traffic accidents and other emergencies and eventualities; provision of other services; provision of centres for education and training; and charging. In relation to the promotion of fire safety, this will enable SFRS to run national publicity campaigns, which are currently done by the Scottish Ministers. **Section 101** also transfers responsibility for the enforcement of fire safety in certain Crown and other premises from the Chief Inspector of Fire and Rescue Authorities to SFRS and amends legislation so that where the enforcing authority is SFRS a matter may be referred by either party for determination of a dispute by the Chief Inspector.

**SECTIONS 109-119 – FURTHER AMENDMENTS OF 2005 ACT**

106. **Sections 109 and 110** amend sections 35 and 36 of the 2005 Act - power to obtain assistance in carrying out functions and arrangements for carrying out functions by others - replacing references in those sections with “relevant authority” (unitary authority or joint fire and rescue board) to the Scottish Fire and Rescue Service. The sections also provide that functions can only be delegated and assistance provided in this way if the Chief Officer considers that the persons from whom assistance will be provided or to whom the functions will be delegated have the relevant knowledge, skills and experience to do so. In addition, under section 36, the function of extinguishing fires may only be delegated to fire-fighters.

107. **Section 111** inserts new sections 39 A – C into the 2005 Act to place a statutory duty on SFRS to make arrangements which secure best value. This replaces the current duty of best value on fire and rescue authorities and joint boards by Section 1 of the Local Government in Scotland Act 2003. Best value is defined as meaning a continuous improvement in the performance of SFRS’s functions. In carrying out its duties in relation to best value, it must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as
meaning guidance on carrying out the duties imposed in new section 39A, including, in particular, guidance on how to make and what is to be included in the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult SFRS and anyone else they consider appropriate. Where there is conflict between (a) and (b), SFRS must have regard only to (a).

108. In making arrangements to secure best value, SFRS is required to balance the quality of the performance of its functions, the cost of doing so, and the cost to persons of any service provided by SFRS on a wholly or partly chargeable basis. In maintaining that balance, SFRS must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (within the meaning of Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46)). SFRS is to discharge its duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of SFRS’s functions, regard should be taken of the extent to which the outcomes of that performance have improved. New section 39C confers a power on the Auditor General to examine the arrangements made by SFRS to secure best value.

109. Section 112 amends the 2005 Act to insert new sections 41A, 41B and 41C which set out new arrangements for planning. Section 112 inserts section 41A which places a duty on SFRS to prepare a strategic plan. The plan must set out how SFRS proposes to carry out its functions during a 3 year planning period, set out outcomes against which performance can be measured, and include such other information as SFRS considers appropriate (including information relating to other years).

110. Under section 41A SFRS must make arrangements to obtain views, on what the strategic plan should contain, from persons who are likely to be interested in how it carries out its functions. When preparing the plan, SFRS must have regard to the framework document (see section 40 of the 2005 Act), send the draft plan to persons specified in subsection (4), invite comments from these persons and have regard to any comments received. It also provides that SFRS must use best endeavours to secure the Scottish Ministers’ approval to the plan (with or without modifications) before the start of the planning period. The date for the start of the first planning period will be set by the Scottish Ministers by Order. Once the plan has been approved, it must be published and laid before the Scottish Parliament. Section 41B provides for review of the strategic plan and that any new plan prepared following that review must follow the same process for obtaining views from others, approval and publication as the original. SFRS may review and prepare a new strategic plan at any time, but must prepare a new plan for each new planning period (i.e. to take effect on the expiry of the previous planning period). Therefore a review will happen at least once every 3 years. Each new plan must cover a 3 year period which, for plans prepared as a result of a review part way through the previous planning period, will commence 8 weeks after the plan is submitted to the Scottish Ministers for approval, and for plans prepared in anticipation of the expiry of the previous planning period will commence the day after that period expires. Where a strategic plan has been approved under section 41A or 41B, SFRS must have regard to that plan in carrying out its functions (by virtue of section 41C).

111. Section 113 amends the 2005 Act to insert new sections 41D to 41K which set out the arrangements for local fire and rescue services, including the new relationship between the SFRS and each local authority. New section 41D sets out the role of SFRS in ensuring that adequate arrangements are in place for the provision of fire and rescue services within each local authority
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area and for the involvement of the local authority in determining priorities and objectives for SFRS locally.

112. New section 41E makes clear that SFRS has responsibility for the preparation of a local fire and rescue plan for each local authority area. By virtue of new section 41J, the function is to be carried out by a Local Senior Officer, designated by the Chief Officer, with delegated responsibility for the local planning functions in sections 41E to 41K. The plan must set out: the main priorities and objectives for fire and rescue services in the local authority area along with the reasons for selecting these and outcomes against which these will be measured; how it will help deliver any other relevant local outcomes identified through community planning; and, the proposed arrangements for carrying out fire and rescue functions in the local authority area including how those proposals will meet the stated objectives. The local fire and rescue plan can also include any other matters linked to fire and rescue services in the local area that the SFRS thinks fit. When preparing the plan, SFRS must have regard to the fire framework (see section 40 of the 2005 Act) and SFRS’s strategic plan and consult SFRS employee representatives, and others as appropriate. Once it is agreed with the local authority, SFRS must publish it.

113. New section 41G requires SFRS to review the local fire and rescue plan every 3 years, where there has been significant revision to the fire framework, and where a new strategic plan is approved. The plan must be revised if there has been no revised plan published within the past 3 years, and may be revised following any other review. Under new section 41F the local plan may also be reviewed at any time. Any review and revision of the plan must follow the same procedure for preparation, approval and publication as the initial plan. New section 41H makes clear that SFRS must provide the local authority with any information or reports reasonably requested by the local authority about the carrying out of SFRS’s functions in that local authority area. This includes providing reports relating to any local fire and rescue plan which is in force for the local authority area.

114. New section 41J requires the Chief Officer to designate a local senior officer for each local authority area (they may cover more than one local authority area) and provides for certain statutory functions to be delegated to the local senior officer, including the production of a local fire and rescue plan, and participation in community planning under section 16 of the Local Government in Scotland Act 2003 although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them.

115. Under new section 41K a local authority can monitor and provide feedback to the SFRS on how it carries out its functions in the local authority’s area. It may provide views and make recommendations for improvements in this respect, and feedback may refer to any local fire and rescue plan in force for its area.

116. **Section 114** amends the 2005 Act to insert new section 41L which requires SFRS to prepare and publish an annual report as soon as possible after the end of each reporting year. A copy of the report must be given to Scottish Ministers. The report must contain an assessment of SFRS’s performance during the reporting year in acting in accordance with the fire framework and in achieving the outcomes set out in the strategic plan, and any other information SFRS considers appropriate.
117. **Section 115** amends the 2005 Act to insert new section 41M, requiring SFRS to provide to the Scottish Ministers any reports, statistics and other information they request in relation to its functions. **Subsection (2)** makes clear that the information may include, for example, statistics relating to fire deaths. The information must be provided when and how specified by the Scottish Ministers.

118. **Section 116** amends the 2005 Act to insert new section 42A to allow the Scottish Ministers to give the SFRS a general or specific direction in relation to carrying out its functions. The Scottish Ministers must publish any directions made and SFRS is required to comply with any such directions. A direction cannot be made in relation to adherence to the fire and rescue framework as the existing enforcement arrangements would apply in those circumstances.

119. **Section 117** inserts sections 43A to 43G into the 2005 Act. It describes the role, powers and functions of the Inspectors of the Scottish Fire and Rescue Service. New section 43A allows Her Majesty to appoint a Chief Inspector of the Scottish Fire and Rescue Service, and such number of other Inspectors as determined by the Scottish Ministers. **Section 43A(5)** makes clear that the individual who is the Chief Inspector of Fire and Rescue Authorities on the date the provision comes into force is to be the first Chief Inspector of the SFRS. The same applies to any Inspectors or Assistant Inspectors in post on that date. It is for the Scottish Ministers to set levels of pay and the terms and conditions for such office holders. The Scottish Ministers can also appoint and set pay levels and terms and conditions for Assistant Inspectors. In addition, Ministers have a power to authorise an Inspector to carry out functions of the Chief Inspector in the event of a temporary vacancy in that office, or if the Chief Inspector is temporarily unable to carry out those functions.

120. Under new section 43B an Inspector has powers to inquire into the state and efficiency of SFRS, the manner in which SFRS is carrying out its functions and whether, in doing so, it is complying with its duty to make arrangements which secure best value. The Inspectors may independently initiate such inquiries, and must do so if so directed by the Scottish Ministers. SFRS must cooperate with the Inspectors’ inquiries and, in particular, must provide any information or documents relating to its functions that the Inspector may require, and must grant them access to SFRS premises or equipment as required. The power of entry is not available in relation to private dwellings, and Inspectors do not have the power to enter premises by force.

121. Under new sections 43C and 43D, the Chief Inspector is required to produce a report of any inquiry completed under section 43B and must in all cases give the report to SFRS. If the inquiry is under section 43B(1) the Chief Inspector must give the Scottish Ministers such information in relation to the inquiry as they may request, and, where it relates to the state and efficiency of SFRS or its compliance with its duties in relation to best value, the Chief Inspector must give the report of the inquiry to the Scottish Ministers and lay it before the Scottish Parliament. If the inquiry relates to SFRS’s carrying out of its functions, the Chief Inspector has discretion to provide a copy of the report to the Scottish Ministers. If the inquiry has been directed by the Scottish Ministers, the Chief Inspector must give them a report of the inquiry and any other information relating to the inquiry that the Scottish Ministers request. The Scottish Ministers must lay a copy of the report before the Scottish Parliament. New section 43E makes clear that SFRS must have regard to any reports it receives from the Chief Inspector when carrying out its functions, and must take such measures as it considers appropriate following receipt of the report, e.g. to implement any recommendations made by the Chief Inspector.
122. New section 43F puts in place a requirement for the Chief Inspector of the Scottish Fire and Rescue Service to prepare a plan setting out priority areas for Inquiry by the Inspectors and how such inquiries will be carried out. He or she is required to keep the plan under review and may revise it periodically. The Chief Inspector is required to consult on, and publish, the plan and any revised plan. New section 43G requires the Inspectors and the Auditor General to co-operate and co-ordinate activity in relation to their functions relating to SFRS.

123. Section 117A amends section 52 of the 2005 Act, to allow SFRS to employ special constables (who have been appointed under section 9).

SECTIONS 118-119 – GENERAL

124. Section 118 introduces schedule 5, which makes provision about the transfer of staff, property, rights, liabilities and obligations to SFRS and to local authorities where appropriate. Paragraph 1 defines terms used in the Schedule, including defining the “appointed day” as the day the Scottish Ministers may appoint. There is no parliamentary procedure attached to this.

125. Paragraphs 2-4 of schedule 5 cover the arrangements for the transfer of staff and others. Paragraph 2 covers the transfer of joint board staff. It provides that a joint board employee’s contract of employment has effect on or after the appointed day as if originally made between the employee and the SFRS. Paragraph 2 also makes a number of provisions concerning employees who are subject to a staff transfer order. Sub-paragraph (4) provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. Sub-paragraph (6) provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

126. Paragraph 3 makes provision for a staff transfer scheme for staff employed in the unitary fire and rescue authorities or who are members of staff of the Scottish Ministers. This is because only those employees who are carrying out fire and rescue functions should transfer to the SFRS. It is necessary therefore to identify those employees who are to transfer in a transfer scheme. Paragraph 4 makes further provisions in relation to transfers under paragraph 3. It provides that the contract of employment for the person who is transferring has effect on or after the appointed day as if originally made between the employee and the SFRS. Sub-paragraph (5) provides that employed staff may object in advance of their contract being transferred to the SPA, in which case their contract is terminated at the end of the day before the intended transfer day. This termination will not be treated as dismissal of a person for the purposes of legislation. Sub-paragraph (7) provides that an employee can only terminate their contract of employment by virtue of the staff transfer if they can show that the change of employer was both significant and detrimental.

127. Paragraphs 5 – 8 cover property transfers. Paragraph 5 allows the Scottish Ministers to make an SFRS property transfer scheme. This is a scheme making provision for the transfer to the SFRS of property, rights, liabilities and obligations of Ministers, a local authority or a joint fire and rescue board. Paragraph 6 allows the Scottish Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights,
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liabilities and obligations of a joint board. Scottish Ministers must be provided with information or assistance reasonably required for the transfer schemes under paragraphs 5 and 6. Paragraphs 7 and 8 make general provisions in relation to schemes made under paragraphs 5 and 6.

128. Section 118A is a transitory provision, allowing for membership of the SFRS until the coming into force of section 99(1).

129. Section 119 defines the meaning of “the 2005 Act” as the Fire (Scotland) Act 2005.

PART 3 – GENERAL

130. Part 3 of the Bill makes a number of general provisions common to Parts 1 and 2 of the Bill. Section 120 sets out the arrangement for subordinate legislation under Parts 1 and 2. Sections 121 and 122 allow Scottish Ministers to make ancillary and transitional provisions by order to give full effect to the Bill. Section 123 inserts schedules 6 and 7 which, taken together, make minor and consequential amendments and repeals to other legislation as a consequence of the provisions of this Act. The majority of the changes fall into the following categories:

- changing references in legislation to the current 8 police forces or Chief Constables to refer to the Police Service of Scotland and its Chief Constable;
- changing references to Police Authorities and Joint Police Boards to refer to the SPA;
- removing references to the SPSA and SCDEA;
- changing references to fire authorities and joint fire boards to refer to the SFRS; and
- making changes to legislation relevant to public bodies, to reflect the establishment of the SFRS and the changes made to the PIRC, Inspectors of Constabulary and Inspectors of the SFRS. (The equivalent changes in respect of the SPA are made in Schedule 1.)

131. A number of more significant changes are highlighted below:

- Paragraph 1 of Schedule 6 makes a minor amendment to sections 32A and 42 of the Police (Scotland) Act 1967. These provisions, which relate to grant expenditure on national security and an offence of causing disaffection, cannot be repealed and re-enacted in this Bill as they are reserved to the UK Government;
- Paragraph 4 makes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to ensure the authorisation of intrusive surveillance works effectively in a single service and also to give the PIRC the necessary surveillance powers it requires to carry out covert investigations if required. Similar changes have been made to the Police Act 1997 in relation to interference with property or wireless telegraphy;
- Paragraph 22 makes a number of amendments to Chapter 2 of the Police Public Order and Criminal Justice (Scotland) Act 2006 to reflect the single service and the SPA. The amendments also insert provisions allowing the PIRC to appoint staff officers and to designate any member of staff to take charge of, or assist with,
investigations. Two order making powers are included in the amendments: one allowing the Scottish Ministers to apply any provision of the Police and Fire Reform (Scotland) Act or other enactments relating to constables to PIRC staff; and the other allowing the Scottish Ministers to apply any enactment relating to investigation of offences by constables to investigations carried out by PIRC’s designated staff; and

- Paragraph 56 makes a number of minor amendments to the Fire (Scotland) Act 2005 to replace references to “a relevant authority” with the SFRS. Scottish Ministers must consult SFRS, representatives of employees of SFRS, representatives of local authorities and such other persons as they consider appropriate when preparing the fire framework.

- An entry in schedule 7 repeals the definition of “constable” from the Interpretation and Legislative Reform (Scotland) Act 2010, as well as other police terms which are no longer required. The effect of this is that, in future Scottish legislation, “constable” will include officers of any police force operating in Scotland, such as British Transport Police, unless otherwise defined.

132. **Section 124** deals with commencement of the provisions in the Bill and **section 125** provides that the short title of the Act is the Police and Fire (Reform) Scotland Act 2012.
POLICE AND FIRE REFORM (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Police and Fire Reform (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

PART 1 – POLICE REFORM

Section 11 – Ranks

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: affirmative.

Provision

2. Section 11(1) provides the ranks which a constable may hold in the Police Service of Scotland. Section 11(5) enables the Scottish Ministers to add or remove ranks and section 11(5A) allows regulations made under section 11(5) to make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate.

Reason for taking power

3. This power is considered necessary and appropriate to ensure that the Police Service of Scotland has the ability to enable hierarchical organisational change either by adding or deleting ranks.

Stage 2 amendment

4. The Bill as introduced allowed the addition or deletion of ranks below Assistant Chief Constable (ACC) by regulations subject to affirmative procedure. At Stage 1 of the Bill, a number of stakeholders, including the Association of Chief Police Officers in Scotland (ACPOS), made representations that it may become necessary to add senior ranks above ACC in the future should there become an operational need for this. The Bill has been amended at Stage...
2 to extend the power so as to provide greater flexibility by enabling the addition or removal of senior officer ranks (other than that of Chief Constable).

5. The amendments also permit regulations to make provision consequential on the addition or removal of a rank, including the creation or removal of offices corresponding to the rank, provision relating to the functions of senior officers, and the modification of provisions of the Bill or any other enactment, but only where this is in consequence of the addition or removal of a rank. This is to ensure that any changes may be properly reflected in that structure.

Choice of procedure

6. Any regulations will be subject to affirmative procedure in accordance with section 120(2). This procedure is appropriate given that the list of ranks appears on the face of the Bill. Furthermore, the regulations will also be subject to statutory consultation to ensure the views of those directly affected by them are considered by Ministers. The adoption of affirmative procedure also provides appropriate parliamentary procedure in relation to any consequential provision which might modify the Bill or an enactment comprising primary legislation.

Section 15 – Constables: service outwith the Police Service of Scotland

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative

 Provision

7. Section 15 makes provision for constables to be engaged in service outwith the Police Service on temporary service (or secondment), with the consent of the Chief Constable. Under section 15(2)(a) the Scottish Ministers may, by regulations, prescribe types of service as “temporary service”, and under section 15(2)(b) make such further provision as they consider appropriate.

Reason for taking power

8. As police officers are office holders and their terms and conditions of service are set by legislation, it is necessary to make statutory provision to enable those officers to work outwith the Police Service whilst they remain police officers. Over time the types of temporary service are likely to change and there needs to be flexibility to make any changes without the need for primary legislation. This power enables the Scottish Ministers to ensure that a police officer is able to undertake temporary service with a wide range of other employers or services and for that range of services to change over time to take account of newly established bodies or to facilitate new types of joint working. It is preferable to have the capacity to do this without the need to await a suitable vehicle in primary legislation and providing for this in secondary legislation means that it will be possible to make arrangements for temporary service as best serves the Service, without the need for primary legislation.
Stage 2 amendment

9. The Bill was amended at Stage 2 to provide the Chief Constable with greater flexibility in relation to the arrangements which may be made for temporary service. As amended, the Bill provides that all types of service outwith the Police Service are to be known as “temporary service” and sets out the status of constables on such service. The power to make regulations has therefore been adjusted so that, rather than prescribing types of service which are to be known as “temporary service” and therefore attract the provisions of section 15, the regulations may make further provision about temporary service. In particular, they may prescribe types of temporary service which are treated differently to the general position set out in section 15(2) of the Bill as amended, or in respect of which constables may not be engaged or may be engaged only with the consent of Ministers. As before, the regulations may modify provisions of the Bill in relation to constables on temporary service.

Choice of procedure

10. Regulations made under these provisions remain subject to negative procedure, which is appropriate given the administrative nature and detail of these regulations and the probability of the power being used to implement terms and conditions negotiated with the services. The power is not substantively different to that in the Bill as introduced; therefore a greater level of parliamentary scrutiny is not considered necessary.

Section 49 – Power to make regulations as to the governance, administration and conditions of service of constables and police cadets

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by statutory instrument
Parliamentary procedure: negative

Provision

11. Section 49 gives the Scottish Ministers powers to make regulations for the governance, administration and conditions of service of constables (including special constables) and police cadets. Sections 50 to 54 set out in more detail what regulations may or must provide. These cover appointments; promotions; probation; efficiency and effectiveness; restrictions on private life or business interests; resignation; retirement; conditions of service; duties; disciplinary procedures; and personal records. Section 55 requires the Scottish Ministers to consult and share a draft of the regulations with the Chief Constable, the Scottish Police Authority (the Authority), the staff associations and where appropriate the Police Negotiating Board for the United Kingdom and section 56 allows regulations to make provision for the delegation of functions.

Reason for taking power

12. These provisions are necessary as police officers are office holders and not employees. Their terms and conditions of service are therefore largely set out in subordinate legislation rather than through a contract of employment governed by employment law. Although cadets are not police officers, they are appointed with a view to becoming officers and their terms and conditions are therefore broadly equivalent and are provided for through regulations. Regulations will be amended from time to time following appropriate statutory consultation and formal negotiation with the Authority, the Chief Constable and the staff associations. That, and the
detailed technical and administrative nature of the material that will be included in these regulations and the need to have flexibility to amend at regular intervals, mean that it is not appropriate to incorporate these matters in primary legislation.

**Stage 2 amendment**

13. Section 53 requires that regulations made under section 49 by the Scottish Ministers must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory. It includes a provision allowing functions to be conferred on the Police Investigations and Review Commissioner in relation to investigations into misconduct and unsatisfactory performance. Police staff associations expressed concerns about the inclusion of unsatisfactory performance in this provision. In their view performance is an employment matter and is for the Police Service and Authority to deal with and the Commissioner should have no role in it.

14. The Scottish Parliament accepted this view and amended the Bill at Stage 2 to remove investigations into unsatisfactory performance of constables from the functions that may be conferred on the Commissioner.

**Choice of procedure**

15. Regulations made under these provisions will be subject to negative procedure. This procedure is appropriate given the administrative nature and detail of these regulations and the probability of the power being used to implement terms and conditions negotiated with the service and the staff associations. The amendments do not alter the choice of procedure.

**Section 63, new section 33A – Power to prescribe what is a “serious criminal offence” for the purposes of investigation by the Police Investigations and Review Commissioner**

**Power that has been removed**

**Provision**

16. Section 63 inserts section 33A into the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act). Section 33A provides for the general functions of the Police Investigations and Review Commissioner. Section 33A(2)(b) gives the Scottish Ministers power to prescribe offences as being a serious criminal offence for the purposes of section 33A(1)(b)(i).

**Reason for taking power**

17. The Commissioner will investigate any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence. This will be done under the direction of the appropriate prosecutor, and will include offences resulting in death or serious injury, or other offences prescribed by regulations. This power could be used to expand the types of offences that the Commissioner may investigate under the direction of the appropriate prosecutor without the need for amending primary legislation.
Stage 2 amendment

18. The Bill as introduced conferred no power on the Commissioner to investigate any other type of offence. In discussion with stakeholders including the Crown Office and the Police Complaints Commissioner, the Scottish Government felt that this may be too restrictive as in some cases the prosecutor may determine that a particular offence, though not resulting in death or serious injury, requires an independent investigation outwith the Police Service. The Bill has therefore been amended the Bill at Stage 2 to provide flexibility to allow the prosecutor to determine whether an offence should be investigated independently and to enable it to direct the Police Investigations and Review Commissioner to undertake such an investigation. As the prosecutor will now be able to determine which offences to refer to the PIRC, Scottish Ministers no longer require the ability to prescribe offences as being a serious criminal offence for the purposes of section 33A(1)(b)(i).

PART 2 – FIRE REFORM

Section 99, new schedule 1A paragraph 3(2) – Power to modify descriptions of a person who may be disqualified from membership of the SFRS Board

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative

Provision

19. Paragraph 3(1) of new schedule 1A of the 2005 Act describes persons who are disqualified from appointment and from holding office as a member of the Scottish Fire and Rescue Service (SFRS). Sub-paragraph (d) of paragraph 3 as introduced gave the Scottish Ministers power to prescribe other descriptions of persons who should be disqualified from appointment.

Reason for taking power

20. This power is considered appropriate to ensure no conflict arises between the role of board members and any other role they may hold. It also allows the necessary ability to respond to new and emerging circumstance and legislation.

Stage 2 amendment

21. The Bill was amended at Stage 2 to remove sub-paragraph (d) and replace it with a broader power to allow Ministers to adjust the list of persons described as disqualified. This gives Ministers greater flexibility to monitor the new arrangements for the SFRS. This will allow Ministers, as well as adding to the disqualification criteria, to remove criteria where there is considered to be a strong case for those initially disqualified to be able to become members.

Choice of procedure

22. An order made under this provision will, like its predecessor, be subject to negative procedure, given its administrative nature.
Section 118, schedule 5, paragraph 1 – Power to appoint a day by order for the transfer of joint board staff to SFRS

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: none

Provision
23. Paragraph 2 of schedule 5 provides for the transfer of employees of joint fire and rescue boards to SFRS on a day appointed by Ministers by order, under paragraph 1 of that schedule.

Reason for taking power
24. In preparation for the establishment of the service, it will be necessary to ensure that staff transfer at the appropriate time. It may be necessary for different staff to transfer on different dates, or for all staff to transfer on a particular date, to support the smooth and effective transition to the new service. The date or dates cannot at this stage be specified as it will depend on work undertaken with and by the existing services and the result of timescales for transition. It is therefore appropriate for the date or dates to be set by order in due course.

Stage 2 amendment
25. The Bill as introduced provided for this power to be subject to negative procedure in the Scottish Parliament. The Bill was amended at Stage 2 to provide for the exercise of the power instead to be subject to no procedure. This was to reflect the position on introduction for the equivalent police power, in paragraph 2(1)(b) of schedule 4, and as erroneously stated in the original Delegated Powers Memorandum in relation to fire.

Choice of procedure
26. It is considered appropriate that an order made under this provision will be subject to no parliamentary procedure as it is simply determining the date on which staff will transfer in accordance with the provisions set out in the Bill and is therefore analogous with a commencement order.

PART 3 – GENERAL

Section 122 – Transitional Provision

Power conferred on: the Scottish Ministers
Power exercisable by: order made by statutory instrument
Parliamentary procedure: negative

Provision
27. Section 122(1) enables the Scottish Ministers to make transitional, transitory and savings provisions in connection with the coming into force of any provision of this Act.
Reason for taking power

28. This order-making power is necessary to allow for flexibility as provisions within the Bill are brought into force. Without the power, were a transitional provision that requires an amendment to the primary legislation necessary to facilitate implementation of the Act, we would have to return to Parliament to request primary legislation. That would not be an effective use of resources by the Scottish Parliament or the Scottish Government and would potentially delay implementation. The power, whilst potentially wide, is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, or in connection with, the coming into force of any provision of the Bill.

Stage 2 amendment

29. In response to the recommendations of the Subordinate Legislation Committee (SLC), the Scottish Parliament amended section 120 of the Bill at Stage 2 to ensure that the power in section 122 is subject to the affirmative procedure where it contains provisions which add to, replace or omit any part of the text of an Act.

Choice of procedure

30. This is a residual power that is included to ensure that any unforeseen obstacle to the transition to the Scottish Police Authority or to SFRS can be addressed. There are precedents for this kind of power, which is restricted by the fact that only transitional and transitory provision can be made. Bearing in mind the limited scope of the power, in terms of the subject matter and nature of the provision that can be made, the Scottish Government felt that the negative procedure would provide sufficient parliamentary scrutiny.

31. It remains the Scottish Government’s view that the temporary nature of transitional provisions means that the negative procedure is generally appropriate. However, acknowledging on this particular occasion the merit of taking a consistent approach to the applicable procedure where orders are made which include textual modification under sections 121 and 122, the choice of procedure was changed to affirmative where it is used to make textual amendments to primary legislation and to the negative procedure otherwise.
Subordinate Legislation Committee

36th Report, 2012 (Session 4)

Police and Fire Reform (Scotland) Bill as amended at Stage 2

Published by the Scottish Parliament on 20 June 2012
Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1;

and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Rob Littlejohn

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meeting on 19 June 2012, the Subordinate Legislation Committee considered the delegated powers provisions in the Police and Fire Reform (Scotland) Bill, as amended at Stage 2. The Committee submits this report to the Parliament under Rule 9.7.9 of Standing Orders.

2. The Scottish Government provided the Parliament with a supplementary delegated powers memorandum\(^1\) on the new provisions in the Bill.

Delegated Powers Provisions

3. At Stage 1 of the Bill, the Committee reported that it did not need to draw the attention of the Parliament to the powers in the following sections: 10(2); 11(5); 15(2); 63 (new section 33A); 65; 67; 71(2); 97(1) (paragraph (e) of definition of “international joint investigation team”); 99 (new schedule 1A, paragraph 2(4)); 99 (new schedule 1A, paragraph 3(d)); 112 (new section 41A(6)); 117 (new section 43A); schedule 1, paragraph 2(4); schedule 1, paragraph 3(h); schedule 3, paragraph 4; schedule 4, paragraph 2(1); schedule 5, paragraph (1); and schedule 6, paragraph 22(13)(b).

4. After Stage 2, the Committee reports that it does not need to draw the attention of the Parliament to the new or substantially amended powers in sections: 11(5); 15(2); 49; 74(1); 78(2); 99 (inserting paragraph 3(2) of new schedule 1A in the Fire (Scotland) Act 2005); 118 (paragraph 1 of schedule 5); and 122.

5. The Committee also welcomes the fact that the Scottish Government amended the procedure applicable to the power in section 122 in order to address its concerns.

\(^1\) Police and Fire Reform (Scotland) Bill. Supplementary Delegated Powers Memorandum. Available at: [http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Police_and_Fire_Reform_(Scotland)_Bill_-_supplementary_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Police_and_Fire_Reform_(Scotland)_Bill_-_supplementary_DPM.pdf)
Justice Committee

Police and Fire Reform (Scotland) Bill

Letter from the Cabinet Secretary for Justice to the Convener

During Stage 2 of the Police and Fire Reform (Scotland) Bill on 12 June I informed the Committee of the Treasury’s decision not to agree to the proposed Scottish Police Authority (SPA) and Scottish Fire and Rescue Service (SFRS) being able to reclaim VAT.

This decision will mean that the SPA and SFRS will be the only police and fire and rescue authorities in the UK that are unable to recover VAT. The decision is also in stark contrast with the Treasury’s treatment of Academy schools in England, which are fully funded by the UK Government yet the Treasury created a new provision to enable them to recover VAT. This is manifestly unfair and amounts to a tax on public sector reform in Scotland.

The Bill provides for enhanced democratic scrutiny of the delivery of policing and fire and rescue. Far from increasing central control, it creates a new direct relationship with the 32 local authorities, not joint boards, centred around a collaborative approach and agreement of joint priorities. This includes the fact that both SPA and SFRS will continue to be able to receive funding from Scottish local authorities to pay for the cost of agreed local priorities.

As I indicated during the debate, as part of officials’ discussions with Treasury they shared proposals with them which would include an express provision in the Bill to make that funding link totally explicit and which we consider would meet Treasury’s policy for securing section 33 status as set out in the letter of 29 February to the Scottish Parliament’s Finance Committee. This involved sharing draft illustrative amendments to the police provisions in the Bill, accompanied by an explanation that equivalent amendments would be made for fire. This was a necessary part of negotiations with Treasury in seeking their agreement to amend reserved legislation to secure the continued ability of the services to recover VAT, before putting any amendments to our Bill to Parliament for decision. As agreed last week I now attach a copy of that draft amendment, for the Committee to consider.

The proposals shared with Treasury relate to the provisions in the Bill which enable local authorities and the services to work together to set priorities and objectives for service delivery in their area, and to produce an agreed local plan. They would make clear that local authorities can continue to provide funding for agreed local priorities, by giving them a statutory right to request the inclusion of specified measures in the local plan and any cost of implementing those measures must be met from the local authority’s funds (including local taxation) in so far as not already met. Examples of these measures could include involvement in community projects and initiatives, additional police officers, increased overtime to meet local needs and campus police officers.

Regardless of VAT, it is our view that the suggested amendments would clarify, as requested by the Local Government and Regeneration and Justice Committees, that local authorities can provide additional funding for local priorities. I am therefore minded to bring forward Stage 3 amendments based on the proposals shared with HM Treasury.

I am copying this letter to the Convenors of the Local Government and Finance Committees.

Kenny MacAskill MSP, Cabinet Secretary for Justice, 19 June 2012
ANNEX

Draft illustrative amendment to the Police and Fire Reform (Scotland) Bill (as introduced)

Section 46

Kenny MacAskill

1 In section 46, page 19, line 25, at end insert—

⟨( ) A local authority may specify policing measures that it wishes the local commander to include in a local policing plan.⟩

After section 48

Kenny MacAskill

2 After section 48, insert—

⟨Funding by local authorities

(1) Subsection (2) applies where—

(a) at the request of a local authority, a local commander has included policing measures specified by the local authority in a local policing plan, and

(b) the local authority has approved the plan.

(2) Any expenditure of the Authority which is incurred in respect of the policing of the local authority’s area as a result of specified policing measures must, in so far as not otherwise met, be met by the local authority.⟩
Justice Committee

Police and Fire Reform (Scotland) Bill

Letter from the Cabinet Secretary for Justice to the Convener

I wrote to you on 19 June to share with the Committee the proposals developed as part of negotiations with Treasury to secure the continued ability of the Scotland’s police and fire services to recover VAT.

At that time, I advised that although Treasury had rejected these proposals I was minded to bring them forward as amendments to the Bill at stage 3, on the basis that they would provide reassurance to the Local Government and Regeneration and Justice Committees that local authorities can continue to provide additional funding for local priorities.

After considering further and following helpful discussions with CoSLA, I have decided against lodging the amendments. It has always been our position, as set out in our responses to the Committees’ reports, that even without any amendment to the Bill provisions local authorities will be able to continue to fund local services on a voluntary basis using their existing statutory powers.

The amendments are therefore unnecessary to enable these voluntary arrangements to continue. Yet they add a level of formality which is unnecessary and could be seen as being unhelpful in promoting strong, collaborative relationships between local authorities and the services locally. Given that Treasury have indicated that they are unwilling to accept these amendments as evidence of a local funding link for VAT purposes, and local authorities can in any event reach agreement with the new services to provide funding for local priorities, I have decided against lodging the amendments.

I am copying this letter to the Conveners of the Finance and Local Government and Regeneration Committees.

Kenny MacAskill MSP
Cabinet Secretary for Justice
21 June 2012
Letter from the Cabinet Secretary for Justice to HM Treasury

Our officials have been discussing for some time the VAT status of the proposed Scottish Police Authority (SPA) and Scottish Fire and Rescue Service (SFRS). I understand that you have decided that you are not prepared to allow the new bodies to recover VAT.

We have not received any formal reasons for your decision but I understand it is on the basis that the SPA and SFRS will be funded by central government.

We have sought to work with you cooperatively and constructively. This included setting out the ways in which the Police and Fire Reform (Scotland) Bill provides for enhanced local democratic scrutiny of the delivery of policing and fire and rescue creating a new direct relationship with the 32 local authorities, not joint boards. We have reiterated that both SPA and SFRS will continue to be able to receive funding from Scottish local authorities to pay for the cost of agreed local priorities.

I consider that this availability of a local funding mechanism meets your policy as set out in your letter of 29 February to the Scottish Parliament’s Finance Committee. However, to provide you with reassurance that our proposals meet your policy, we had shared with your officials options for providing an express provision in the Bill to make that funding link totally explicit. We considered this would demonstrably satisfy your policy and facilitate your decision to make the necessary changes to UK legislation to allow the SPA and SFRS to recover VAT.

It is therefore extremely disappointing that you have rejected our proposals and furthermore have been unable to co-operate with us, failing to provide a credible basis for your decision or to offer suggested amendments that would meet your policy without undermining our whole programme of reform.

Whether or not we can agree that there is an element of ‘local funding’, we still think there are other compelling reasons for allowing the new Fire and Police Authorities to recover VAT. This will ensure that the reform of Scotland’s police and fire services is fiscally neutral, and maintain parity of treatment between police and fire services across the UK.

By failing to agree the continuation of the services’ ability to recover VAT, your policy is in stark contrast with your treatment of Academy schools in England. These schools are fully funded by central government. Originally the funding UK Government department (Department for Education) met new VAT costs associated with the shift to central funding and those costs were reimbursed by Treasury. You then changed the rules, by creating a new provision in the Value Added Tax Act 1994, to allow the Academy schools to reclaim VAT thereby taking funding pressure off the Department for Education. You stated to the Public Bill Committee of the UK Parliament on 9 June 2011 that in doing so your “objective is to ensure that we can proceed in a fiscally neutral way” and that “if we did not introduce such a refund scheme, academies would be at a significant disadvantage compared with local authority schools”.

This demonstrates the flexibility in the VAT system, where there is a will to do so, to enable Treasury to take steps to ensure that the creation of new public bodies is tax neutral even where they are centrally funded. You were willing to do this for your own initiative of Academy
schools, but have refused to do so in respect of the Scottish Government’s reform of police and fire services. This is not acceptable.

In the same way as you provided a level playing field for Academies and local authority funded schools, agreeing to SPA and SFRS being able to reclaim VAT would ensure a level playing field for police and fire services across the UK, as well as equitable treatment between UK Government Departments which are leading programmes of reform and the Scottish Government and Parliament.

As you will be aware, an order is being prepared under section 104 of the Scotland Act to make various consequential changes to UK legislation resulting from the Bill. This work is being coordinated by the Scotland Office. Scottish police and fire authorities are currently able to recover VAT under the Value Added Tax Act. With your agreement the necessary minor amendments to that Act to enable this to continue could readily be included in that order as they are clearly consequential on our reform programme. We have already prepared draft amendments for this purpose, which I am more than happy to share with your officials.

On that basis, and in light of the considerations I set out above, I urge you to re-consider your decision and agree to allow both SPA and SFRS to be included as bodies who are entitled to recover VAT under the Value Added Tax Act 1994.

Kenny MacAskill MSP
Cabinet Secretary for Justice
21 June 2012
Police and Fire Reform (Scotland) Bill

**Marshalled List of Amendments selected for Stage 3**

The Bill will be considered in the following order—

- Sections 1 to 125
- Schedules 1 to 7
- Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

### Section 2

**Kenny MacAskill**

5. In section 2, page 1, line 14, at end insert—
   
   
   
   
   <(  ) to promote the policing principles set out in section 32,>

**Kenny MacAskill**

6. In section 2, page 1, line 15, at end insert—
   
   
   
   
   <(  ) to keep under review the policing of Scotland,>

**Kenny MacAskill**

7. In section 2, page 1, line 16, at end insert <(including, in particular, the chief constable’s carrying out of the duties imposed by or mentioned in section 17)>

### Section 3

**Kenny MacAskill**

8. In section 3, page 2, line 5, at end insert—
   
   
   
   
   <(  ) the Authority must, before the beginning of each financial year, provide to the chief constable details of how it intends to allocate the financial resources it expects to have available to it in respect of that financial year.>

   
   
   
   
   (  ) In this section, “financial year” means each period of a year ending on 31 March.>

### Section 4

**Jenny Marra**

35. In section 4, page 2, line 15, at end insert—
   
   
   
   
   <(2A) In exercising the power in subsection (2)(a) the Authority must reserve the right to participate in respect of at least one contract in each 3-year period to specified economic operators.>

SP Bill 8A-ML 1 Session 4 (2012)
(2B) For the purposes of subsection (2A)—

(a) “each 3-year period” means each subsequent period of 3 years beginning with the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6),

(b) “specified economic operators” means bodies which operate supported businesses, supported employment programmes or supported factories within the meaning of Article 19 of Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

Lewis Macdonald

In section 4, page 2, line 15, at end insert—

<( ) The Authority may not, without the consent of the Scottish Ministers, exercise the power in subsection (2)(a) to enter into a contract of such a type as may be prescribed by the Scottish Ministers.>

Section 5

John Lamont

In section 5, page 2, line 34, at end insert—

<( ) Before giving the first direction under this section the Scottish Ministers must draw up and publish a statement setting out the circumstances in which giving a direction may be regarded as being in respect of the matters specified in subsection (2).>

Section 16

Kenny MacAskill

In section 16, page 7, line 9, leave out <person> and insert <individual>

Kenny MacAskill

In section 16, page 7, line 11, leave out <A person> and insert <An individual>

Kenny MacAskill

In section 16, page 7, line 11, leave out second <person> and insert <individual>

Kenny MacAskill

In section 16, page 7, line 26, leave out subsection (4) and insert—

<(4) An individual engaged on temporary service under such arrangements holds the office of constable.>
Section 17

Kenny MacAskill

13 In section 17, page 8, line 19, leave out subsection (4) and insert—

<(4) The chief constable must seek to ensure that the policing of Scotland is done—
(a) with due regard to the policing principles, and
(b) in accordance with—
(i) the strategic police priorities,
(ii) the most recently approved strategic police plan, and
(iii) the relevant annual police plan.

(4A) The chief constable must ensure that the policing of Scotland is done with due regard to any recommendations made or guidance issued by the Authority on the policing of Scotland.>

Kenny MacAskill

14 In section 17, page 8, line 29, leave out <(4)(a)(ii)> and insert <(4A)>

Section 26

Lewis Macdonald

38 In section 26, page 12, line 9, at end insert—

<( ) The Authority or, as the case may be, the chief constable may not, without the consent of the Scottish Ministers, appoint individuals under subsection (1) by virtue of arrangements under subsection (2)(b) in such circumstances as may be prescribed by the Scottish Ministers.>

Before section 40

John Lamont

39 Before section 40, insert—

<Examination of Police Service costs

(1) The Scottish Ministers must prepare a full business case for the implementation of the provisions of this Act.

(2) The Scottish Ministers must publish the business case prepared under subsection (1) before the establishment of the Police Service (being the day appointed by order under section 124(2) for the coming into force of section 6).

(3) The Auditor General must, as soon as practicable after the day on which section 6 comes fully into force, examine the costs of the Police Service compared to the costs of the delivery of police services in Scotland prior to the coming into force of this Act.

(4) The Auditor General must—
(a) report the results of an examination under subsection (3) to the Scottish Parliament and the Authority, and
(b) publish the results.>

Section 45

Lewis Macdonald

40 In section 45, page 20, line 6, after <must> insert <, after consulting the local authority,>

Lewis Macdonald

41 In section 45, page 20, line 9, at end insert—

<(  ) The chief constable must provide to each local authority as soon as reasonably practicable—

(a) such information as can reasonably be identified about the resources which were allocated to policing in its area as at 1 April 2012, and

(b) details of the resources to be allocated to policing in its area as at—

(i) 1 April 2013, and

(ii) 1 April in each subsequent year.>

Section 46

Jenny Marra

42 In section 46, page 20, line 12, at end insert—

<(  ) If a local authority appoints a committee or other body to carry out any of its functions under this Part, the proportion of both men and women appointed to the committee or other body must be at least 40 per cent of the membership.>

Lewis Macdonald

43 In section 46, page 20, line 17, at end insert—

<(  ) A local authority may specify policing measures that it wishes the local commander to include in a local policing plan.>

Lewis Macdonald

44 In section 46, page 20, line 19, at end insert—

<(  ) A local authority may raise concerns with the chief constable concerning—

(a) the performance or conduct of the local commander, or

(b) the policing of its area where it has been unable to reach agreement with the local commander.>

John Lamont

45 In section 46, page 20, line 33, at end insert—

<(  ) The Scottish Ministers must provide to each local authority such sums as it may reasonably require to enable it to fulfil its role in policing.>
Section 48

Lewis Macdonald

46 In section 48, page 21, line 17, at end insert—

<( ) includes costings and an explanation or budget provisions for each section of the plan,

( ) sets out the number of constables and police staff expected to be deployed in the local authority’s area.>

John Lamont

47 In section 48, page 22, line 12, at end insert—

<(7B) Before the first strategic plan is approved under section 34, the Authority must agree with such bodies as appear to it to be representative of local authorities a mechanism for resolving any disagreement between a local commander and the relevant local authority on the local police plan.>

John Lamont

47A As an amendment to amendment 47, line 5, at end insert—

<(7C) The mechanism agreed under subsection (7B) must be submitted to the Scottish Policing Commission for approval.>

Section 50

Lewis Macdonald

48 In section 50, page 22, line 29, at end insert <, in particular the conditions of retirement of the chief constable.

( ) Such regulations must make provision preventing the chief constable from being reappointed following retirement.>

Section 74

Graeme Pearson

49 In section 74, page 33, line 35, at end insert—

<( ) Inquiries under subsection (1) may, in particular, be made about the adequacy of the numbers of constables and police staff to ensure that objectives set out in the strategic policy priorities and local police plans are met.>

After section 92

Lewis Macdonald

50 After section 92, insert—
<Statement on compliance with objective of OPCAT>

The Scottish Ministers must make a statement to the Scottish Parliament on the actions it is taking to comply with the objective of OPCAT within 6 months after the day on which section 91 comes into force.>

After section 93

Graeme Pearson

2 After section 93, insert—

<CHAPTER

SCOTTISH POLICING COMMISSION

Scottish Policing Commission

(1) There is to be a body to be known as the Scottish Policing Commission (“the Commission”).

(2) The Commission is to consist of—

(a) the member of the Parliament who is for the time being convener of the Justice Committee or such other committee whose remit includes responsibility for scrutiny of the Scottish Minister or Junior Scottish Minister responsible for policing, and

(b) 4 other members of the Parliament appointed in accordance with standing orders.

(3) The functions of the Commission are—

(a) to keep the arrangements for policing established in this Act under review, and

(b) to report to the Parliament as it considers appropriate on the operation of those arrangements.

(4) A report under subsection (3)(b) may include recommendations as to the effective operation of those arrangements.

(5) In carrying out its functions, the Commission—

(a) must have regard to the policing principles set out in section 32, and

(b) may require any person or body exercising functions under this Act to provide it with such documents, information and explanations about the exercise of those functions as the Commission reasonably considers necessary in connection with the discharge of its functions.

(6) Schedule (Scottish Policing Commission) makes further provision about the Commission.>

Section 95

Kenny MacAskill

15 In section 95, page 45, line 13, at end insert—

<(A1) A person mentioned in subsection (A3) must provide the Authority with such information and assistance as the Authority may reasonably require.
(A2) A person mentioned in subsection (A3) must provide the chief constable with such information and assistance as the chief constable may reasonably require.

(A3) Those persons are—

(a) a police authority within the meaning of the Police (Scotland) Act 1967 ("the 1967 Act"),
(b) a joint police Board constituted by an amalgamation scheme made under the 1967 Act,
(c) a chief constable of a police force maintained under the 1967 Act,
(d) the Scottish Police Services Authority.

Lewis Macdonald

15A As an amendment to amendment 15, line 12, at end insert—

(A4) The information and assistance provided under subsections (A1) and (A2) must include details of the resources allocated to policing in each local authority area as at 1 April 2012.

Section 97

Kenny MacAskill

16 In section 97, page 45, line 34, at end insert <and

( ) any individual engaged on temporary service as a constable of the Police Service under arrangements made under section 16,>

John Finnie

1 In section 97, page 46, line 18, at end insert—

<“joint central committee of the Police Federation for Scotland” means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee,>

Section 99

Roseanna Cunningham

17 In section 99, page 48, line 6, leave out <person> and insert <member>

Roseanna Cunningham

18 In section 99, page 48, line 8, leave out <6 nor more than 10> and insert <10 nor more than 14>

Jenny Marra

52 In section 99, page 48, line 11, at end insert—

<( ) The proportion of both men and women appointed to SFRS must be at least 40 per cent of the membership.>
In section 99, page 48, line 11, at end insert—

<( ) In appointing members, the Scottish Ministers must have due regard to representation among members of SFRS of persons with knowledge of communities and fire and rescue services in all regions of Scotland.>

In section 99, page 48, line 11, at end insert—

<( ) No fewer than one third of the members of SFRS, excluding the chairing member, must be members of local authorities.

( ) The Scottish Ministers must select the members of local authorities to be members of SFRS from nominations made by the Convention of Scottish Local Authorities.

( ) The number of members nominated by the Convention of Scottish Local Authorities must be no more than twice the number of positions to be filled.>

In section 99, page 50, line 6, at end insert—

<( ) In determining the terms and conditions for the appointment of the Chief Officer, the Scottish Ministers, or as the case may be, the SFRS must make provision for the retirement of the Chief Officer and, in particular, such provision must prevent the Chief Officer from being reappointed following retirement.>

In section 99, page 51, line 1, at end insert—

<Public access

(1) SFRS must ensure that its proceedings and those of its committees and sub-committees are held in public.

(2) Despite sub-paragraph (1), SFRS or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.

(3) SFRS must publish—
    (a) agendas for its proceedings and those of its committees and sub-committees,
    (b) the papers relating to those proceedings,
    (c) such reports of those proceedings as it thinks fit.

(4) Despite sub-paragraph (3), SFRS may decide that all or part of any agenda, paper or report need not be published.

(5) SFRS must publish a statement setting out—
    (a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
(b) the circumstances in which agendas, papers and reports need not be published.

**Jenny Marra**

57 In section 99, page 51, line 19, at end insert—

<(2A) In exercising the power in sub-paragraph (2)(a) SFRS must reserve the right to participate in respect of at least one contract in each 3-year period to specified economic operators.

(2B) For the purposes of sub-paragraph (2A)—

(a) “each 3-year period” means each subsequent period of 3 years beginning with the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6),

(b) “specified economic operators” means bodies which operate supported businesses, supported employment programmes or supported factories within the meaning of Article 19 of Directive 2004/18/EC of the European Parliament and of the Council of 31st March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.>

**Lewis Macdonald**

58 In section 99, page 51, line 19, at end insert—

<(  ) SFRS may not, without the consent of the Scottish Ministers, exercise the power in sub-paragraph (2)(a) to enter into a contract of such a type as may be prescribed by the Scottish Ministers.>

**Roseanna Cunningham**

20 In section 99, page 52, line 35, leave out from <, or> to <that> in line 37

**Before section 100**

**Jenny Marra**

59 Before section 100, insert—

<General functions of SFRS

Before section 8 of the 2005 Act (fire safety), insert—

“7A General functions of SFRS

The general functions of SFRS are to include—

(a) saving life;

(b) protecting property; and

(c) rendering humanitarian services.”.>
Section 109

Lewis Macdonald

60 In section 109, page 55, line 7, at end insert—

<(1A) SFRS may not, without the consent of the Scottish Ministers, enter into such arrangements in such circumstances as may be prescribed by the Scottish Ministers.> 

Section 110

Lewis Macdonald

61 In section 110, page 55, line 19, at end insert—

<(1A) SFRS may not, without the consent of the Scottish Ministers, enter into such arrangements in such circumstances as may be prescribed by the Scottish Ministers.> 

Section 113

Lewis Macdonald

62 In section 113, page 59, line 24, at end insert—

<( ) The Chief Officer must provide to each local authority as soon as reasonably practicable—

(a) such information as can reasonably be identified about the resources which were allocated to fire and rescue services in its area as at 1 April 2012, and

(b) details of the resources to be allocated to fire and rescue services in its area as at—

(i) 1 April 2013, and

(ii) 1 April in each subsequent year.>

Lewis Macdonald

63 In section 113, page 59, line 33, at end insert—

<( ) the number of members of staff of SFRS expected to be deployed in the local authority’s area,>

Lewis Macdonald

64 In section 113, page 61, line 11, at beginning insert <After consulting the local authority,>

Lewis Macdonald

65 In section 113, page 61, line 38, at end insert—

<( ) A local authority may raise concerns with SFRS regarding the performance of conduct of the Local Senior Officer for the authority’s area.”.>
Section 114

Lewis Macdonald

66 In section 114, page 62, line 11, at end insert—

<( ) the average number of members of staff of SFRS during the reporting year,>

Section 118A

Roseanna Cunningham

21 In section 118A, page 66, line 29, at end insert—

<(A1) A person mentioned in subsection (A2) must provide SFRS with such information or assistance as SFRS may reasonably require.

(A2) Those persons are—

(a) a fire and rescue authority within the meaning of section 1 of the 2005 Act,

(b) a joint fire and rescue board constituted by a scheme made under section 2(1) of the 2005 Act.>

Lewis Macdonald

21A As an amendment to amendment 21, line 8, at end insert—

<(A3) The information and assistance provided under subsection (A1) must include details of the resources allocated to fire and rescue services in each local authority area as at 1 April 2012.>

Roseanna Cunningham

22 In section 118A, page 66, line 34, leave out <6> and insert <10>

Before section 120

John Finnie

67 Before section 120, insert—

<Parliamentary scrutiny of operation of Act

(1) The Scottish Parliament must make arrangements for keeping under review the operation of this Act.

(2) The Scottish Parliament must publish reports in pursuance of subsection (1).>

Section 124

Kenny MacAskill

23 In section 124, page 67, line 34, leave out subsection (1) and insert—
The following provisions of this Act come into force on the day after Royal Assent—

(a) in Part 1, sections 1 (and schedule 1), 2(1)(b), (2) and (3), 4, 7, 38, 39, 41(1), (3), (4) and (5), 81(1), (2)(a) and (10), 85, 86, 95(1) (and schedule 3A) and 97,

(b) in Part 2, sections 99(1) (but only for the purpose of inserting section 1A(1) and (3) into the 2005 Act) and (2), 111, 115, 118A(1) and (2) and 119, and

(c) this Part (other than section 123).

Schedule 1

Kenny MacAskill

24 In schedule 1, page 69, line 13, leave out <person> and insert <member>

Kenny MacAskill

25 In schedule 1, page 69, line 15, leave out <6 nor more than 10> and insert <10 nor more than 14>

Lewis Macdonald

68 In schedule 1, page 69, line 16, at end insert—

<(  ) No fewer than one third of the members of the Authority, excluding the chairing member, must be members of local authorities.

(  ) The Scottish Ministers must select the members of local authorities to be members of the Authority from nominations made by the Convention of Scottish Local Authorities.

(  ) The number of members nominated by the Convention of Scottish Local Authorities must be no more than twice the number of positions to be filled.>

Alison McInnes

3 In schedule 1, page 69, line 18, at end insert—

<(  ) The appointment under sub-paragraph (1) (or as the case may be reappointment under paragraph 3(4)) of members is subject to the approval of the Scottish Parliament>

John Lamont

69 In schedule 1, page 69, line 18, at end insert—

<(  ) In appointing members, the Scottish Ministers must have regard to the desirability of ensuring that membership—

(a) includes, but is not limited to, persons who—

(i) are members of a local authority,

(ii) as far as possible adequately represent the regions of Scotland,

(iii) have no other current or previous direct connection to policing, and

(b) includes persons with a range of professional expertise, including financial expertise.>
**Jenny Marra**

70 In schedule 1, page 69, line 18, at end insert—

< ( ) The proportion of both men and women appointed to the Authority must be at least 40 per cent of the membership.>

**Lewis Macdonald**

71 In schedule 1, page 69, line 18, at end insert—

< ( ) In appointing members, the Scottish Ministers must have due regard to representation among members of the Authority of persons with knowledge of communities and policing in all regions of Scotland.>

**Lewis Macdonald**

72 In schedule 1, page 71, line 26, at end insert—

< ( ) The Authority may not, without the consent of the Scottish Ministers, appoint individuals under sub-paragraph (1) by virtue of arrangements under sub-paragraph (2)(b) in such circumstances as may be prescribed by the Scottish Ministers.>

**John Lamont**

Supported by: Graeme Pearson

26 In schedule 1, page 73, line 5, at end insert—

<Public access

(1) The Authority must ensure that its proceedings and those of its committees and sub-committees are held in public.

(2) Despite sub-paragraph (1), the Authority or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.

(3) The Authority must publish—

(a) agendas for its proceedings and those of its committees and sub-committees,
(b) the papers relating to those proceedings,
(c) such reports of those proceedings as it thinks fit.

(4) Despite sub-paragraph (3), the Authority may decide that all or part of any agenda, paper or report need not be published.

(5) The Authority must publish a statement setting out—

(a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
(b) the circumstances in which agendas, papers and reports need not be published.>

**Lewis Macdonald**

73 In schedule 1, page 73, line 10, after <determine> insert <, except its powers under section 14(1),>
After schedule 3

Graeme Pearson

4 After schedule 3, insert—

<SCHEDULE
(introduced by section (Scottish Policing Commission))

SCOTTISH POLICING COMMISSION

1 The member of the Scottish Policing Commission (“the Commission”) holding office under section (Scottish Policing Commission)(2)(a) on a dissolution of the Parliament continues to hold office until a convener of the Justice Committee, or such other committee whose remit includes responsibility for scrutiny of the Scottish Minister or Junior Scottish Minister responsible for policing, is appointed following a general election.

2 A member of the Commission appointed under section (Scottish Policing Commission) (2)(b) holds office until the Parliament is dissolved unless the member previously resigns, ceases to be a member of the Parliament otherwise than by virtue of a dissolution or is removed from office by resolution of the Parliament.

3 The validity of any act of the Commission is not affected by any vacancy in its membership or by any defect in the appointment, or qualification for membership, of any member.

4 The Commission may—
   (a) determine its own procedure,
   (b) appoint one of its members to preside at its meetings.

5 The parliamentary corporation is to provide the Commission, or ensure that the Commission is provided, with the property, staff and services required for its purposes.

6 The Commission may give directions to the corporation for the purpose of or in connection with the exercise of the corporation’s functions in relation to the Commission.

7 Any expenses incurred by the Commission in the exercise of its functions are to be paid by the corporation.

8 For the purposes of the law of defamation, the following are absolutely privileged—
   (a) any statement made in proceedings of the Commission,
   (b) the publication under the authority of the Commission of any statement, and
   (c) any report to the Parliament under section (Scottish Policing Commission)(3)(b).

9 In paragraph 8, “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

Schedule 3A

Kenny MacAskill

27 In schedule 3A, page 77, line 22, leave out <6> and insert <10>
Schedule 4

John Lamont
74 In schedule 4, page 82, line 24, leave out <ceases to> and insert <does not>

John Lamont
75 In schedule 4, page 82, line 24, leave out <to a constable> and insert—
   <(a)>

John Lamont
Supported by: Lewis Macdonald
76 In schedule 4, page 82, leave out line 27

John Lamont
77 In schedule 4, page 82, line 29, at end insert—
   <(b) where the necessity of the constable moving home arises in direct consequence of
   that constable being promoted to a higher rank on or after the appointed day.>

Kenny MacAskill
28 In schedule 4, page 84, line 37, after <Authority> insert <or the chief constable appointed in
   accordance with section 7>

Kenny MacAskill
29 In schedule 4, page 85, line 2, at end insert <, or
   (e) a chief constable of a police force.>

Kenny MacAskill
30 In schedule 4, page 85, line 6, leave out <or (c)> and insert <, (c) or (e)>

Kenny MacAskill
31 In schedule 4, page 85, line 11 after <Authority> insert <or, as the case may be, the chief
   constable>

Kenny MacAskill
32 In schedule 4, page 85, line 13, after <Authority> insert <or, as the case may be, the chief
   constable>

Schedule 7

Kenny MacAskill
33 In schedule 7, page 126, line 8, at end insert—
<Children and Young Persons (Scotland) Act 1937 (c.37)>

Kenny MacAskill

34 In schedule 7, page 126, line 15, leave out <1980> and insert <1968>
Groupings of Amendments for Stage 3

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 3 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

**Note:** The time limits indicated are those set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above each line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings. The timings in relation to groups 1 to 11 relate to the time from the commencement of proceedings in the morning (10.20 am), while the timings for groups 12 to 18 relate to the time from the start of proceedings in the afternoon (2.45 pm).

**MORNING**

**Group 1: Functions of the Scottish Police Authority and chief constable**
5, 6, 7, 8, 13, 14, 73

**Group 2: Contracts and other arrangements for the provision of services**
35, 36, 38, 57, 58, 60, 61, 72

**Group 3: Directions by the Scottish Ministers**
37

*Debate to end no later than 40 minutes after proceedings begin*

**Group 4: Temporary service in the Police Service of Scotland**
9, 10, 11, 12, 16

**Group 5: Examination of Police Service costs**
39

**Group 6: Local authority role in policing and fire and rescue services**
40, 41, 43, 44, 45, 46, 47, 47A, 15A, 62, 63, 64, 65, 21A
Debate to end no later than 1 hour 20 minutes after proceedings begin

**Group 7: Gender balance**
42, 52, 70

**Group 8: Conditions of retirement of chief constable and Chief Officer**
48, 56

**Group 9: HMICS: functions of inspectors**
49

Debate to end no later than 1 hour 55 minutes after proceedings begin

**Group 10: Statement on compliance with objective of OPCAT**
50

**Group 11: Parliamentary scrutiny of arrangements under Act**
2, 67, 4

Debate to end no later than 2 hours 25 minutes after proceedings begin

**AFTERNOON**

**Group 12: Commencement, transitional and transitory**
15, 20, 21, 23, 28, 29, 30, 31, 32

**Group 13: Interpretation and miscellaneous technical amendments**
1, 17, 24, 33, 34

**Group 14: Membership of the Authority and SFRS**
18, 53, 54, 22, 25, 68, 3, 69, 71, 27

Debate to end no later than 30 minutes after proceedings begin

**Group 15: Proceedings of the Authority and SFRS: public access**
19, 26

**Group 16: Functions of SFRS**
59

Debate to end no later than 1 hour after proceedings begin

**Group 17: SFRS annual report**
66
Group 18: Limitation on mobility of transferred constables
74, 75, 76, 77

Debate to end no later than 1 hour 30 minutes after proceedings begin
Business Motion: Police and Fire Reform (Scotland) Bill: Bruce Crawford, on behalf of the Parliamentary Bureau, moved S4M-03495—That the Parliament agrees that, during stage 3 of the Police and Fire Reform (Scotland) Bill—

(a) debate on the groups of amendments specified below in relation to the morning and afternoon shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated;

(b) each time limit specified in relation to the morning shall be calculated from the beginning of proceedings in the morning and each time limit specified in relation to the afternoon shall be calculated from the beginning of proceedings in the afternoon; and

(c) all time limits shall exclude any period when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in each of the morning and the afternoon being called) or otherwise not in progress:

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<td>Groups 1 to 3</td>
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<td>Groups 4 to 6</td>
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<td>Groups 7 to 9</td>
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<td>Groups 10 and 11</td>
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<td>Groups 12 to 14</td>
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<td>Groups 15 and 16</td>
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<td>Groups 17 and 18</td>
<td>1 hour 30 minutes</td>
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The motion was agreed to.

Police and Fire Reform (Scotland) Bill - Stage 3: The Bill was considered at Stage 3.

The following amendments were agreed to (without division): 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 40, 43, 15, 16, 1, 17, 18, 19, 20, 64, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34.

Amendment 67 was agreed to (by division: For 113, Against 7, Abstentions 0).
The following amendments were disagreed to (by division):

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<th>Number</th>
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The following amendments were not moved: 60, 61 and 4.

**Police and Fire Reform (Scotland) Bill - Stage 3:** The Cabinet Secretary for Justice (Kenny MacAskill) moved S4M-03407—That the Parliament agrees that the Police and Fire Reform (Scotland) Bill be passed.

After debate, the motion was agreed to ((DT) by division: For 101, Against 6, Abstentions 14).
Police and Fire Reform (Scotland) Bill: Stage 3

10:21

The Deputy Presiding Officer (Elaine Smith): The next item of business is stage 3 proceedings on the Police and Fire Reform (Scotland) Bill. In dealing with the amendments, members should have before them the bill as amended at stage 2, which is SP bill 8A, the marshalled list, which is SP bill 8A-ML, and the groupings, which is SP bill 8A-G.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the morning. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak button as soon as I call the group.

Members should now refer to the marshalled list of amendments.

Section 2—Functions of the Authority

The Deputy Presiding Officer: Group 1 is on functions of the Scottish police authority and chief constable. Amendment 5, in the name of the Cabinet Secretary for Justice, is grouped with amendments 6 to 8, 13, 14 and 73.

The Cabinet Secretary for Justice (Kenny MacAskill): I will speak to amendments 5 to 8, 13 and 14 in my name, and amendment 73 in the name of Lewis Macdonald.

The Scottish police authority’s ability to hold the chief constable to account for the policing of Scotland is wide ranging and allows the authority to scrutinise and challenge the chief constable on all of his or her functions and roles and on all aspects of policing. Amendments 5 to 8 make the authority’s role more proactive.

Amendment 5 gives the authority an explicit function to promote the policing principles that are set out in section 32 of the bill. Amendment 6 requires the authority to keep under review the policing of Scotland. Amendment 7 makes it clear that, as part of holding the chief constable to account for the policing of Scotland, the authority is to hold the chief constable to account particularly for carrying out his or her duties as listed under section 17.

Amendment 8 relates to the authority’s obligation to maintain the police. It makes it clear
that the authority is obliged to provide the chief constable with details of how the authority intends to allocate the financial resources that it expects to have available to it in respect of that financial year, as it will be important for the chief constable to know what financial resources he or she can expect to have for the year in order to be able to plan effectively.

Amendments 13 and 14 strengthen the accountability of the chief constable to the authority so that the chief constable "must ensure", rather than "must seek to ensure", that the policing of Scotland is done with due regard to any recommendation or guidance issued by the authority.

In amendment 73, Lewis Macdonald proposes that the authority should not be able to authorise any of its committees or any member of its staff to call on a senior officer to resign or—where appropriate—to retire from office in the interests of efficiency or effectiveness of the police service. I cannot support that amendment, as it is for the authority to decide how it will organise its functions. If the authority has, for example, a human resources sub-committee, it may be entirely appropriate for that sub-committee to have the role of calling on a senior officer to resign or retire.

I have it made clear in my letter to the Scottish Chief Police Officers Staff Association that I would expect the authority to set out the process that it will follow in taking a decision, and I fully expect that any representations that are made will be considered by all the authority's members.

I move amendment 5.

Lewis Macdonald (North East Scotland)
(Lab): It is appropriate that consideration of the bill at stage 3 should begin with a debate on, among other things, one of the powers that the bill will give to the new national police board—namely, the power to "call on a senior officer to resign or ... retire from office in the interests of efficiency or effectiveness of the Police Service."

That is a sweeping power, and it immediately places a limit in real terms on the operational autonomy of the chief constable. It also reduces his or her responsibility for deputy and assistant chief constables, to whom section 14 also applies.

Henceforth, ministers will appoint the members of the board of the Scottish police authority. They will have the power to reappoint them—or not—four years later. Ministers will also have the power to veto the appointment of the chief constable. Now the board, which will be appointed by ministers, will also have the power to get rid of the chief constable, although it will, of course, have to consult ministers first.

Those powers would have to be abused only once to bring the whole system into disrepute. If a chief constable had different priorities from the minister and there were board members who were too eager to please, the result could well be the removal of a chief officer whose face no longer fitted. As the chief officer will hold powers over a much wider area than any previous chief officer in Scotland and will be accountable to far fewer people, there must be whatever safeguards the Parliament can devise to protect that chief officer from undue interference.

I lodged a similar amendment at stage 2, when the Government envisaged giving the board only the power to require retirement in the interests of efficiency or effectiveness. It has extended that power. Amendment 73 would require simply that the power to call for retirement or resignation should not be delegated to a small group of members of the authority but should be the responsibility of all members acting together. That is a modest change, which recognises that there are risks—or the perception of risk—and seeks to reduce them.

We welcome the Government’s amendments in this group, and I hope that the cabinet secretary will think again about his intention not to support amendment 73.

Kenny MacAskill: I understand the concern that SCPOSA has raised with the member; indeed, I have met the association. However, we have made it clear that these are matters for the authority, and ultimately Mr Macdonald recognises that fact. His position is that they should be dealt with by the full authority, rather than by being delegated to a sub-committee. It seems to me that how they are dealt with should be a matter for the authority, and ultimately Mr Macdonald recognises that fact. His position is that they should be dealt with by the full authority, rather than by being delegated to a sub-committee. It seems to me that how they are dealt with should be a matter for the authority, which will be charged with good governance. Representation will also be made by SCPOSA or any successor organisation.

We should take into account the fact that the power will be used sparingly by the authority—I have no doubt about that. When it has to be used, it should be for the appropriate authority to decide how it handles the matter. Equally, as has been referred to, it is doubtful the case that every authority member will be well aware of it and have to consider it.

Amendment 5 agreed to.

Amendments 6 and 7 moved—[Kenny MacAskill]—and agreed to.

Section 3—Maintenance of the police

Amendment 8 moved—[Kenny MacAskill]—and agreed to.

Section 4—General powers of the Authority
The Deputy Presiding Officer: Group 2 is on contracts and other arrangements for the provision of services. Amendment 35, in the name of Jenny Marra, is grouped with amendments 36, 38, 57, 58, 60, 61 and 72.

Jenny Marra (North East Scotland) (Lab): Amendments 35 and 57 relate to the procurement of services for the single police service and the single fire service. They seek to ensure that, when the police and fire authorities enter into contracts, they reserve the right to use article 19 of directive 2004/18/EC to provide at least one contract to supported workplaces every three years.

10:30

The amendments are modified versions of amendments that I lodged at stage 2. They reflect the Government’s support for the principle of providing contracts to supported businesses and address the Government’s concern that my stage 2 amendments were too prescriptive.

By reserving the right to use article 19 in participating in one unspecified contract every three years, amendments 35 and 57 would allow the police and fire authorities the flexibility to choose a suitable area of tender in which to use article 19 and would ensure that they provided work for supported businesses. That guarantee would go further than any current or planned provision for the use of article 19 in Scottish public sector procurement.

There is consensus across the parties that we should support the commendable work of Scotland’s supported workplaces, yet now—more than ever—the staff of supported workplaces such as Remploy face an uncertain future. It is the Scottish Government’s responsibility to do all that it can to help vulnerable people in supported workplaces to maintain their livelihoods and their dignity in work. The bill presents us with an unprecedented and timely opportunity to do that, by creating sustainable jobs in areas on which our supported workplaces have proven track records in delivery, such as the creation of uniforms or specialist personal protective equipment.

The single police and fire services will be among the biggest public sector procurers in Scotland. As such, the cost of procuring from supported workplaces would be minimal in relation to the benefit that they and their workers would receive.

I hope that the Government will accept that amendments 35 and 57 address the concerns that it raised at stage 2. Given the cabinet secretary’s support for the principle, I hope that the Government will see the benefit that the amendments would bring to the new police and fire services.

I move amendment 35.

Lewis Macdonald: Amendment 36 and my other amendments in the group are designed to give police staff and fire and rescue service staff some certainty that their jobs will not be lost as the result of the contracting out of services after the bill has been passed.

Mr MacAskill has been keen to say that no privatisation will take place on his watch, but he has resisted the opportunity to build that assurance into statute. It is fair to say that he has been reluctant to acknowledge the scale of civilian job cuts that have been made in the police service on his watch—1,000 posts have gone and thousands more are at risk. Jobs have gone not because wicked chief constables conspired against their non-warrant-holding employees but because shedding civilian staff is the only way that is readily open to the police service—even under existing conditions—to make the savings that the cabinet secretary demands within the limits that he has set on chief constables’ actions.

That can only get worse. Unison has warned that, under the terms in the financial memorandum, 2,000 jobs might go. The Association of Chief Police Officers in Scotland has warned that another 800 jobs might be lost because Mr MacAskill has failed to avoid liability for VAT for the new service.

Given the financial pressures, the temptation to make savings by contracting out will only grow. Senior managers in the police service are discussing that even now—that was confirmed by the recent conference of the Association of Scottish Police Superintendents.

There are reports about how the new contractor for prison transport has cut staff terms and conditions to deliver savings to the Government, and there are rumours aplenty that the same fate lies in store for civilians who work for the police in custody suites and call centres. I think that such rumours have been encouraged by Mr MacAskill’s enthusiasm for putting police officers back into running police cells.

The amendments in my name would make placing contracts with and securing services from third parties subject to ministerial approval and would allow ministers to exclude by order minor or essential contracts from that general provision. If ministers really are set against contracting out, they can demonstrate that by supporting my amendments.

Support for the amendments in Jenny Marra’s name would allow the Scottish Government to turn its commitment to and guidance on supported employment into a statutory requirement for the public services that we are discussing—an
example that the rest of the public sector might follow.

Kenny MacAskill: I will speak first to amendments 36, 38, 58, 60, 61 and 72, in the name of Lewis Macdonald. The amendments are to provisions that are not new. In fact, the police provisions come from section 9(1)(b) of the Police (Scotland) Act 1967, as amended by the Criminal Justice (Scotland) Act 2003. The fire provisions in the bill update sections 35 and 36, on assistance and delegations, of the Fire (Scotland) Act 2005. They are therefore tried and tested approaches.

As we have heard, Mr Macdonald’s amendments would allow ministers to specify the circumstances in which the Scottish police authority and the Scottish fire and rescue service would require to obtain ministerial consent before they entered into contracts or made arrangements for assistance to be obtained from, or functions to be delegated to, other persons. I cannot support amendments that enable the Government to interfere in the operation of the SPA and the SFRS in that way. I am also concerned that with services such as policing and fire and rescue, there might be a requirement to bring in additional resources or people at very short notice to deal with a particular problem or to free up others to deal with that problem. Do we really want the services to be waiting for ministerial consent before they can do that? Accordingly, I do not support amendments 36, 38, 58, 60, 61 and 72.

However, I reiterate that I am totally opposed to the privatisation or contracting out of our vital public services. I also assure members that, should a future Government want to privatisate the direct carrying out of police functions, primary legislation would be required to allow a range of police powers to be given to non-police officers.

I turn to amendments 35 and 57, in the name of Jenny Marra. I thank Ms Marra for her engagement throughout the bill proceedings on the use of supported businesses in the procurement of goods and services for the SPA and the SFRS. From the outset, I have said that the Scottish Government recognises that supported businesses have a valuable role to play in assisting people who have disabilities to integrate into the labour market and in helping to improve their overall independence and wellbeing, which is crucial in the building of a healthier and fairer Scotland. However, I cannot support amendments that single out the SPA and the SFRS as public bodies that must enter into at least one contract with supported businesses in a three-year period. It would be wrong of ministers to prescribe in legislation the type of supplier that a public body must contract with.

Ms Marra is also wrong to give the impression that, through that requirement, we could secure the future of businesses such as Remploy. It is essential that the SPA and the SFRS retain their flexibility to issue tenders and enter into contracts that meet their needs and secure value for money for the public purse.

Jenny Marra’s point goes beyond policing and fire and rescue services, and the Scottish Government will actively consider the issue for inclusion in the public procurement bill in relation to public bodies across the board. Indeed, the issue was mentioned in the exchange with Helen Eadie during Scottish Parliamentary Corporate Body question time. I do not support amendments 35 and 57. I do not support the amendments in the group.

Jenny Marra: I will first address amendments 36, 38, 58, 60, 61 and 72, which address the need to build assurances into statute that services will not be privatised. The cabinet secretary seemed to make the point in his response that contracting out is an operational matter. We contest the assertion that contracts for police staff and services are operational matters—I invite the cabinet secretary to check the position with police staff and police chiefs.

I move to amendments 35 and 57 in my name. The cabinet secretary says that it would be wrong for ministers to specify contracts with supported workplaces in this country. I argue that many of the workers who work in supported workplaces across this country would see it as being his job, in spending public money, to support some contracts for public services going to workers in supported workplaces.

Kenny MacAskill: Does the member recall that I said that the issue should be dealt with across Government and not simply in the SPA and the SFRS? That ties into the response, from a Scottish Parliament perspective, given to Helen Eadie, which I recall Ms Eadie welcomed.

Jenny Marra: I would indeed welcome such a commitment across Government, but the cabinet secretary will be aware that, although the specification exists in the public contract regulations, it is not being implemented. I invite him to take the bold and welcome step to be the first cabinet secretary to put it in statute that we in the Parliament support our workers in supported workplaces across the country; that we value the high-quality work that they do; and that we think that they are worthy of providing goods and services to our police and fire services.

The measure would be easy to implement. Article 19 of the European Union procurement directive is a piece of EU law that is within the cabinet secretary’s gift to put in the bill, easily giving people in our supported workplaces a chance to get the contracts. Amendment 35 also
gives the cabinet secretary the ideal opportunity, which I did not think that he would bypass, to bring the contracts back to Scotland, because at present all the uniforms are made south of the border. I invite the cabinet secretary to reconsider and to support amendment 35, which I will press.

The Deputy Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division at stage 3, I suspend the meeting for five minutes.

10:41

Meeting suspended.

10:46

On resuming—

The Deputy Presiding Officer: I ask members to ensure that their cards are properly inserted into the terminals for the purpose of voting; some cards do not appear to be showing on my screen.

We now proceed with the division on amendment 35. This is a 30-second division, and I ask members to cast their votes now.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macarthur, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross- shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Amendment 36 moved—[Lewis Macdonald].

The Deputy Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elamine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus North and Mearns) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
Fitpatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGregor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
The result of the division is: For 36, Against 81, Abstentions 0.

Amendment 36 disagreed to.

Section 5—Directions

The Deputy Presiding Officer: Group 3 is on directions by the Scottish ministers. Amendment 37, in the name of John Lamont, is the only amendment in the group.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): Section 5 contains a ministerial power that the Scottish Government has repeatedly asserted will rarely be used and will apply only to non-operational matters. The power enables ministers to direct the authority in any non-operational matter, and the rationale behind it is that it is required to enable Scottish ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary. However, a number of organisations have expressed real concern that the power risks political interference with the police force. The organisations that have expressed concern include the Convention of Scottish Local Authorities, the Scottish Police Federation and the University of Glasgow’s Professor Jim Gallagher.

Amendment 37 accepts that a ministerial power may be necessary but seeks to force the minister to justify its use by issuing a statement before it is used. We still believe that there is a lack of clarity about the instances in which the ministerial power will be used. At stage 2, the cabinet secretary said:

“The bill clearly defines the respective roles and responsibilities of the chief constable, the authority and the Scottish ministers. It is absolutely clear that the only person who can direct and control constables is the chief constable.”

He added that he was

“not persuaded that a statement ... would add to that clarity.”—[Official Report, Justice Committee, 29 May 2012; c 1385.]

If the Government is so clear about when and where the power could be used, I question why it does not support the idea of a clear statement being published before the power is exercised. I encourage the Scottish Government to support the amendment.

I move amendment 37.

Graeme Pearson (South Scotland) (Lab): As outlined by John Lamont, the authority must comply with any direction—general or specific—that is given by the Scottish ministers. That is an outlandish power, which will be available to ministers in future Governments, and it is not clear how such a power might be used. Amendment 37 offers some comfort to the Parliament about the precise circumstances in which such directions might be given.

Section 5(2) states:

“A direction may not be given in respect of ... a specific operation being or to be carried out by the Police Service”.

I presume that that acknowledges the operational independence that our society so welcomes and values. Nevertheless, a general or specific direction that is given by ministers could have an impact on the way in which the police carried out their operational duties.

I ask the minister to give grave consideration to the amendment, which would offer comfort to the Parliament in the knowledge that we would have the opportunity to question a minister and be assured that a general or specific direction was necessary. It would also ensure that the Government was open to accepting some of the advice that was offered by people other than Government ministers.

Kenny MacAskill: Following the defeat of his amendment at stage 2, Mr Lamont has reintroduced it as amendment 37. I understand where he is coming from, but I am not sure how he expects ministers to publish a statement that covers all possible eventualities and which, despite that, seems to be set in stone for ever more. More important, the bill is already clear in excluding from the power of direction the way in which specific operations are being or will be carried out. That provides sufficient clarity and protection from interference in on-going or planned operations.

The bill also provides for parliamentary scrutiny by requiring that any direction must be published and laid before the Scottish Parliament. I am, therefore, not persuaded that a statement by the Scottish ministers would add any value or enhance transparency, and I will not support the amendment.

As I have said before, the nature of policing, the nature of society and the nature of crime are continually evolving and it is not reasonable to expect all future eventualities to be addressed prior to the first use of the power. It might be helpful for me, instead of trying to predict all the scenarios in which such a power would not be used, to provide the chamber with some illustrations of when such a power could be used.
The power might be used to ensure that the SPA complies with general Government policy that applies across the whole public sector, such as policy on pay and workforce issues. Alternatively, it might be used to ensure that the SPA takes action on recommendations arising from the work of external independent bodies, such as the Auditor General, parliamentary committees and public inquiries.

John Lamont: I am not persuaded by the cabinet secretary’s analysis of how the power will operate in practice. Graeme Pearson set out clearly the concerns that we and Labour have about how the power could be used. The cabinet secretary has articulated some of the circumstances in which the power could be used. I do not see why he is prevented from being more explicit on the face of the bill about those circumstances, or why, before the power could be used, he could not come to the chamber to explain them or set them out.

For those reasons, I press amendment 37.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Douglas, Jason (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adams, John (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Amendments 13 and 14 moved—[Kenny MacAskill]—and agreed to.

11:00

Section 26—Police staff

Amendment 38 moved—[Lewis Macdonald].

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, George (Paisley) (SNP)
Adamson, Clara (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Amendment 38 disagreed to.

Before section 40

The Deputy Presiding Officer: Group 5 is on examination of police service costs. Amendment 39, in the name of John Lamont, is the only amendment in the group.

John Lamont: The Scottish Government has estimated that a single force will result in £130 million-worth of savings a year and £1.7 billion-worth of savings over 15 years. However, those figures are based on an outline business case, on which the financial memorandum was based, that was produced in July 2011. The financial memorandum states that it does not provide a plan or blueprint for the future delivery of the services and is not intended to be used to set future budgets. When giving evidence at stage 1, Chief Constable Smith of ACPOS said that the outline business case was “never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings.”—[Official Report, Justice Committee, 28 February 2012; c 971-2.]

The Scottish Government’s position is that a full business case is a matter for the services themselves, as it will influence and determine the detailed design of the new police and fire and rescue services. The Government expects that that will be completed at the earliest opportunity that is available to the new services. However, when considering the matter at stage 2, the cabinet secretary initially suggested that a full business case would be produced before stage 3, but then went on to clarify that it was still being prepared by stakeholders and would be produced at the earliest possible opportunity.

Our amendment seeks to force the Scottish Government to publish a full business case before the implementation of the act. It is hugely regrettable and, frankly, unacceptable, that that has not yet been produced by the Scottish Government.

We all accept that the reason behind the creation of a single police force is to produce a more efficient service, but the Scottish Government has not even produced fully thought-out evidence to the Parliament that shows what savings will be delivered.

Additionally, our amendment seeks to compel the Auditor General to review the savings that are made by the creation of a single force, following the publication of the full business case. That must be done as soon as is practicable after the creation of a single force, and the report must be laid before the Scottish Parliament. We decided against the inclusion of a time period on the basis...
that that might restrict the Auditor General or the information available to him.

Although the bill allows the Auditor General to consider the efficiency of the single service, it does not explicitly state that any report must consider the savings that are being made. Those are the figures that we need, which is why the Scottish Conservatives have proposed the amendment.

I move amendment 39.

Graeme Pearson: Supporting John Lamont is becoming a habit with me, but I will try to break it as I go on. [Interruption.]

The Deputy Presiding Officer: Order.

Graeme Pearson: I am pleased to have awakened the Government benches.

John Lamont has pointed out an important matter that members should take seriously, which is that we are going to upset a £1.4 billion business to its very foundations and move it forward in less than a year’s time. In the Justice Committee, we repeatedly invited witnesses to share with us the process for producing a full business case. As was said earlier, Kevin Smith indicated that his initial understanding had been that such a case would be produced by the Government but that he subsequently became aware that the service was to produce the full business case. He gave a commitment that that case would be made available as soon as reasonably possible and he said that he thought that the majority of the work would be completed within four weeks—that would have been in March this year.

Last week, I asked the cabinet secretary whether he could share with us the business case that had been promised in the committee. After some fudging, I received a letter only yesterday that indicated that no business case was available yet and which referred me back to the service and indicated that it would prepare the business case.

Amendment 39 is a reasonable amendment, because any organisation would want to have a comprehensive understanding of reorganisation costs and whether proposed savings were achievable. I invite the cabinet secretary to agree to the amendment.

Lewis Macdonald: Amendment 39 offers ministers the opportunity to improve the transparency of their decision-making process. As we have heard, the Government’s outline business cases were heavily criticised at the time of publication last year. At stage 2, the cabinet secretary appeared to be prepared to at least consider publishing a full business case before the completion of the bill’s parliamentary process, but he then reverted to his stage 1 position, which was that the business case was a matter for the new services.

That seems to me to miss the point of the business case, which is surely to answer the question whether the sums add up before committing to proceed with the changes that the Government has in view. I do not know whether the minister will regret that decision on the business case, but I suspect that the new services might regret being launched into their new format without full business cases having been prepared.

I, too, think that amendment 39 is commendable because, clearly, a report by the Auditor General on the costs before and after the merger of the police and fire services could only improve transparency. Many questions have been asked about the costs, benefits and savings from the mergers, so it would be a matter of regret if the Government chose not to allow the Auditor General to answer those questions.

Kenny MacAskill: Under subsections (1) and (2) of the section that amendment 39 would insert, the Scottish ministers would have to publish a full business case before commencing parts of the bill under section 124. As I said at stage 2, the outline business cases, produced in accordance with Treasury guidance and published in September 2011, provided a strong, evidence-based case for the move to single services. Both those business cases demonstrated that single services were the most likely to deliver the necessary savings and other benefits of reform. It was on that basis that we introduced the bill.

Full business cases are to be produced to set out in detail the effect of delivering single services. To enable those business cases to be produced, a series of critical decisions on the design and delivery of the services is needed. It is sensible and right that those decisions should be taken by the police authority, the SFRS board and the chief officers once they have been appointed. They include decisions on the size and shape of the executive teams to lead the services; on the configuration of specialist services such as firearms, murder investigation and flood rescue to meet the needs of communities across Scotland; and on how support services such as HR and training are delivered.

Parliament and the services themselves would be rightly critical if ministers sought to take such decisions on the services’ behalf. The two services need to take ownership of the new structures that we are creating and make the detailed decisions that will enable full business cases to be produced. It therefore does not make any sense for the Government to produce full business cases before those decisions have been made.
On subsections (3) and (4), the bill already enables the Auditor General to initiate examinations into the economy, efficiency and effectiveness of the police authority and the police service and the arrangements that they make in relation to best value. Those provisions give the Auditor General full scope to undertake the type of activity that is suggested by the amendment. However, it is important to emphasise that, under the Public Finance and Accountability (Scotland) Act 2000, the Auditor General is deliberately independent of the Government and the Parliament, and it should not be for us to tell him or her—the Auditor General will soon be a her—what to examine or how and when to examine it. However, I assure Lewis Macdonald that, following discussions with the Auditor General, I am confident that he or his successor would respond positively to any request from the Parliament to examine the new services.

John Lamont: During this debate about the creation of a single police force, the cabinet secretary and the Scottish Government have made a huge amount of the massive savings that would be delivered. For the cabinet secretary to come to the Parliament at the final stage of the bill and not have a full business case that explains how the savings will be achieved and not show how the business case will be set out is unacceptable. The onus must be on the Scottish Government to produce more information beyond the outline business case, on which it was never intended that efficiency savings and structural change would be based. That has been made absolutely clear by those who prepared that report. For those reasons, I will press amendment 39.

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eaddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Not only that, but the Government’s decision to end the tripartite division of power among local authorities, chief constables and St Andrew’s house in favour of a simple centralised power structure has also proved to be singularly ill-advised when it comes to saving money.

11:15

Amendment 43, in my name, is, word for word, one of the two illustrative amendments that the cabinet secretary offered the Treasury as an incentive to grant the police and fire services exemption from VAT. Mr MacAskill shared them with the Treasury long before he shared them with members of the Justice Committee, for reasons that I understand, but now, when push comes to shove, he has chosen not to lodge them. That is surprising, as enabling local councils to continue to specify extra services or extra officers was meant to be enough to persuade Treasury ministers to treat the new services as if they were local council services, yet it now appears that Mr MacAskill does not want to do that.

It is perhaps hardly surprising that Treasury ministers were not convinced. Mr MacAskill’s wizard wheeze represented less than 1 per cent of the total police service budget, as more than 99 per cent was still to come directly from central Scottish Government funds. Surely the whole point of a fig leaf is not to drop it while one is still arguing the case. If Mr MacAskill has indeed dropped his fig leaf, it is difficult to see how his continuing correspondence with Treasury ministers can have a positive effect.

The Cabinet Secretary for Parliamentary Business and Government Strategy (Bruce Crawford): Has Lewis Macdonald spoken to his colleagues in the better-together camp to persuade them that they are going in the wrong direction? He should talk to his friends on the Tory benches and get it sorted out.

Lewis Macdonald: It is a fair question, but the person who ought to have been speaking to the Tories long before the bill was introduced is no one on the Labour benches; it is the minister who is responsible for bringing forward the reform. As we have seen from Bruce Crawford’s intervention, the minister who is responsible clearly failed to do that part of his job in order to secure these savings to the police and fire service budgets.

If Scottish ministers genuinely believed that they had a case for exemption from VAT, they might usefully have sat down not only with ministers at Westminster but with COSLA to work out a governance structure that would keep a significant part of police and fire funding within the local government family. It is a curious kind of partnership between local and central Government.
when local services are taken wholly into the centre and ministers then resist any measures to secure local input to the new national governance structures.

Ministers argue that the partnership lies not in who runs the boards but in the new relationship to be struck up between councils and services at a local level. They proclaim that, instead of just a few councillors on joint boards, every councillor in every council will be able to have something to do with police and fire services. However, as things stand, those councillors on joint boards are in charge of regional as well as local strategy, they have responsibility for police and fire budgets, and they appoint the people who lead those services.

The current system does not work as well as it should and change is required, but the powers in the bill for the 32 councils simply to draw up local policing and fire and rescue plans fall a long way short of the input that councillors have at present. Under the proposed system, councils will be toothless and powerless, with no recourse if the local commander does not want to listen, no right of access to budgetary information, and no say in who their local commander is to be. Only in Kenny MacAskill’s ideal world of perpetual consensus will the structures in the bill deliver meaningful local accountability, because only the cabinet secretary appears to believe that councillors will be queueing up for the chance to participate in these talking shops.

Our amendments in the group propose to give councils a say in the appointment of local commanders and senior officers; to provide for reports on budgetary changes, including those between the status quo and the first year of the new force or service, and on costings and staffing under the local plans; and a statutory right to take local disagreements or concerns to the chief constable or chief fire and rescue officer. They do not overturn chief officers’ responsibility for delivering their services, which sits at the heart of the bill, but they go some way towards righting the balance and I believe that they will be widely welcomed by councillors of all parties. If ministers had also welcomed them, we could have been confident that they understood the need for balance and proper limits on the exercise of centralised control.

I move amendment 40.

John Lamont: Local authorities will incur considerable costs as a result of the bill. After all, local authority representatives or staff might well sit on the Scottish police authority and local authorities will have to scrutinise and monitor the drafting and implementation of local police plans. During its consideration of the bill, the Local Government and Regeneration Committee heard from COSLA that the estimated costs for local authorities are likely to be between £3 million and £5 million to cover elected members’ time, policy support, research, analysis and administrative support. Amendment 45 seeks to force the Scottish Government to ensure that sufficient funding is available for local authority engagement with and scrutiny of the single police force; to ensure that the creation of a single force does not leave local authorities out of pocket; and to protect local authority scrutiny of local policing, thus enhancing local accountability.

On amendment 47, the bill states that a local police plan is to be prepared by the local commander and submitted to the local authority for approval; that, in preparing the plan, the commander must consult such persons as he or she “considers appropriate”, which might include local authorities, and that the plan can be amended “at any time” on agreement of the commander and the local authority. However, the bill provides no more detail on what happens when the local commander and the local authority cannot agree and section 48, for example, is unclear about what happens if the local authority does not approve a plan. Our amendment seeks to place an obligation on the police authority to draw up a mechanism to address situations in which the local authority and the local commander disagree over a policing plan. That mechanism must be in place before the first strategic plan is approved to provide clarity on what happens if there is disagreement and avoid stalemate. It is also designed to ensure that local commanders do not ignore the wishes of local authorities and to provide transparency in decision making at a local level.

The Scottish Government’s position is that there is a risk that an explicit dispute resolution mechanism would become the option of first rather than last resort and would detract from the important relationship between the local authority and the local commander. Surely that does a disservice to the professionalism of our councils and local commanders. The existence of a mechanism to deal with disagreements would not lead to councils ignoring the need for mature debate and negotiation. The alternative is that the bill remains totally silent over what happens when there is disagreement.

Amendment 47A seeks to put in place an additional protection for local accountability by requiring the authority to submit the dispute resolution mechanism for approval to the Scottish policing commission, as proposed in a Labour amendment that will be considered later.

Alison McInnes (North East Scotland) (LD): I fully support all the amendments in this group. The bill and, indeed, the entirety of the Government’s plans are woefully short on true local
accountability and lack any real controlling role for local authorities in setting the course of policing in their areas.

The measures in amendments 41 and 62 are vital if local authorities are to have any realistic hope of monitoring how emergency services are serving their areas and, more important, whether the much-vaunted local police plan is being fully implemented. Without information on what resources are being allocated to each area, local authorities will in effect be operating in the dark.

Sarah Boyack (Lothian) (Lab): As Lewis Macdonald has made clear, these amendments go to the heart of our police force's future shape and are vital in ensuring effective policing in every part of Scotland. We support the better use of national resources for policing, but it is crucial that such an approach be balanced with improved local accountability.

I strongly support Labour's amendments in this group, because they are about ensuring accountability and getting clarity on what is available for policing. In Edinburgh, for example, the police board’s investment in policing is regularly topped up with local police officers who serve our communities in dedicated posts but, for that to continue, we need to know the baseline not just now but every year thereafter. Such a key financial safeguard should be in this bill.

Local police plans should set the shape of policing in our local communities. We need to see a picture of what local policing can be expected by people. There will always be a tension between national and local delivery, but with local councillors serving on boards we will get accountability—it will not come from the new centralised national police force. Without clarity on funding and the staffing resource that is to be deployed, there will be less influence, less accountability and less sensitivity to policing in our local communities. That will be a huge missed opportunity. It cannot be in the interest of good government and it is certainly not in the interests of transparency. Where will the complaints from our local communities go? Will they end up with the national police board, on the ministers' desks, or in the Parliament? We are centralising our national police force, but it does not need to be like that.

As Lewis Macdonald pointed out, we will squander huge amounts of resources that the bill could have made available for policing on our streets and in our communities. COSLA is clear that it wants a more integrated local community service through our police. That could be achieved through these amendments. They would give us democratic scrutiny and engagement and deliver better outcomes for our communities, so I ask the minister to reconsider. This is about strengthening our national police force so that it is balanced by local accountability. The bill will take us in the wrong direction. If the cabinet secretary and his back benchers do not support our amendments today, it will be unfinished business for the Labour Party. This is not the bill that the Parliament should pass.

The Deputy Presiding Officer: I have had a late request from Kevin Stewart to speak.

Kevin Stewart (Aberdeen Central) (SNP): I rise to my feet as the longest-serving member of Grampian police board. I do not recognise the picture of local accountability in the operation of police boards that is being painted by Labour and Tory members. The reality is that a few members from each local authority serve on the board. They do not represent their councils on that board—they represent the board. The reality of the bill is that there will be more local accountability than there has ever been. Members of the Opposition should have spoken to members of police boards before they made their speeches today.

Kenny MacAskill: Of course tensions and disagreements will arise; that is a natural function of scrutiny and engagement between boards and those who operate with them. However, it would be disproportionate to require a legislative solution. The bill will create a framework for delivery of shared local outcomes, which will give local authorities broad powers to shape delivery and to hold local commanders and senior officers to account. It is clear where ultimate responsibility for local services will lie: the chief constable and the SFRS will be responsible for ensuring that adequate service delivery arrangements are in place in each local authority area.

I believe that the lines of accountability in the bill provide more than sufficient clarity that unresolved concerns about local delivery will be able to be directed to the chief constable or the SFRS without the need for separate statutory provision. I invite members to recall the evidence at stage 1, including that from representatives of the Society of Local Authority Chief Executives and Senior Managers, ACPOS, police authority conveners and staff associations, which comprehensively rejected statutory dispute resolution. Therefore, I see no grounds for supporting amendments 44 and 65.

Similarly, amendments 47 and 47A would bring us back to statutory dispute resolution mechanisms, which have been discussed on numerous occasions. Have we so little faith in the ability of local partners to work together to resolve difficulties maturely that we need to provide detailed escalation and arbitration routes in statute?
Amendments 41 and 62 resurrect amendments that were defeated at stage 2, with slight adjustments, and are supplemented by amendments 15A and 21A. I welcome Mr Macdonald’s recognition of the difficulties that new services will face in providing information that preceded their establishment. However, the other concerns that I raised at committee still stand. I remind Mr Macdonald that we are not creating 32 police forces and 32 fire and rescue services. We are creating single services, which will deliver all aspects of policing and fire and rescue, wherever and whenever they are needed and which will deploy specialist resources to meet the needs of communities. The deployment of such resources will often be demand led, varying from day to day, week to week and year to year. The resources that are deployed in any area on one given day could very well be different on another day. On that basis, I cannot support those amendments. However, I can reassure Parliament that the police are already leading work that will identify the number of local community and response officers in each local authority area. That will be a core part of the local plan and will provide transparency to the council and communities from day one.

11:30

Similarly, amendments 46 and 63 would require local plans to include additional information on budget allocation and workforce deployment.

Local officers will deliver across all of the priorities and objectives set out in the plan. For example, a community police officer might be talking to primary kids about drugs in the morning but dealing with a domestic abuse incident in the afternoon. Does Mr Macdonald really think that it is sensible and practical to allocate the budget for that police officer to different objectives?

The bill already requires local plans to set out how the services propose to deliver local priorities and objectives. That is a far more meaningful requirement—it focuses on the means by which outcomes will be delivered, rather than on detailed costings or on a head count of personnel who are expected to be deployed in a local area. I therefore cannot support those amendments.

Although local authorities will no longer have responsibility for the funding and operation of the police service, they will have an important role in shaping and scrutinising police and fire and rescue services in their area. I recognise that local authorities will want to ensure that they have sufficient on-going resources for that role. I assure members that, as is normal, those costs will be met through the local government settlement and that there will be discussions with COSLA on that settlement. A statutory duty is not required for that to happen and, therefore, I cannot support amendment 45.

I support amendment 43, in the name of Lewis Macdonald, which provides clarity around the role of the local authority.

I also support amendments 40 and 64. The relationships between the local authority and the local commander and between the local commander and the local senior officer will be critical to the success of local relationships, and those amendments reflect best practice without giving the local authority the power to veto an appointment.

I will briefly touch on the matters raised by Mr Macdonald with regard to VAT. We discussed with COSLA whether it wished us to lodge the amendments irrespective of the attitude taken by the Treasury, it said no and we have obliged.

I know that many eyes in the United Kingdom will be focused on Northern Ireland today as the Queen meets Martin McGuinness. It might be useful to explain why the Police Service of Northern Ireland will be VAT exempt but the police service of Scotland will not be—better together indeed. It might be useful to explain why, despite what we offered, academy schools and police commissioners in England will be VAT exempt, but the police service of Scotland will be liable to meet VAT—better together indeed. It might be quite important to point out why the only police service in the UK that will not be VAT exempt is the police service of Scotland. Let them explain how we are better together.

These matters can be addressed by changing VAT south of the border. That opportunity is there to do that, given the new alliance that there is in this chamber, across the country and, doubtless, in Westminster. If members want to make sure that our police service is not liable to VAT, they need to make sure that action is taken south of the border—otherwise we will take those powers once there is constitutional change.

John Lamont: Is it not the case that the UK Government set out circumstances in which a new force would be able to claim the VAT exemption but the Scottish Government chose to ignore those circumstances and press ahead with the reform regardless, thereby costing the new force this money?

Kenny MacAskill: The Scottish Government offered a whole variety of proposals that mirrored matters that had been dealt with south of the border to address national parks not being subject to VAT. Other examples are academy schools, which were recently brought in, and police commissioners. Each and every one of the suggestions that we put forward was rejected. We asked what would be acceptable and the UK
Government refused to provide us with any options.

The position remains quite clear: this Government has done everything to ensure that our police service is not the only police service in the whole of the United Kingdom that is found liable to meet VAT. The situation can be changed by a simple amendment to an act of the British Parliament. If those who operate in the better-together campaign cannot change that south of the border, they should allow those of us who wish to make that change to have the powers to allow this Parliament to rectify the mistakes and arrogance from down there.

Lewis Macdonald: I am glad that the cabinet secretary has agreed that local authorities should have a role in appointing local commanders and chief officers. I am confident that amendment 41 has broad support in local government, and that it will take us a small step in the right direction.

However, I am disappointed that the cabinet secretary will not support a number of the other amendments in group 6. He has said that he will vote for the amendment that he lodged himself, and which he brought to the table to discuss with the Treasury a few weeks ago. That is welcome, although perhaps not surprising.

I am afraid that the bad news for Mr MacAskill is that five minutes of grandstanding in the Scottish Parliament at the end of the bill’s process is no substitute for the hard work of negotiating with other Government departments at the appropriate time before introducing legislation that was not only—[Interruption.]

The Deputy Presiding Officer (John Scott):

Lewis Macdonald: Not only was the legislation in the manifestos of Scotland’s major parties, but ministers knew before they began that they had not resolved the issues. That is not responsible government, nor is it the right way to obtain agreement. If that is a taste of the type of diplomacy that would be on offer in an independent Scotland, it is no wonder that two thirds of the Scottish people want nothing whatever to do with it.

The amendments in group 6 address the key weaknesses in the bill. The police service is not just another service and local government is not just another stakeholder, and the bill will profoundly change the relationship between the two.

I was interested to listen to Kevin Stewart deriding the police boards’ accountability for delivery of police services under the current arrangements. He told us of his long service on Grampian joint police board, untroubled by any twinges of concern that he ought to be accountable to anyone for the decisions that he chose to make. That is a disturbing tale, and there is no doubt that there is a need for change.

Kevin Stewart: Mr Macdonald again paints the wrong picture. We were accountable, but we were not accountable to the local authority, and thus we were not accountable to the electorate of a local authority. Mr Macdonald needs to get that absolutely right, because all councillors and their constituents will now have a say in that, which they did not have before. He must admit that fact.

Lewis Macdonald: Perhaps we now have an explanation for one of the mysteries that has troubled me during the bill process. I hear from Scottish National Party councillors that they are concerned about the loss of local accountability and input, but I do not hear that from SNP back benchers. Perhaps they all believe, like Kevin Stewart, that members of police boards elected by the local community are accountable to nobody but themselves. That is a deeply disturbing vision.

Mr Stewart and every other member of every police board up and down the country are, of course, accountable to the people in the communities that they serve. That is surely the principle that should underpin the new boards that we are putting in place under the reforms in the bill.

There is a case for change. The point has been raised that those who are concerned about local accountability should talk to members of police boards. Not only have members on the Labour benches talked to members of police boards, but the Justice Committee took evidence at stage 2 from members and conveners of police boards. Although they had different views about the bill’s general principles, they were all but unanimous in believing that extra measures were required in order to improve local accountability to communities for the decisions that are taken by those boards. The amendments in group 6 have been lodged on that basis.

I am disappointed that the cabinet secretary does not recognise, for example, the reassurance that would be given to a community by there being transparency about the money that is spent on policing in a community today and on the money that will be spent in it after the creation of the single force. That would not take away from the fact of there being a single force, but would make it accountable to the local community. That is the basis on which we have lodged our amendments, and it is on that basis that we will press them.

Amendment 40 agreed to.

Amendment 41 moved—[Lewis Macdonald].
The Deputy Presiding Officer: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (Lab)
McManus, John (Shettleston) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Peterson, Gill ( Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Barnfather and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 41 disagreed to.

Section 46—Local authority role in policing

The Deputy Presiding Officer: We move to group 7, which is on gender balance. Amendment 42, in the name of Jenny Marra, is grouped with amendments 52 and 70.
**Jenny Marra:** Amendments 42, 52 and 70 are a package of amendments to introduce a better gender balance on the boards of Scotland’s national fire service and national police service, as well as on any local police boards that are created under the bill. They seek to address the systemic underrepresentation of women in Scotland’s public sector decision-making bodies, which is stark in our justice system, by harnessing the progressive policy of gender quotas that is used by many of our European neighbours, including Finland, Norway, Denmark and Iceland.

In Scotland, justice feels like men’s business. On our police boards, 18 per cent of members are women. On our fire boards, women fare slightly better—they account for 22 per cent of members. That trend is ever prevalent in other areas of our justice system. Men comprise 80 per cent of members of the Scottish Legal Aid Board and of the Scottish Law Commission, 86 per cent of members of the Scottish Police Services Authority and 70 per cent of members of the Judicial Appointments Board for Scotland.

Women’s voices are drowned out in scrutiny of our police and fire services and of our whole justice system. Our police and fire services deal daily with gender-based domestic violence and prostitution. Under their current composition, with such systemic imbalance, our boards cannot scrutinise properly. At the heart of Scotland’s justice system lies a problem that our European neighbours realised years before us: it is not possible to address an underlying culture of underrepresentation without taking action.

Amendments 42, 52 and 70 would guarantee nothing more than men and women have 40 per cent each of appointments to the boards of Scotland’s single police and fire services. That represents a minority stake, which allows for 20 per cent flexibility. The same approach was recently put to the Cabinet Secretary for Education and Lifelong Learning, Mike Russell, by the higher education governance review, which recommended exactly the same 40:40:20 model for university courts, to emulate our European neighbours.

11:45

The Scottish Trades Union Congress, Oxfam, the National Union of Students and Engender have all backed the amendments in group 7. As they and our European neighbours believe, Labour believes that the proposed measure is progressive; the bill gives us the opportunity to design the decision-making bodies of our single services using a progressive image of how we should all expect our decision-making bodies to look. By agreeing to amendments 42, 52 and 70, we can take a small step towards changing the wider culture in our justice system, which drowns out the needs and concerns of the majority of our population.

I move amendment 42.

**Margaret Mitchell (Central Scotland) (Con):** I sympathise tremendously with the sentiment behind Jenny Marra’s amendments, which are similar to stage 2 amendments that she lodged. However, to single out one equality strand—gender—for special treatment could discriminate against other equality strands, when appointments must be made on merit. I very much regret that, for that reason, I cannot support the amendments.

**Alison McInnes:** I thank Jenny Marra for lodging the amendments and congratulate her on how she spoke to them. I support the intention behind the amendments. Until now, I have been reluctant to argue for quotas, but it is clear that voluntary action is not working. We had a useful debate about that in the chamber only a couple of weeks ago.

Let us take a small step forward. From the outset of the new police service, let us make it clear that we respect women equally in our society. If policing is about keeping communities safe, the police authority should take account of women in our communities in setting strategies and priorities. To include women on boards from the outset in the suggested way would be a good signal.

I say to Margaret Mitchell that the proposed approach would not “single out” an equality strand. All the other equality strands are subsets of the gender imbalance, so we must consider the way forward.

**Dennis Robertson (Aberdeenshire West) (SNP):** I cannot support the amendments from Jenny Marra on gender, because they would discriminate against all the other equality strands. Alison McInnes said that the amendments would not discriminate, because they relate to gender balance. However, if we are to be for equality, we must refer to women, race and disability and not just to women alone.

**The Minister for Community Safety and Legal Affairs (Roseanna Cunningham):** I recognise that Jenny Marra and others are passionate about gender equality, although others are passionate about all equalities. Given my position, I am hardly likely to disagree about increasing women’s representation on the boards of public bodies. However, I disagree with Jenny Marra’s idea that setting such quotas for the bodies that the bill will establish would be a helpful approach.

**Johann Lamont (Glasgow Pollok) (Lab):** Will the minister take an intervention?
Roseanna Cunningham: We want to appoint the best people to run the Scottish police authority and the Scottish fire and rescue service on the basis that they have the right blend of skills and experience to manage those vital public services.

Johann Lamont: Will the minister take an intervention?

Roseanna Cunningham: I will let in the member in a moment!

Members: Ooh!

Roseanna Cunningham: I do not accept that the choice should be constrained by quotas for any one group.

Now I will let the member in.

Johann Lamont: Is the minister seriously suggesting that a body of which 80 per cent are men reflects the talents and abilities of the people of this country? It is incredible to suggest that men forming 80 per cent of a body entirely reflects merit. What an attitude that shows to the women of this country.

Roseanna Cunningham: As Johann Lamont must be aware, many organisations that involve her party—including some of the new local authority administrations—can impose such measures internally if they wish to do so. It is interesting that they do not do that.

Parliament recently supported a motion recognising the progress that has already been made by the Scottish Government to improve diversity in the public appointments process, resulting in 34 per cent of public appointments in 2011-12 being held by women. That is not the end result, but the picture is improving and we accept that there is more to do. In fact, I had a conversation about board membership with a fire board yesterday morning. We did not just discuss gender equality because we need also to look at other equality issues.

Appointments to the SPA and SFRS will be made through the public appointments process that all Governments have been happy to use in the past, including Johann Lamont’s own party’s Government, and we will ensure that underrepresented groups are encouraged to apply. That, of course, includes groups other than women. We will actively raise awareness of the forthcoming appointments through senior women’s networks and other diversity and equality organisations. We are also raising awareness in more general ways by opening up registration this week for packs to be issued on the date of publication of the advert.

Ms Marra’s amendment 42, which seeks to impose gender quotas on local authority committees, is even more restrictive. Not quite 25 per cent of local councillors are women. Although that might be a record high, if a quota of 40 per cent women is set for police and fire committees, I presume that committees that work on other issues are likely to end up being all male, which is certainly not a desirable outcome. The Government recognises that women should be more equally represented in public life, and we are working to improve the situation. We need to increase the number of women who are putting themselves forward for appointments and we need to make sure that more women are able to progress through organisations to gain the skills and experience that public appointments panels look for.

I cannot support the imposition of statutory quotas for individual bodies.

Jenny Marra: I will press my amendment because I believe fundamentally that it is the progressive measure that we should introduce. The party of government likes to talk the talk of being progressive, but when it comes down to action, it rarely walks the walk.

Mark McDonald (North East Scotland) (SNP): Does Jenny Marra accept that if the political will existed, what she seeks could be achieved? For example, in Aberdeen, the SNP appointed a 50:50 gender split to the police and fire boards, but the Labour Party appointed a 100 per cent male board.

[Interuption.]

The Deputy Presiding Officer: Order! Order!

Jenny Marra: I absolutely agree that if the political will was there on the issue, the Government would vote for it and put it on the statute. If Mark McDonald wants to audit council representation across the country, he will find that Labour has far more female councillors across the 32 local authorities than does the SNP.

As the Conservatives said, people are always sympathetic to this kind of action, but as I pointed out in my opening remarks, our European neighbours have found that sympathy or encouraging the use of packs of CDs and brochures, such as those that the minister is about to send to people, does not make a difference. Our European neighbours have decided that the progressive and proper way forward is to put the measure on the statute book. In 20, 30 or 50 years, we will look back on today’s debate and see that it was the right thing to do.

As for discrimination against other minorities, my party would be happy to come to the chamber to debate better representation for all our minorities, but each minority group deserves to have that time for itself. The Government should not package them all up and say that we do not
care about other minority groups because we want to vote for gender equality.

Fundamentally, I lodged amendments 42, 52 and 70 because I feel that our police and fire services deal daily with serious gender issues and that those issues are not receiving the scrutiny that they deserve. I encourage the Government to rethink its position and to support amendment 42.

The Deputy Presiding Officer: The question is, that amendment 42 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Finn, Mary (West Scotland) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Fraser, Murdo (Mid Scotland and Fife) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKean, Derek (South Scotland) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Mclean, Margaret (Central Scotland) (Con)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scallon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Claydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
MacKay, Derek (Central Scotland) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McPherson, John (South Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scallon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
The Deputy Presiding Officer: The result of the division is: For 40, Against 77, Abstentions 0.

Amendment 42 disagreed to.

Amendment 43 moved—[Lewis Macdonald]—and agreed to.

Amendment 44 moved—[Lewis Macdonald].

The Deputy Presiding Officer: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Ppectorick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
Fitzpatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Claydbank and Mingavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 64, Abstentions 0.
Amendment 44 disagreed to.

Amendment 45 moved—[John Lamont].

The Deputy Presiding Officer: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (LD)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Rodenick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graeme, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Bannfshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 64, Abstentions 0.

Amendment 45 disagreed to.

Section 48—Local police plans
Amendment 46 moved—[Lewis Macdonald].

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glascow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glascow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Robin (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Camburnald and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 55, Against 64, Abstentions 0.

Amendment 46 disagreed to.

Amendment 47 moved—[John Lamont].

Amendment 47A moved—[John Lamont].
12.00

The Deputy Presiding Officer: The question is, that amendment 47A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Mallik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh South) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caitlins, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 53, Against 64, Abstentions 0.

Amendment 47A disagreed to.

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.
The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Galway and West Dumfries (Con) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
MacDonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 47 disagreed to.

Section 50—Appointments, promotions etc

The Deputy Presiding Officer: Group 8 is on the conditions of retirement of the chief constable and the chief officer. Amendment 48, in the name of Lewis Macdonald, is grouped with amendment 56.

Lewis Macdonald: The amendments are intended to address the issue of the proper reward
of chief officers and, in particular, the specific issue that is raised about the conditions of their retirement.

The intended salary of the new fire chief was announced recently: in this age of austerity, that individual will be required to get by on a mere £165,000 a year. Of course, the question may be asked who came up with such an imaginative step for the use of taxpayers’ money. Was it a sub-committee of former chief officers, a cabal of aspiring civil servants, or a panel of candidates for the job? Perhaps it was Mr MacAskill’s idea to take the biggest salary that the Government dispenses and simply add a five-figure sum—to reflect the increased scale of the responsibility, of course.

We gave the cabinet secretary the opportunity at stage 2 to explain his thinking and the process, but he chose not to take it, so today we raise the related issue of the reappointment of chief officers. Under the bill, chief officers can retire, be paid a lump sum, and then get back on the team to do much the same job, at much the same salary, but with a tidy little sum already salted away. That is good for chief officers, but it is perhaps not the best way to look after public money.

The issue is not the fitness or otherwise of retired officers to do the job; for me, that question does not arise. The question is one of equity. If retired teachers can work as supply teachers but are required not to take on a full-time teaching job that would take that job away from a colleague who has chosen to keep working, it is hard to see why the chiefs of the police and fire services should be any different.

The amendments are designed simply to ensure that retirement means what it says, and that public servants are treated much the same, whether they are running the new national police and fire services at unprecedented salaries, or leading a local school. It is not about favours; it is about fairness, and the point at which we make the transition to the new national services is surely the point at which to address the anomaly.

I move amendment 48.

**Kenny MacAskill:** I fully understand what Lewis Macdonald is seeking to achieve through his amendments. I share his concerns about the cost to the public purse and the message that such a reappointment would send to the public. However, I cannot support the amendments.

There may be unforeseen and exceptional circumstances in which it would be appropriate to reappoint a retired chief constable or chief officer. Any such appointment would have to be consistent with the principles of best value, and only in exceptional circumstances could the reappointment of an individual who has retired, is in receipt of a pension and has benefited from a lump sum deliver best value.

**Lewis Macdonald:** That is helpful. If amendment 48 is not agreed to, will the cabinet secretary issue guidance to the new services to indicate that such a reappointment should happen only in exceptional circumstances?

**Kenny MacAskill:** I am happy to put on record that it would happen only in exceptional circumstances that, in all likelihood, would never arise. However, we must prepare for every eventuality. The chief constable and senior team might be incapacitated for some reason. We have seen such instances that have affected the Police Service of Northern Ireland, and there have been difficulties in the higher court in Scotland. I am happy to put on record that I am talking about exceptional circumstances that we do not expect to occur. Nevertheless, we must prepare for every eventuality.

I assure members that the appointment of chief constables must be approved by the Scottish ministers, and I would expect there to be very good reasons for a reappointment before it would ever be approved.

**Lewis Macdonald:** It is encouraging to hear the cabinet secretary make that clear statement. However, it would be even more encouraging for the matter to be made clear in the bill by amendment 48. A statutory provision would offer certainty. The cabinet secretary will be aware that there have been concerns about such matters in different parts of Scotland. On that basis, although I take on board the cabinet secretary’s comments, I am inclined to press amendment 48.

**The Deputy Presiding Officer:** The question is, that amendment 48 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a one-minute division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
McTaggart, Anne (Glasgow) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Campbell, Roderick (North East Fife) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Brown, Keith (Midlothian South, Tweeddale and
Glenridding) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Pertshyrshire South and Kinross-
shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caitness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and
Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse)
(SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine)
(SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 40, Against 76, Abstentions 0.
Amendment 48 disagreed to.

Section 74—Functions of inspectors

The Deputy Presiding Officer: Group 9 is on the functions of inspectors. Amendment 49, in the name of Graeme Pearson, is the only amendment in the group.

Graeme Pearson: Amendment 49 seeks to amend section 74 as it applies to Her Majesty’s inspectorate of constabulary for Scotland. The function of HMICS is to have the skills and experience necessary to act as a professional adviser not only to Government, but to chief officers. The functions of inspectors as laid out in section 74 do not refer specifically to the constables and police staff who are engaged in the policing of Scotland.

Given the controversies that have occurred over the past few years with regard to the balance between police constables and support staff, and the unforeseen impact of the commitment to the additional 1,000 police officers, whereby more than 1,000 support staff have apparently gone missing from the service, it would be reasonable, not only for this Government but for future Governments, to include in the functions that HMICS could make inquiry about, the adequacy of the numbers of constables and police staff in ensuring that the objectives that are set out in the
strategic policy priorities and local police plans are met.

It would not be unreasonable to expect that HMICS could deliver on that. The knowledge that HMICS would be able to pay attention to matters in relation to staff and report accordingly would offer some comfort and support to those staff. Although such reports would not be mandatory, they would offer an independent and expert assessment of the current wellbeing of the police force at any one time.

I move amendment 49.

**Kenny MacAskill:** When amendment 49 was debated by the Justice Committee at stage 2, Mr Pearson said that we should place concerns about staffing issues and police numbers on record in the bill to show the public that we identify with those concerns. However, I consider that concerns about staffing and police numbers are best addressed through the regular face-to-face engagement between me and my officials and various representative bodies, such as the Scottish Police Federation and Unison.

The bill gives Scottish ministers the power to direct HMICS to carry out inquiries into any matter that we consider appropriate. I could direct HMICS to do what Mr Pearson suggests without it needing to be specified in legislation.

Giving an isolated example of the kind of thing into which HMICS may inquire could be construed as intending some sort of limit on the kind of inquiries that HMICS is to make. That would be an unfortunate unintended consequence, therefore I cannot support amendment 49.

**Graeme Pearson:** I am disappointed at the cabinet secretary’s response. I press amendment 49.

**The Deputy Presiding Officer:** The question is, that amendment 49 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

**For**

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

**Against**

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
The united nations 10 years ago. Treatment or Punishmen t, which was agreed by Torture and Other Cruel, Inhuman or Degrading protocol to the United Nations Convention against United Kingdom’s obligations under the optional chapter 16 is designed to meet in Scotland the restructuring the police and fire services, but being to establish

Macdonald, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 55, Against 62, Abstentions 0.

Amendment 49 disagreed to.

After section 92

The Deputy Presiding Officer: Group 10 is on statement on compliance with the objective of OPCAT. Amendment 50, in the name of Lewis Macdonald, is the only amendment in the group.

Lewis Macdonald: The bill is about restructuring the police and fire services, but chapter 16 is designed to meet in Scotland the United Kingdom’s obligations under the optional protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was agreed by the United Nations 10 years ago.

The objective is described in section 90 as being to establish

"a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty”.

12:15

If that meant all the places in which people are deprived of their liberty, I suspect that we would not now be facing proposals from Mr MacAskill to abolish prison visiting committees, which are well designed to be OPCAT compliant. However, it was made clear at stage 2 that the bill does not affect prisons, and ministers were clear that they did not want it to. Therefore, the amendment, like the bill, relates only to people who are deprived of their liberty in police custody.

The bill places firm requirements on the new police service to give custody visitors access to those in cells, including visits without notice, meetings with detainees in private, and access to detention records. It extends even greater rights of access to members of the United Nations sub-committee on prevention of torture and other cruel, inhuman or degrading treatment or punishment, which was established under OPCAT and whose intended visit can be blocked only

“on urgent and compelling grounds of public safety, natural disaster or serious disorder”.

That is all very welcome, but OPCAT compliance has to go beyond rights of access. Those who carry out the visits must be enabled to become part of the UK’s national preventive mechanism, which is a further safeguard that is required by international obligations and currently includes—in England, but not in Scotland—the Independent Custody Visiting Association and the independent monitoring boards that visit detainees who are held in prison.

Putting independent custody visitors on a statutory footing is the first step towards them becoming part of the NPM, but they must also fulfil specific membership criteria in order to be declared OPCAT compliant. The UN guidelines on national preventive mechanisms state that:

"The NPM should be identified by an open, transparent and inclusive process which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.”

The guidelines also state that, once it is established,

"The NPM should ensure that it has the capacity to and does engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations”

and that

"It should also actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.”

The inclusion in the bill of independent custody visitors is an important and useful first step in the right direction, but it will not achieve its purpose of OPCAT compliance unless independent custody visitors become part of the national preventive mechanism and the NPM is able to
“engage in a meaningful process of dialogue with the state” and “follow-up on the implementation of any recommendations”.

Amendment 50 requires ministers to make a statement to Parliament six months after this part of the bill comes into force on what they have done to further the OPCAT compliance of custody visiting and to move independent custody visitors in the direction of becoming a designated part of the national preventive mechanism.

Preparing such a statement will perhaps also assist ministers in thinking about what else they need to do to achieve OPCAT compliance for all “places where people are deprived of their liberty.”

I move amendment 50.

Kenny MacAskill: Lewis Macdonald’s amendment would place in the bill an obligation on the Scottish ministers to make a statement in Parliament within six months of the bill coming into effect on what actions have been taken to comply with the objectives of OPCAT through the implementation of independent custody visiting.

The provisions in the bill for independent custody visiting are in pursuance of the objectives of OPCAT, which was ratified by the UK in 2003. That established a national preventive mechanism, of which the independent custody visiting scheme that is proposed in the bill would be a part.

Visits to places of detention ensure that the rights and treatment of detainees and the conditions in which they are held are monitored and protected. The responsibility for independent custody visiting rests with the new Scottish police authority. The visitors will report direct to the SPA and any areas requiring action will be directed by the SPA to the new chief constable of the police service of Scotland. It will therefore be for the new Scottish police authority to report on the progress of the independent custody visiting scheme as it develops, not for Scottish ministers. The annual report by the national preventive mechanism will report on compliance. It is the intention that the scheme will become a member of the NPM.

Although I am content to support continuing dialogue on this issue, I do not think that it is appropriate to place that requirement on ministers. In any event, the new visiting scheme will develop over time and a six-month deadline is not appropriate. I therefore ask Lewis Macdonald to withdraw amendment 50.

Lewis Macdonald: I listened carefully to what the cabinet secretary said and I take on board the point about the responsibility of the Scottish police authority in relation to this matter. However, there is a wider responsibility for the Government, whose responsibility is not confined to the area of custody visiting in police cells. That is why I think that it would be a useful development and requirement for ministers to make a report on the matter not only within six months of the implementation of this part of the bill but, indeed, at what I hope would be future regular intervals.

I am encouraged to an extent by the cabinet secretary’s support for OPCAT and the process that we have described, but I will press amendment 50 because I believe that the point about the accountability of the Government, as well as that of the police authority that will report to the Government, is important.

The Deputy Presiding Officer: The question is, that amendment 50 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (LD)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adams, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Alasdair (Na h-Eileanan an Iar) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Edward, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)

Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 55, Against 62, Abstentions 0.

Amendment 50 disagreed to.

After section 93

The Deputy Presiding Officer: We now move to group 11, which is on parliamentary scrutiny of arrangements under the bill when enacted. Amendment 2, in the name of Graeme Pearson, is grouped with amendments 67 and 4.

Graeme Pearson: For me, the amendments that I will speak to at this time are the most important amendments in relation to democratic accountability, and they have significance for all members sitting in the chamber who are not members of the Government. The amendments go to the very heart of how we hold a Government to account. It is about not only the Government that exists today but the Governments that will exist in the decades ahead. It has taken us 50 years to arrive at the creative changes that we propose in the bill, and members can be sure that it will be another 50 years before we revisit any mistakes that we make at this time.

Given the decisions that members took earlier about local accountability and acknowledging Kevin Stewart’s comments about the shortcomings in democratic accountability in previous arrangements, we need to look at what we have agreed so far today and where it takes us. We have talked about the creation of a single police force, but it is more than a single police force: it is a national police force whose power, control, influence, direction and budget will be allocated at a national level. It will focus through the cabinet secretary, with direction to a convener who will be appointed by the cabinet secretary and a board that will be approved by the cabinet secretary, and it will be administered by a chief constable whom the board will appoint with the cabinet secretary’s approval.

There is no democratic oversight in the current arrangement that we see, and we need to think about the impact of that. Elsewhere in the world, national law enforcement organisations have the opportunity to play free and wild with the power at their disposal. That is not the Scottish way. Policing by consent involves consent that is merely agreement, compliance or knowing; it means that there is an understanding of what
powers we allocate to law enforcers and the police service, and of how we administer them.

Two months ago, I raised the focus of the amendments with the cabinet secretary. In fairness, he acknowledged his interest in the matters that I raised with him, and I was given an assurance that officials would come back to me to discuss the issue fully and that we would try to flesh it out. Unfortunately, that assurance was not followed through.

I met the cabinet secretary and officials only last week and was given an assurance from him that, although he found it difficult to support my amendments, he would offer his support today for the principles that lie behind them and an alternative to those arrangements. It is beholden on members to ensure that the arrangements that we want to see in place are properly spelled out in the bill so that we will know the way forward with some confidence. That is not to say that we are challenging only this Government; we are challenging future Governments and future arrangements.

John Finnie’s amendment 67, well meaning as it may be, would allow the Government to make arrangements for keeping under review the operation of the act and to publish reports to the Parliament on its efforts in that regard. That leaves a great deal to cabinet secretaries and Governments in deciding what is meant by keeping under review the operation of the act. My amendments on the provision of a commission set out clearly the criteria under which it would operate and would allow the Parliament to ensure that it behaved within the spirit and word of the legislation.

Last night, the cabinet secretary raised with me the fact that the Lord Advocate understood that the provision of a commission could fetter the independent role of investigation, but that it might have been possible, had there been time, to address some of the concerns. I am surprised that the Government would take that view, given that the wording of my amendments reflects an approach that the Parliament took with the Scottish Commission for Public Audit, which was published and agreed in 2000. That commission has operated for the past 12 years with no apparent problem for the independence of the Lord Advocate and their role in the scheme of things.

I hope that members will realise that, in light of the proposed dramatic changes to the police service, there is a pressing need for us as parliamentarians to provide proper and effective scrutiny of the arrangements and relationships that are created by a single police service. A blank-cheque approach will not provide parliamentarians with the confidence that there is effective scrutiny. Parliamentarians should realise that the issues are not political. We should co-operate collectively and seek consensus to give the general public confidence that we are up to the role that we seek to take in these matters; that we take seriously the policing of Scotland; that we support those who police on our behalf; and that we will ensure that they deliver in the spirit that we intend them to deliver.

I move amendment 2.

12:30

John Finnie (Highlands and Islands) (SNP): I fully support the need for robust parliamentary scrutiny of the police and fire and rescue services, but the policing commission that Graeme Pearson proposes would do nothing that the Parliament cannot already do.

My amendment 67 seeks to make it clear that the Parliament has an important role to carry out in scrutinising the new services as they are established and as they bed down, but it does not prescribe how that should be achieved.

I have been an MSP and a member of the Justice Committee for over 12 months, and the committee has provided valuable scrutiny of this bill and other legislation that has passed through the Parliament. That is an excellent example of what a committee, working effectively, can do.

I support the establishment of a single police service and a single fire and rescue service for Scotland, but I recognise that it represents a significant change, not least in governance. The bill already provides new opportunities for scrutiny. My amendment simply seeks to provide a further safeguard to ensure that the Parliament takes up those opportunities.

I appreciate the motivation behind Graeme Pearson’s amendments, and I understand the deeply felt views that he has on the issue, but I do not consider that it is necessary to put in place new structures to achieve scrutiny. We should build on the existing committee structure. Policing and the fire and rescue service are key public services, and the Parliament would be failing if it did not find time to scrutinise the transition to and operation of the new services. I consider that there is merit in the idea of setting up a new committee that is dedicated to that role, but that is a matter for the Parliament to decide.

John Lamont: I rise to speak in favour of Graeme Pearson’s amendment 2, to return the favour from earlier in the day. He proposes the creation of a Scottish policing commission to oversee the work of the single police force. We believe that reform is necessary to protect front-line policing. However, our support for reform is
conditional on the protection of local accountability.

Graeme Pearson spoke effectively and clearly about the dangers of unfettered power and the need for the Parliament to be able to scrutinise the single police force and hold it to account. I fully accept that the current Government may not have any sinister intentions for our police and security forces, but surely the Parliament’s job is to plan for the worst-case scenario, to protect accountability and to protect the right of this place to hold our police to account. That is why I am happy to support Graeme Pearson’s amendment.

Alison McInnes: I commend Graeme Pearson for bringing back his proposal for a Scottish policing commission following further discussions after stage 2. The Government has been extremely lukewarm on the idea and it has cited any number of concerns about accountability, blurred lines of responsibility and so on. However, the fact remains that the Government’s reforms will take responsibility out of the hands of locally elected representatives and put it into the hands of a wholly appointed board that is hand-picked by ministers. The bill concentrates unprecedented power in the cabinet secretary’s hands, which is a dangerous step that takes no account of how a less benign Government might use the powers.

Graeme Pearson’s amendment is a sensible safeguard against the dangers that are inherent in the bill. John Finnie, who is a member of the Justice Committee, has not really grasped the enormity of the problem that we are articulating today. The cabinet secretary may see scrutiny as an inconvenient burden, but ordinary citizens demand it. They demand to know that any public service—especially one that is as fundamental to their safety and security as the police—is properly accountable and, most importantly, accountable to them. The loss of locally based police boards means that it is incumbent on members of this Parliament to take up that role.

The police have an unparalleled role in our everyday lives. They have the power to arrest and detain and the right to wield firearms. The establishment of a formal standing body to monitor and scrutinise the police is an absolute necessity and I hope that the cabinet secretary will treat it as such.

Patrick Harvie (Glasgow) (Green): I am sympathetic to Graeme Pearson’s amendments in group 11. They represent a better approach than Mr Finnie’s suggestion, which in effect would bind a parliamentary committee in its work programme. I do not recall that we have created such a statutory requirement in any previous legislation, and it seems to me to be an odd approach.

I ask Mr Pearson to address two aspects in his closing remarks. The first is the composition of the commission that he proposes. Does he anticipate that it would work along similar lines to our Scottish Parliamentary Corporate Body, with a balance of the political parties in the Parliament being represented on it, or would he expect it to lock in a majority of the Government of the day?

Secondly, with regard to the commission’s operation, would Mr Pearson expect it to be required to meet in public and to have its proceedings on the record?

Nigel Don (Angus North and Mearns) (SNP): I come to this debate somewhat unprepared but, looking at what is in front of me, I have to wonder how Mr Pearson’s proposed commission would differ from any ordinary parliamentary committee. What powers would it have that would be different from those of, say, the Justice Committee, under whose remit such matters would normally fall? Mr Pearson is a member of the current Justice Committee and I was a member of the previous one but I cannot at the moment see how what the proposed commission would do would differ from what the Justice Committee could do.

I agree with John Finnie that, given the Justice Committee’s history of being very busy, perhaps another committee with a new name and another set of folk in the Parliament should be set up. In short, I simply cannot understand why we need a commission to be put in the bill when the Scottish Parliament can set up a committee to carry out this work.

Kenny MacAskill: I concur with all members who have spoken of the need for robust parliamentary scrutiny of policing. Of course, how that is achieved is a matter for the Parliament, not the Government of the day. Indeed John Finnie’s amendment requires the Scottish Parliament, not Scottish ministers, to keep the act “under review” and “publish reports”.

As has been mentioned, policing by consent has been the cornerstone of Scottish policing since its inception. We must maintain that principle as we move forward, and the Parliament has a key role in ensuring that we do so. We are all well aware that the establishment of a single Scottish police authority and police service significantly changes the structures of accountability and scrutiny of policing, and we have built into the new structure plenty of opportunities for Parliament to play a role in that scrutiny. Strategic priorities, strategic plans and annual plans are all to be laid before Parliament, as are the Scottish police authority’s annual report and reports from Her Majesty’s chief inspector of constabulary and the new police investigations and review commissioner. Parliament can also proactively inquire into any aspect of policing and require any person to attend
proceedings to give evidence or to provide documents for such an inquiry.

I am not clear that Mr Pearson’s proposed committee would have any additional function that is not already available to the Parliament, although I note that necessary safeguards on disclosure of information relating to the investigation of crime are absent. Moreover, its membership would not differ from that of a parliamentary committee. I am not therefore convinced that it is necessary to establish a new type of body.

It has been suggested that the Justice Committee is already busy and does not have sufficient time to scrutinise the transition to and operation of the new police service. This Parliament was set up to scrutinise all devolved matters. Surely with a new single service the scrutiny of policing should be central to this Parliament’s priorities, and surely, as a corporate body, we should be ensuring that we set aside sufficient time to carry out this role effectively, diligently and proportionately.

This Government is receptive to establishing a new committee under existing standing orders. That would provide a more flexible solution that can be adapted as the new service beds in.

Patrick Harvie: I want to ensure that I understand what the cabinet secretary is saying. He has said that he wants a new committee to be established under existing standing orders. Is that an alternative to Mr Finnie’s proposal for a scrutiny arrangement to be put in place under the auspices of the legislation that we might be about to pass?

Kenny MacAskill: No. I am simply supporting John Finnie’s amendment 67, which would facilitate this alternative approach. It is up to Parliament, not the Scottish Government, to decide the nature of committees, and we are happy to support the decision that Parliament makes. Although amendment 67 seeks to commit Parliament to keeping the bill’s operation under review—which emphasises the importance of the two key public services of policing and the fire and rescue service—it does not dictate the mechanism by which that should be done. Maintaining that flexibility of response is important for this chamber, not for me or my successors.

Margaret Mitchell: Does the cabinet secretary accept that the will of Scottish ministers and the will of the Scottish Parliament are one and the same thing in a majority Government?

Kenny MacAskill: No, I do not accept that at all. There is a clear divide. Having a parliamentary majority makes a difference that we welcome—we do not deny that it makes matters easier—but I think that the member underplays the role and importance of Parliament and what is available to members. [Interruption.]

The Deputy Presiding Officer: Order.

Kenny MacAskill: I do not believe that a Scottish policing commission is necessary. It would also present some risks that should be carefully considered. First, the relationship that would exist between Parliament and the commission is not clear. Would the commission take over Parliament’s role in the scrutiny of policing, or would it have an additional role? What would happen if Parliament and the commission took different views on an issue?

Furthermore, the commission could result in overlap and confusion that could blur the existing governance and scrutiny arrangements for the police. The bill already sets out a clear and logical structure for scrutiny at each level, and it would not be helpful to add another layer.

Finally, there are significant concerns—which Mr Pearson underplays—that the commission could fetter the Lord Advocate’s independent role in the investigation and prosecution of crime, particularly because it would have powers to compel police officers, and possibly prosecutors, to provide information relating to the investigation and prosecution of crime. The Scotland Act 1998 and the standing orders of this Parliament provide that Parliament cannot obtain such information, which could be sub judice, and that is for good reason.

In summary, I suggest to members that the establishment of a parliamentary commission to scrutinise policing is neither necessary nor advisable. If Parliament wishes to impose a specific scrutiny mechanism by means of the bill, I recommend John Finnie’s amendment 67. I repeat my offer to work constructively with the Parliament to establish a committee for that purpose, if it would be helpful. However, it is not for the Government to establish a parliamentary committee; it is for Parliament.

Graeme Pearson: It is wise to acknowledge that no Government in the world enjoys scrutiny. No Government invites appropriate and active scrutiny; it is inconvenient, it is difficult and it needs to be dealt with month in, month out.

With amendments 2 and 4, we seek to achieve the ability to scrutinise the Government officials and executives who will be involved in the administration of policing in Scotland. John Finnie indicated that Parliament already has the opportunities and powers available to it. If we already have them, why do we not put a name to those opportunities and have our commission? Let us allow back benchers the opportunity to play their role responsibly. The notion that a commission operated by members of the Scottish
Parliament would in some way cause challenges and difficulties is imagined and not likely to happen in the future.

The construction of an alternative committee was mentioned. Like John Finnie, I have been in Parliament for only a year, so I am not completely aware of how that committee might be constructed and arranged. However, it is fair to acknowledge that, only last week, the cabinet secretary said to me that any alternative to the commission would not be a gold star response and would be second tier. That is the opportunity that John Finnie’s amendment 67 offers.

There has been a lot of political noise about the various parties offering support to each other on this amendment. I would like to think that that is some evidence of a consensus in the views that members are sharing in the chamber. There will not be a member in this chamber who has not been approached by constituents who are worried about the changes and who want to know how democratic accountability will be delivered.

Only within the past month, President Sarkozy left office and three French senior police officers were dismissed from service: the head of federal police, the head of city police, and the head of intelligence. The significance of that is that they were dismissed because they were seen as being too close to the Government and personally identified with the President. We cannot have changes to the police service occurring with changes of Government. I ask members to think about that.

12:45

There needs to be a balance between the powers of the Government and the powers of the Parliament in order to reflect the will of the general public. Nigel Don asked what the difference would be between the proposed commission and an ordinary parliamentary committee. The commission would be appointed by the body of Parliament to reflect all the interests of the parties in this chamber in a balanced way—and not in a way that reflects Government influence. That would ensure that the commission calls the Government to account and that the police service operates as this Parliament would wish.

Bruce Crawford: Can Graeme Pearson tell me why it is not possible to construct a committee in this Parliament that represents every political party in this chamber in a proper way? That is absolutely the right way to do it—all he is doing is undermining the whole process of the parliamentary committees.

Graeme Pearson: I point out that, if the member felt so strongly about it, we had the past eight weeks to discuss it at length. I am not an unreasonable person. What I want is a better police service, not a political advantage.

I ask members to consider seriously my amendments 2 and 4, which I offer in good will. I believe that the option that was offered by John Finnie will not achieve what we seek to achieve for the future.

I will press the amendments.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a one-minute division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
The Deputy Presiding Officer: The result of the division is: For 55, Against 62, Abstentions 0.

Amendment 2 disagreed to.

The Deputy Presiding Officer: That concludes this morning’s business.

12:48

Meeting suspended.

14:45

On resuming—

The Presiding Officer (Tricia Marwick): The first item of business this afternoon is the continuation of stage 3 proceedings on the Police and Fire Reform (Scotland) Bill. I remind members, in dealing with the amendments, that they should have before them the bill as amended at stage 2, which is SP bill 8A, the marshalled list, which is SP bill 8A-ML, and the groupings, which is SP bill 8A-G.

I also remind members that, as with this morning, the division bell will sound, and proceedings will be suspended for five minutes prior to the first division. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. All other divisions will be 30 seconds.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call the group.

Members should now refer to the marshalled list of amendments.

Section 95—Transfer of constables, staff, property etc

The Presiding Officer: Group 12 is on commencement, transitional and transitory arrangements. Amendment 15, in the name of the Cabinet Secretary for Justice, is grouped with amendments 20, 21, 23 and 28 to 32.

Kenny MacAskill: All the amendments in group 12 will make further provision to assist the preparations for transfer to the new services. Amendments 15 and 21 will require the current police and fire and rescue authorities and joint boards, as well as chief constables in the Scottish Police Services Authority, to provide information and assistance to the Scottish police authority chief constable on the SFRS.

Amendment 23 provides for specified sections of the bill to be commenced the day following royal assent. That reflects the fact that Parliament and stakeholders have pressed us to ensure that the...
new bodies and senior officers are in place as soon as possible so that there is sufficient time for them to prepare to take up their full operational functions from April 2013. It is also worth noting that the police service of Scotland will not come into being immediately; the chief constable will be in post only to lead the necessary preparation work.

Amendment 20 flows from the early establishment of SFRS. It will remove provisions that deal with an initial counting period of less than six months. As a result of amendment 23, such a short initial period will not occur. Amendments 28 to 32 will adjust the provisions relating to the police property transfer scheme so that any property or obligations of current chief constables can be appropriately transferred to either the SPA or the new chief constable.

I move amendment 15.

John Finnie: The amendment deals with the requirement to consult the Scottish Police Federation. As the bill is drafted, Scottish ministers are required to consult all three central committees of the Scottish Police Federation before making regulations. However, the federation has raised concerns that consultation of its constituent parts might result in separate responses from each, without a clear view being provided. The amendments in the group respond to the federation’s concern. Prior to making regulations under sections 11 or 49 of the bill, the amendments will require—

The Presiding Officer: Mr Finnie, you are speaking to amendment 1 in the next group.

John Finnie: I am. I apologise.

The Presiding Officer: We are still on the group of amendments prior to that, so please sit down.

Amendment 15A moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 15A be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division. As this is the first division of the afternoon, I suspend Parliament for five minutes.

14:49

Meeting suspended.

14:54

On resuming—

The Presiding Officer: We proceed with the division on amendment 15A. I ask members to cast their votes now.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gi bson, Kenneth (Cunninghame North) (SNP)
Gi bson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

**Amendment 15A agreed to.**

**Amendment 17 moved—[Kenny MacAskill]—and agreed to.**

**Section 97—Interpretation of Part 1**

The Presiding Officer: The result of the division is: For 55, Against 65, Abstentions 0.

Amendment 15A disagreed to.

Amendment 15 agreed to.

**Amendment 1 agreed to.**

**Section 99—The Scottish Fire and Rescue Service**

Amendment 17 moved—[Kenny MacAskill]—and agreed to.

The Presiding Officer: Group 14 is on membership of the Scottish police authority and the SFRS. Amendment 18, in the name of the...
minister, is grouped with amendments 53, 54, 22, 25, 68, 3, 69, 71 and 27.

Roseanna Cunningham: The amendments in group 14 relate to membership of the Scottish police authority and the Scottish fire and rescue service. Amendment 18 will adjust the size of the SFRS board and amendment 25 will adjust the size of the Scottish police authority, increasing their memberships so that in addition to the chairs, the boards must have a minimum of 10 other members and a maximum of 14.

Amendments 22 and 27 are minor amendments that are consequential to that change.

15:00

As members will know, there has been much debate on the issue. During stage 2, Kenny MacAskill indicated that he was willing to reflect further on the issue. Having listened to views throughout the bill process, including those of COSLA, we are now persuaded that the size of the board should be increased to a total minimum of 11 and a total maximum of 15.

The Government has been clear from the outset that members of both bodies should be appointed solely on the basis of their skills and expertise, through a fair and open public appointments process. We debated earlier the steps that we are taking to encourage women to apply for the posts. I now want to take this opportunity to encourage people from all walks of life, from all political parties and from different areas and communities to put themselves forward so that the board truly serves all of Scotland.

Amendments 53 and 71 in the name of Lewis Macdonald would require ministers to have regard to representing persons with knowledge of specific communities, fire and rescue services and policing respectively in all regions of Scotland. Amendments 54 and 68, which are also in his name, seek to ensure that at least a third of the SFRS and SPA membership is from local authorities and that Scottish ministers should select those members from nominations that would be made by COSLA. The committee rejected Lewis Macdonald’s similar amendments at stage 2. It does not matter whether he is seeking half or a third; it is essential that members of the SPA and the SFRS all have equal status on the boards and that they work collectively in the best interests of the whole of Scotland.

Accordingly, I also cannot support amendment 69 in the name of John Lamont, which seeks to ensure that in appointing members of the SPA, ministers have due regard to the need for various areas and interests, such as being members of a local authority, representing or having knowledge of communities and policing in the regions of Scotland and having no direct connection with policing. I share Kenny MacAskill’s view that the police authority must have the maximum flexibility to seek a wide range of experience and have the necessary skills to hold the chief constable to account.

Alison McInnes’s amendment 3 proposes that membership of the SPA be approved by Parliament. I cannot support an amendment that confuses the lines of governance between the Parliament and the SPA. The SPA is not a parliamentary body so it would not be right for Parliament to scrutinise members that it has agreed to appoint.

I encourage Parliament to support amendments 18, 22, 25 and 27. I will not support amendments 3, 53, 54, 68, 69 and 71.

I move amendment 18.

Lewis Macdonald: Group 14 again brings us to issues that are at the heart of the bill, which are to do with the nature of the boards that will oversee the new services.

I welcome the amendments from ministers to increase the size of the boards of both authorities. It is a pity that they saw fit to reject similar amendments that were lodged by Labour and other parties at stage 2, but I accept what the minister said about having reflected on the case that was made and responding accordingly. I am glad that ministers have finally paid heed to the concerns of many people who gave evidence that very small boards could not do the job without co-opting non-members onto their sub-committees.

A further point has, sadly, not been conceded, and that is about the future engagement of local government with police and fire services at national level. The minister talked about wanting to avoid overlap and the confusion of lines of accountability, and about wanting to ensure that maximum flexibility will be possible. That all sounds well and good, but all that it means is maximum discretion and minimum lines of accountability, other than to the ministers who will make the appointments. That is why we are disappointed by the response to amendments that have been lodged by Labour and others.

Ministers have not seen fit to support amendments that we debated earlier, on a parliamentary commission to provide increased accountability through MSPs. Consequently, the only way the new service can be accountable to anyone other than ministers is through support for the amendments in group 14.

Mr MacAskill talked at stage 2 about reserving seats for local councillors on the founding boards of both services, but he also made it clear that he does not want that to be done on a statutory basis.
because he believes that councillors will play less and less of a role in running the services in the future. We believe that that approach is fundamentally mistaken. There is a disconnect between making local councils responsible for ensuring that communities have a say in the planning of services at local level and planning to phase out local authority engagement at national level.

The Minister for Local Government and Planning (Derek Mackay): I am sure that Lewis Macdonald wants fair representation for local government, so will he comment on the emerging practice of Labour local authorities of stacking delegate entitlement in order to ensure that Labour secures positions in organisations such as COSLA?

Lewis Macdonald: What I am bound to comment on is what I have found throughout today’s proceedings: the disappointing response of Scottish National Party members in turning issues of accountability and democracy into sectarian issues of party-political preference. Derek Mackay comes from a local government background, so I would have expected him to sympathise with the argument that local councillors know quite a lot about the needs of their local communities and therefore should be heard at national level, but instead all he wants to talk about is some party-political point scoring from the latest developments in COSLA. I think that Parliament as a whole will regard that as deeply disappointing.

Councillors being on the boards of the services is not just about capturing their experience and knowledge of their local communities—important though that is—but would also be helpful in providing a division of powers, which surely is a desirable objective in a democratic society.

Roseanna Cunningham was wrong to say that there is no difference between our proposal at stage 2 on councillors having half the seats and our proposal today on their having a third of the seats. Our current proposal recognises the Government’s position and goes halfway to meeting it. It would be pleasing if the Government at some point today showed willingness to come halfway to meeting other parties.

Alison McInnes: My amendment 3 looks at the manner in which members of the SPA will be appointed. The cabinet secretary rejected my call during stage 2 to consider using the Crown appointments procedure to appoint the chairing member. He cited the two-tiered board and different lines of accountability that that would create, and I acknowledged his position on that.

By contrast, amendment 3 would leave all members of the authority to be appointed through the public appointments process, but would also submit all candidates to a confirmation vote here in Parliament. I am content that that would strike a fair balance between the desire for consistency and the need to ensure transparency in the appointment process. I do not foresee that requirement being burdensome, but it would provide an important safeguard.

Too often during the bill process, the Government has forgotten that it may not be in power in Scotland for the rest of time. At some stage in the future there may be a Government in power that is not quite so scrupulous as the current Government, so it is important to build safeguards into our law for such an eventuality. The SPA in particular will be a public body of unmatched scope that will oversee the entire country’s policing with a £1 billion budget. I do not think that it is unreasonable for the public to have some reassurances that the people who are tasked with spending that budget have been appointed with the agreement of Parliament.

On the other amendments in the group, I am inclined to support Lewis Macdonald’s revised amendments 54 and 68. I certainly see the benefit of having councillors on the SFRS and the SPA. I would prefer all members to be appointed through a transparent formal process, so I have some concern about requiring that appointments be made from candidates who are put forward by COSLA. Nevertheless, the importance of the presence of local elected members trumps that concern. John Lamont’s amendment 69 would provide a good alternative that would set in statute the range of experience that would be desirable on a board, without being overly restrictive.

Any of the amendments in group 14 would improve the bill. It is so disappointing that the Government is so thrawn on the subject and will not budge.

John Lamont: Amendment 69 deals with the required skills of board members of the new police authority. The bill does not express or outline the types of expertise that should be present in the authority. Paragraph 2(3) of schedule 1 states:

"The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority."

However, the bill does not point towards the type of skills that will be required, and neither is there mention of the board’s membership covering different parts of Scotland. Amendment 69 does not seek to list explicitly the types of expertise that should be on the board or the regions that should be represented on it; instead, it seeks to expand on the provision in paragraph 2(3) of schedule 1. Amendment 69 states that authority must include

...
persons with a range of professional expertise, including financial expertise."

We lodged a similar amendment at stage 2, and the Government’s response was that the board’s expertise would evolve in time to reflect the skills and expertise that will be required at particular points. My view is that a basic requirement for adequate regional representation, local authority cover and external professional expertise from the outset of the single force must be included in the bill.

We also lodged an amendment at stage 2 that would have required the authority to consist of between 15 and 19 members. The cabinet secretary rejected that amendment on the basis that that number of members would not facilitate the strategic and collective decision making that the authority requires. Although the Scottish Government rejected our amendment at stage 2, I am pleased that it has lodged an amendment that will increase the size of the board so that it will include between 10 and 14 members, which is clearly a step in the right direction.

We are happy to support Lewis Macdonald’s and Alison McInnes’s amendments, which have been debated.

Roseanna Cunningham: We have again heard mention of a future unscrupulous Government that may emerge were the unhappy possibility that the SNP is no longer in government to occur. Given that that future unscrupulous Government can come only from the Labour Party, the Tory party or the Liberal Democrats, we should be told which future unscrupulous Government can come only from the Labour Party, the Tory party or the Liberal Democrats, we should be told which that future unscrupulous Government can come only from the Labour Party, the Tory party or the Liberal Democrats, we should be told which party is likely to deliver such a Government. It certainly would not be the SNP.

I say to John Lamont that I am slightly entertained by the notion that we would use legislation to start to design job specifications. That is not the basis on which anybody governs now, and it should not be in the future.

Some of the issues that Lewis Macdonald has raised will properly be for a parliamentary justice committee to address. That is where, in parliamentary terms, the power lies to bring people to account, and that is what should be done in the future instead of our complicating the issue and providing for other organisations elsewhere that would do the job that the Justice Committee should do.

I say to Lewis Macdonald that, even on the basis of what he said, it is hardly possible that all the areas of Scotland can ever be represented on a board, even at the maximum size that will now pertain. Therefore, the amendments would not achieve what it is claimed they will achieve.

Lewis Macdonald: We have not sought geographical representation of every area of Scotland; we have simply sought a requirement on ministers to appoint members who have a knowledge of circumstances across Scotland. Surely that is something so modest that even the minister might choose to support it.

Roseanna Cunningham: I had actually finished my comments, but does Lewis Macdonald seriously think that we will appoint people who have absolutely no qualifications or experience whatever to the boards? What a piece of nonsense.

Amendment 18 agreed to.

Amendment 52 moved—[Jenny Marra].

The Presiding Officer: The question is, that amendment 52 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eddie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Mailk, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)

1547
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Brogie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Campbell, Margaret (Cunninghame South) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen South) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 40, Against 78, Abstentions 0.

Amendment 52 disagreed to.

Amendment 53 moved—[Lewis Macdonald].
Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen Central) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 54, Against 65, Abstentions 0.

Amendment 53 disagreed to.

Amendment 54 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 54 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
The Presiding Officer: The result of the division is: For 38, Against 79, Abstentions 0.

Amendment 54 disagreed to.

The Presiding Officer: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patrica (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffith, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)

Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finnie, Andrew (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
McDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
The Presiding Officer: Group 15 is on proceedings of the authority and the SFRS: public access. Amendment 19, in the name of John Lamont, is grouped with amendment 26.

John Lamont: I am pleased to see from the marshalled list that amendments 19 and 26 also have the support of Graeme Pearson, so I thank him again. [Interruption.]

The Presiding Officer: Order.

John Lamont: The Justice Committee’s stage 1 report raised concerns about the transparency of the SPA. In response, the Scottish Government asserted that the board will hold meetings in public and publish all papers, but no such requirement is included in the bill. Section 2(3) requires the authority to “try to carry out its functions in a way which is proportionate, accountable and transparent”.

At stage 2, we lodged an amendment that sought to compel the board to hold meetings in public and to publish agendas and papers for those meetings “except in circumstances as specified in standing orders”.

It was anticipated that that exception would be used only when security or other reasons did not permit a meeting or part of the meeting to be held in public.

The cabinet secretary stated that he was sympathetic to our amendment, but he wanted to ensure that its drafting would not unduly restrict the authority’s freedom to determine for itself the best way of going about its business.

Amendment 19, which was drafted in consultation with the Scottish Government, requires both the SPA and the SFRS to hold meetings in public and publish agendas, papers and reports. It also requires the authorities to publish a statement that sets out the circumstances in which meetings may be held in private and agendas will not be published.

We agree that it is appropriate to include an exemption to allow meetings to be held in private. We would have preferred the authority to be allowed to draw up a statement of circumstances in which it can hold a meeting in private and the statement to be put to Parliament or the proposed Scottish policing commission for approval; however, the current drafting is acceptable. The amendment is an improvement on the wording in the bill, as it seeks to require meetings to be held in public in most circumstances, and I encourage members to support it.

I move amendment 19.

Graeme Pearson: I will not prolong the debate. Enough has been said about open and
transparent government, good governance and the need for openness in the publication of agendas and the way in which meetings are run and I believe that amendment 19 encourages the health of the administration of the SFRS and the police authority.

Roseanna Cunningham: I am happy to support John Lamont’s amendments 19 and 26. From the outset, we have made it clear that the SFRS and the Scottish police authority will carry out their respective functions in a transparent way and that it has always been our expectation that meetings should and will be held in public.

The Justice Committee concluded that the SFRS and the SPA should hold meetings in public and publish their papers, while also recognising that certain occasions might necessitate consideration of items in private. Following stage 2, we have been happy to work with David McLetchie and John Lamont and can support an amendment that achieves that aim.

Accordingly, I welcome the amendments, whose sensible intention is to ensure that the SFRS and the SPA meet in public unless there is good reason not to and that both bodies make clear and publish the circumstances in which proceedings will be held in private. Again, I support amendments 19 and 26.

John Lamont: I am very pleased that the Scottish Government has accepted my amendments. I wish only that it had taken a more consensual approach to some of the other amendments that have been lodged.

Amendment 19 agreed to.
Amendment 57 moved—[Jenny Marra].

The Presiding Officer: The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Claudia (South Scotland) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, lain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)

Against
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Parker, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Amendment 58 moved—[Lewis Macdonald].

The Presiding Officer: The result of the division is: For 42, Against 78, Abstentions 0.

Amendment 57 disagreed to.

The Presiding Officer: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bia, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (Highlands and Islands) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Ayrshire South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dunfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrik, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Edinburgh Central) (SNP)
McKinley, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)

The Presiding Officer: The result of the division is: For 42, Against 78, Abstentions 0.

Amendment 57 disagreed to.

Amendment 58 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Bia, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Gavin (Lothian) (Con)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (Highlands and Islands) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Ayrshire South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Fergusson, Alex (Galloway and West Dunfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrik, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Edinburgh Central) (SNP)
McKinley, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stewart, David (Highlands and Islands) (Lab)
Amendment 59 would put the overarching ethos—

The Presiding Officer: The result of the division is: For 38, Against 82, Abstentions 0.

Amendment 58 disagreed to.

Amendment 20 moved—[Roseanna Cunningham]—and agreed to.

Before section 100

The Presiding Officer: Group 16 is on the functions of the SFRS. Amendment 59, in the name of Jenny Marra, is the only amendment in the group.

Jenny Marra: Amendment 59 seeks to amend the Fire (Scotland) Act 2005 so that the functions of the fire service will include, but not be limited to, saving life, rendering humanitarian services and protecting property. The amendment reflects a modern approach to the fire and rescue service, which has expanded to take on a wider role within our communities. Now, more than ever, the public rely on the fire service to perform a wider range of duties, and the service is frequently the first port of call for a range of emergency and rescue situations. I believe that that is not reflected as well as it ought to be in current legislation.

Amendment 59 would put the overarching ethos of the service at the heart of its functions. It would mean that the bill would better reflect the functions that the fire service undertakes. It would strengthen the scrutiny of the service and fine tune its priorities. Furthermore, by agreeing to the amendment we would afford the service greater scope to claim the resources that are necessary to undertake those functions. Those would all be positive outcomes from amendment 59, and I urge other parties to support it.

I move amendment 59.

Roseanna Cunningham: An amendment in exactly the same terms was lodged at stage 2 and rejected by the Justice Committee. The Government is well aware that, for genuine reasons, certain stakeholders would like to see the general functions of the SFRS on the face of the bill, along the lines proposed by Ms Marra. However, we are not convinced that that is either necessary or desirable. The Justice Committee supported that view in its stage 1 report and at stage 2, as did the Chief Inspector of Fire and Rescue Authorities in his written evidence.

The Government recognises and values the wide prevention and response roles that fire and rescue services in Scotland have developed, but we consider that they are fully covered by the existing legislation. The principal fire and rescue functions are set out in the Fire (Scotland) Act 2005 and the Fire (Additional Function) (Scotland) Order 2005. The 2005 act provides the flexibility to confer additional functions by further additional functions orders. It also sets out ancillary fire and rescue functions, including a power for the SFRS to prepare for other eventualities and take action that it considers appropriate to respond to them. That structure, together with the fire and rescue framework, provides flexibility to adjust or expand on the functions in future, without the need for further primary legislation. The new framework will also include a new purpose for the SFRS with a clear focus on prevention and community safety, which the Fire Brigades Union and the SFRS will have the opportunity to input to. Therefore, I do not consider that amendment 59 is necessary.

Amendment 59 could have unintended consequences, as its scope is extremely wide. It would place no limitation on the functions, and it would impose duties on the SFRS to save lives, protect property, and render humanitarian services across Scotland in all circumstances. I do not think that that is reasonable or achievable, so I cannot support amendment 59.

The Presiding Officer: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.
The Presiding Officer: The result of the division is: For 42, Against 78, Abstentions 0.

Amendment 59 disagreed to.

Section 109—Assistance

Amendment 60 not moved.

Section 110—Delegation

Amendment 61 not moved.

Section 113—Local fire and rescue plans

Amendment 62 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.
The Presiding Officer: The result of the division is: For 56, Against 64, Abstentions 0.

Amendment 62 disagreed to.

Amendment 63 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Finlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Rhiannon (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Etrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Marr, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glengow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham North) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gi (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheehouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
Amendment 63 disagreed to.

Amendment 64 moved—[Lewis Macdonald]—and agreed to.

Amendment 65 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 65 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adams, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Glasgow) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)

Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeenshire) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 56, Against 63, Abstentions 0.

Amendment 65 disagreed to.

Section 114—Annual report

The Presiding Officer: Group 17 is on the SFRS annual report. Amendment 66, in the name of Lewis Macdonald, is the only amendment in the group.

Lewis Macdonald: We return yet again to the central debate on the bill, which is how best to secure accountability and transparency in the new services. Amendment 66 deals with the annual report of the Scottish fire and rescue service, which is to be published and laid before Parliament.

At present, the bill states that the report should measure the performance of the service against its
framework document and strategic plan, but it requires little specific information beyond that. Amendment 66 seeks to impose a duty on the fire and rescue service to report each year on the number of staff in the organisation. That should not cause any particular difficulty either for the new service or for its senior officer, or indeed for ministers. Such information might routinely appear in the annual report in any case. Staffing levels are certainly of interest to members of the Scottish Parliament and to our constituents, and they are not something that any well-run public service would wish to hide.

Imposing a statutory requirement simply guarantees that that information will be available. It also means that representatives of fire and rescue service staff, such as the Fire Brigades Union, will be able to see directly the impact on their members of changes in the way that the service is run, both in the long term and from year to year.

Many people within and outwith the service want to know what the Government's future plans may be. If members are able to support that requirement, they will provide some comfort to those across the public services who fear the risk of contracting out that may follow the bill's passage. For that reason, I hope that members will support the amendment.

I move amendment 66.

Roseanna Cunningham: I fear that I will disappoint Lewis Macdonald once again. I am not persuaded that the bill should make provision for the SFRS annual report to include details of average staffing numbers for the reporting year as proposed in amendment 66.

Hanzala Malik (Glasgow) (Lab): Will the minister take an intervention?

Roseanna Cunningham: If the member will let me get beyond my first paragraph.

The average number of staff takes no account of the many different roles that staff play or the differences between whole-time, retained and volunteer firefighters and the range of duties that are carried out by other staff. It is clear that the average number of SFRS staff is meaningless and that reporting it would not improve transparency.

Hanzala Malik: To assist the minister, I understand that, under the equalities legislation, all employers must produce a report that demonstrates figures for equality in terms of gender and so on. If that is the case, the legislation would surely accommodate such a requirement.

Roseanna Cunningham: The information that the report contains will include a wide range of figures, and I am sure that it will not be beyond the average individual to tot up and work out what the average number might be, but that is not a particularly useful figure in itself.

Ministers, fire and rescue stakeholders and Scotland’s communities want a service that is focused on outcomes, not inputs. The SFRS annual report should tell us how the service has used its resources, including that most valuable of resources, its people—all of them—to deliver improved outcomes for the people and communities of Scotland.

I cannot support amendment 66, and I ask Lewis Macdonald not to press it.

Lewis Macdonald: As the minister correctly forecast, I am disappointed with her response. I hear what she says, and it is true that an average figure for staffing numbers in the course of a year is only one fairly simple measure. However, a statutory requirement to provide that measure would encourage the fire and rescue service to provide more detailed information on the different roles and the different types of staff involved, which would be useful.

The minister is right to say that the general public are more interested in outcomes than inputs. However, if that is code for saying that people want their fires fought and do not care who fights them, the minister is mistaken. People are looking for public services that secure their objectives in an appropriate way that is recognised as such by others in the public services.

We are talking about a situation in which the risk of contracting out is very real. It has been discussed, and we have heard about it in relation to the police service in today's debate. It is reasonable and understandable that people in the fire service want some reassurance. Amendment 66 contains a very modest measure that is designed to enable people to get some reassurance, and I will certainly press it.

The Presiding Officer: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)

Against
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)


Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, James (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahan, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Kevin (Blackmarns and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinson, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 55, Against 64, Abstentions 0.

Amendment 66 disagreed to.

Section 118A—Membership of SFRS: transitory provision

Amendment 21 moved—[Roseanna Cunningham].

Amendment 21A moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 21A be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
The Presiding Officer: The result of the division is: For 56, Against 64, Abstentions 0.

Amendment 21A disagreed to.

Amendment 21 agreed to.

Amendment 22 moved—[Roseanna Cunningham]—and agreed to.

Before section 120

Amendment 67 moved—[John Finnie].

The Presiding Officer: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clydebank and Milngavie) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Allan (Balloch and璧nnoch) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAipil, Kenney (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeen West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire West) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Stewart, John (Central Scotland) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 56, Against 64, Abstentions 0.

Amendment 21A disagreed to.

Amendment 21 agreed to.

Amendment 22 moved—[Roseanna Cunningham]—and agreed to.

Before section 120

Amendment 67 moved—[John Finnie].
Amendment 67 agreed to.

Section 124—Commencement
Amendment 23 moved—[Roseanna Cunningham]—and agreed to.

Schedule 1—The Scottish Police Authority
Amendments 24 and 25 moved—[Roseanna Cunningham]—and agreed to.

Amendment 68 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)

Against

McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McMillan, Stuart (West Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
Beamish, Claudia (South Scotland) (SNP)
Bibby, Neil (West Scotland) (SNP)
Boyack, Sarah (Lothian) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (SNP)
Dugdale, Kezia (Lothian) (SNP)
Eddie, Helen (Cawdenbeath) (SNP)
Fee, Mary (West Scotland) (SNP)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (SNP)
Findlay, Neil (Lothian) (SNP)
Grant, Rhoda (Highlands and Islands) (SNP)
Gray, lain (East Lothian) (SNP)
Griffith, Mark (Central Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (SNP)
Hum, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (LD)
Lamont, Johann (Glasgow Pollok) (SNP)
Macdonald, Lewis (North East Scotland) (SNP)
McIntosh, Ken (Eastwood) (SNP)
Malik, Hanzala (Glasgow) (SNP)
Marra, Jenny (North East Scotland) (SNP)
Martin, Paul (Glasgow Provan) (SNP)
McCulloch, Margaret (Central Scotland) (SNP)
McInnes, Alison (North East Scotland) (LD)
McMahon, Siobhan (Central Scotland) (SNP)
McMahon, Michael (Uddingston and Bellshill) (SNP)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (SNP)
McKellen, Margaret (Central Scotland) (SNP)
McNeil, Duncan (Greenock and Inverclyde) (SNP)
McTaggart, Anne (Glasgow) (Lab)
Mason, Stewart (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
Mckelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McMillan, Neil (South Scotland) (Con)
McNeil, Duncan (Greenock and Inverclyde) (SNP)
McMillan, Stuart (West Scotland) (SNP)
McMillan, Neil (East Kilbride) (SNP)
Paisley, Sirew (Glasgow) (SNP)
Paisley, Sirew (Glasgow) (SNP)
Park, John (Mid Scotland and Fife) (LD)
Pearson, Graeme (South Scotland) (SNP)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Clydebank and Chryston) (Lab)
Stuart, James (Highlands and Islands) (LD)
Stewart, Brian (Mid Scotland and Fife) (SNP)
Stewart, Kevin (Aberdeenshire West) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinson, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Aviemore) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 41, Against 77, Abstentions 0.

Amendment 68 disagreed to.

Amendment 3 moved—[Alison McInnes].

15:45

The Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (South of Scotland) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
Mclain, Joan (South Scotland) (SNP)
McGhee, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 55, Against 64, Abstentions 0.

Amendment 3 disagreed to.

Amendment 69 moved—[John Lamont].

The Presiding Officer: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Lab)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, Jackson (Midlothian) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Edinburgh, Leith Walk, and South Leith) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scalapino, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Alisaught (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Edie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (North East Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmord, Alex (Aberdeen North) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swiny, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 55, Against 63, Abstentions 0.

Amendment 69 disagreed to.

Amendment 70 moved—[Jenny Marra].

The Presiding Officer: The question is, that amendment 70 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
Mcculloch, Margaret (Central Scotland) (Lab)
Mcdougall, Margaret (West Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahan, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scott, Tavish (Shetland Islands) (LD)
Pell; Porteous, Ross (Edinburgh) (SNP)
Pollock, Alistair (Glasgow) (SNP)
Price, Adam (Banffshire and Buchan) (SNP)
Quinn, Stephen (Aberdeen) (SNP)
Ritchie, Ian (Banff and Buchan) (SNP)
Shirriff, Allan (Glasgow) (SNP)
Smith, Liz (Mid Scotland and Fife) (SNP)
Smith, Drew (Glasgow) (Lab)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr. Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Browne, Kevin (Lothian) (Con)
Brown, Gavin (Lothian) (Con)
Browne, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Carlaw, Jackson (West Scotland) (Con)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Davidson, Ruth (Glasgow) (Con)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gibson, Kenneth (Cunningham North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Goldie, Annabel (West Scotland) (Con)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Edinburgh Western) (SNP)
L Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McKevie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeen North) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Smith, Liz (Mid Scotland and Fife) (Con)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelerhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 42, Against 78, Abstentions 0.

Amendment 70 disagreed to.

Amendment 71 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (LD)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Siobhan (Central Scotland) (SNP)
McMahon, Michael (Glasgow) (SNP)
McInnes, Alison (North East Scotland) (LD)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McNeil, Siobhan (Central Scotland) (Lab)
McNeice, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (SNP)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (SNP)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allen, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 55, Against 64, Abstentions 0.
Amendment 71 disagreed to.
Amendment 72 moved—[Lewis Macdonald].
The Presiding Officer: The question is, that amendment 72 be agreed to. Are we agreed?

Members: No.
The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, Kevin (Aberdeen Central) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Dundee Kirkton) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 38, Against 82, Abstentions 0.

Amendment 72 disagreed to.

Amendment 26 moved—[John Lamont] and agreed to.

Amendment 73 moved—[Lewis Macdonald].

The Presiding Officer: The question is, that amendment 73 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (Mid Scotland and Fife) (SNP)
Hume, Jim (South Scotland) (LD)
Hyslop, Fiona (Linthgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Lochhead, Richard (Dundee City West) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Steward (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Paterson, Gil (Clydebank and Milngavie) (SNP)
Rennie, Willie (Mid Scotland and Fife) (LD)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, Kevin (Aberdeen Central) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Dundee Kirkton) (SNP)
Urguhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigger, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
Meehan, Sheila (South Scotland) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Mason, John (Glasgow Shettleston) (SNP)
MacAskill, Kenny (Edinburgh Central) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thomson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
Wheelhouse, Paul (South Scotland) (SNP)
White, Sandra (Glasgow Kelvin) (SNP)
Wilson, John (Central Scotland) (SNP)
Yousaf, Humza (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 55, Against 63, Abstentions 0.

Amendment 73 disagreed to.

After schedule 3

Amendment 4 not moved.

Schedule 3A—Period before establishment of Police Service

Amendment 27 moved—[Kenny MacAskill]—and agreed to.

Schedule 4—Transfer of constables, staff and property etc

The Presiding Officer: Group 18 is on limitation on mobility of transferred constables. Amendment 74, in the name of John Lamont, is grouped with amendments 75 to 77.

John Lamont: Schedule 4 to the bill concerns the transfer of constables, staff and property following the establishment of a single police force. Paragraph 9(2) limits the transfer of constables to another area of Scotland as constables will no longer be employed by their regional police force but by the Scotland-wide single force. It says that constables may not be transferred if such a move "would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist."

However, paragraph 9(4) states that the limitation ceases to apply in three cases, which are

"if, on or after the appointed day, the constable—
(a) is or becomes a senior officer of the Police Service,
(b) is promoted to a higher rank,
(c) gives the chief constable written consent to the lifting of the limitation imposed by sub-paragraph (2)."

The Scottish Police Federation has expressed concern about that provision because it would allow the transfer of officers anywhere in Scotland on promotion to a higher rank. The SPF argues that the provision could damage local policing and act as a disincentive to new recruits due to the disruption that can be caused by relocation. That condition was not included when the previous amalgamations took place in 1975.

The Scottish Conservatives believe that it is appropriate to allow the transfer to other parts of Scotland of constables who seek promotion. As with other professionals, constables should be given the choice to relocate in search of promotion. However, the current wording of paragraph 9(4) of schedule 4 appears to allow the relocation of promoted constables at any future point following promotion. In particular, the use of the term “ceases to apply” appears to permit transfers to any part of Scotland at any time if a constable is promoted after the establishment of the single police force. I hope that that is not the intention but, if it is, it would be very disruptive to employees of the new single force, who would be subject to transfer to any part of Scotland at any time following a promotion.

My amendment 74 seeks to clarify the situation and would replace “ceases to apply” with “does not apply”. I also seek to reword paragraph 9(4)(b) to clarify that a constable can be transferred only at the point of promotion and not at any future date.

We lodged similar amendments at stage 2, and have lodged them again because we feel that, at that stage, the Scottish Government did not fully appreciate the policy intention behind them. At stage 2, the cabinet secretary said that the amendments

"would narrow the exception in paragraph 9(4) relating to promotion so that the provision would apply only where the requirement to move outwith their home force area was a direct consequence of the promotion. The effect would be that promoted constables would retain the right to stay in their home force area unless the promotion itself entailed a move outwith the area.”—[Official Report, Justice Committee, 12 June 2012; c 1462.]

However, the current wording would appear to give a free hand to the Scottish police authority to move a constable anywhere in Scotland at any future point simply because he or she was promoted following the establishment of the single police force. We argue that it is not acceptable to put policemen and policewomen in that position.

I move amendment 74.

Lewis Macdonald: Here is a final opportunity for ministers to show that they are willing to take on board amendments from other parties to avoid adverse and, I presume, at least in part unintended consequences of the way in which the bill has been drafted. Police officers understandably value the protection that they enjoy from being required to move from one force area to another. Of course, that protection in its current form will cease to have meaning when the current forces cease to exist. As has been said, ministers have preserved that protection, but not for officers who are promoted, who can be required to move home as part of their new appointment.

As John Lamont described, the problem is that the bill is worded in such a way that officers will lose the protection altogether after promotion, as well as at the point of promotion. In other words, the protection from being required to move house will soon be phased out in practice. Perhaps that is what ministers intend. If it is not what they intend, they have two choices: they can reject the amendments and ask police officers to take their word for it that, in practice, the protection will remain other than at the point of promotion; or they can offer real comfort by accepting the amendments, which are modest in scope and which, taken together, have precise and limited effects.

We proposed a more sweeping amendment at stage 2, but we have not pursued that, in the hope that ministers might accept Mr Lamont’s more limited proposed changes. It is now up to Mr MacAskill to choose whether to take the same approach as us and accept the amendments or to stick with the original wording in the bill, regardless of its unintended consequences.

Alison McInnes: The requirement to relocate constables is one of the many practical problems that the bill will introduce without providing an adequate solution. In any size of force, there must be flexibility to relocate constables but, in a force area the size of Scotland, there must be reasonable restrictions to protect officers from being asked to move unreasonable distances. The current provisions do not give enough safeguards. John Lamont’s amendments are a reasonable compromise, as they allow flexibility, balanced with a regard for family life, so we should support them.

Kenny MacAskill: I recognise the need to balance the rights of individual officers with the need to ensure that the police service has the flexibility to organise itself and deploy resources to best deliver policing in all Scotland’s communities. Paragraph 9 of schedule 4 provides safeguards for officers who transfer to the service. It provides that an officer
“must not be assigned duties which ... would necessitate that constable moving home to a place”

that would have been in another force area in the current eight-force structure. Paragraph 9(4) provides that the safeguard applies until such a time as the officer

“is or becomes a senior officer”,

is promoted, or consents

“to the lifting of the limitation”.

Even when the exceptions apply, I expect the police service to take a sensible, measured and considered approach to resourcing, not least because of the cost of relocation.

I am not convinced that the case has been made since we last debated the matter at stage 2. I remain convinced that the bill’s provisions strike an appropriate balance between the rights of individual officers and the new service’s need for flexibility. I therefore cannot support the amendments.

16:00

John Lamont: I remain unconvinced that the Government has heard the arguments made by the Labour Party, the Conservative Party and the Lib Dems, and, indeed, the Scottish Police Federation. There is a real concern among police officers about the issue, and it is unfortunate that the Government has failed to take heed of that.

The Deputy Presiding Officer (John Scott):

The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davies, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Edie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Ferguson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Angela (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)

Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
Mclnnnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries and Galloway) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret ( Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie ( Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eddie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth ( Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Ken (Edinburgh Eastern) (SNP)
Macdonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Amendment 74 disagreed to.

Amendment 75 moved—[John Lamont].

The Deputy Presiding Officer: The question is, that amendment 75 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Eastwood) (Con)
Macdonald, Lewis (North East Scotland) (Lab)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)

Against

Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (SNP)

The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.
Amendment 75 disagreed to.

Amendment 76 moved—[John Lamont].

The Deputy Presiding Officer: The question is, that amendment 76 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McMahon, Siobhan (Central Scotland) (Lab)
McNeil, Duncan (Greenock and Inverclyde) (Lab)

McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfrieshire) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunningham South) (SNP)
Campbell, Alieen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Forthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabian, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Graham, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
that amendment 77 be agreed to. Are we agreed?

Amendment 77 moved—[John Lamont].

The Deputy Presiding Officer: The question is, that amendment 77 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brown, Gavin (Lothian) (Con)
Carlaw, Jackson (West Scotland) (Con)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Davidson, Ruth (Glasgow) (Con)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Fee, Mary (West Scotland) (Lab)
Fergusson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Fergusson, Alex (Galloway and West Dumfries) (Con)
Findlay, Neil (Lothian) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Goldie, Annabel (West Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Renfrewshire South) (Lab)
Hume, Jim (South Scotland) (LD)
Johnstone, Alex (North East Scotland) (Con)
Johnstone, Alison (Lothian) (Green)
Kelly, James (Rutherglen) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
Macintosh, Ken (Eastwood) (Lab)
Malik, Hanzala (Glasgow) (Lab)
Marra, Jenny (North East Scotland) (Lab)
Martin, Paul (Glasgow Provan) (Lab)
McCulloch, Margaret (Central Scotland) (Lab)
McDougall, Margaret (West Scotland) (Lab)
McGrigor, Jamie (Highlands and Islands) (Con)
McInnes, Alison (North East Scotland) (LD)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McManus, Siobhan (Central Scotland) (Lab)
McNeill, Duncan (Greenock and Inverclyde) (Lab)
McTaggart, Anne (Glasgow) (Lab)
Milne, Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfries) (Lab)
Park, John (Mid Scotland and Fife) (Lab)
Pearson, Graeme (South Scotland) (Lab)
Pentland, John (Motherwell and Wishaw) (Lab)
Rennie, Willie (Mid Scotland and Fife) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland Islands) (LD)
Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
Smith, Drew (Glasgow) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Liz (Mid Scotland and Fife) (Con)
Stewart, David (Highlands and Islands) (Lab)

Against

Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
AlIan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
MacDonald, Angus (Falkirk East) (SNP)
MacDonald, Gordon (Edinburgh Pentlands) (SNP)
Mackay, Derek (Renfrewshire North and West) (SNP)
MacKenzie, Mike (Highlands and Islands) (SNP)
Mason, John (Glasgow Shettleston) (SNP)
Matheson, Michael (Falkirk West) (SNP)
Maxwell, Stewart (West Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDonald, Mark (North East Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
McLeod, Aileen (South Scotland) (SNP)
McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
McMillan, Stuart (West Scotland) (SNP)
Paterson, Gill (Clydebank and Milngavie) (SNP)
Robertson, Dennis (Aberdeenshire West) (SNP)
Robison, Shona (Dundee City East) (SNP)
Russell, Michael (Argyll and Bute) (SNP)
Salmond, Alex (Aberdeenshire East) (SNP)
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)
Sturgeon, Nicola (Glasgow Southside) (SNP)
Swinney, John (Perthshire North) (SNP)
Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
Torrance, David (Kirkcaldy) (SNP)
Urquhart, Jean (Highlands and Islands) (SNP)
The Deputy Presiding Officer: The result of the division is: For 54, Against 63, Abstentions 0.

Amendment 77 disagreed to.

Amendments 28 to 32 moved—[Kenny MacAskill]—and agreed to.

Schedule 7—Repeals

Amendments 33 and 34 moved—[Kenny MacAskill]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Police and Fire Reform (Scotland) Bill

The Deputy Presiding Officer (John Scott):

The next item of business is a debate on motion S4M-03407, in the name of Kenny MacAskill, on the Police and Fire Reform (Scotland) Bill. I call the cabinet secretary to speak to and move the motion.

16:06

The Cabinet Secretary for Justice (Kenny MacAskill):

I am pleased to open the stage 3 debate on the Police and Fire Reform (Scotland) Bill. We have come a very long way in a very short time, and I thank everyone who has helped to shape this important bill. The bill has benefited from the detailed and careful scrutiny of four parliamentary committees. I thank the Parliament, the conveners and members of those committees—particularly the Justice Committee—and their clerks for their positive contributions.

In addition to consulting formally twice, we have worked closely with key stakeholders, including the senior management of the services, the Scottish Police Federation, the Association of Scottish Police Superintendents and the Scottish Chief Police Officers Staff Association. Between them, they represent all ranks in the service. We also worked closely with Unison, the Fire Brigades Union, the Association of Principal Fire Officers Scotland, the Retained Firefighters Union and local government. Indeed, members of the FBU and Unison and the Police Complaints Commissioner for Scotland have been or are present in the chamber today. I value their wisdom and thank them for all their positive engagement and continued commitment to reform. Their continued leadership and commitment will be crucial in the months ahead. We have listened and, where it was right to do so, we have amended the bill.

Willie Rennie (Mid Scotland and Fife) (LD):

The cabinet secretary has rightly commended those organisations for their contributions to the bill process. Why did he ignore their opposition to the bill?

Kenny MacAskill: I do not understand the member’s statement given that, as has been pointed out, the FBU supported the bill. In addition, the Scottish Police Federation is now full-square behind it, the Association of Scottish Police Superintendents has always championed it and the Association of Chief Police Officers in Scotland was divided between senior officers who wanted it and senior officers who did not.
Since 2007, we have made significant and sustained progress on building a safer and stronger Scotland. Our police and fire and rescue services are performing well. The number of fire deaths is almost 50 per cent lower than a decade ago, and figures that were published yesterday show that the number of recorded crimes continues to fall and is now at a 37-year low. Scotland is a safer place. Non-sexual violent crimes are now at their lowest level since 1982—a 30-year low—and the clear-up rate now stands at 75 per cent. The number of crimes of handling an offensive weapon has decreased by 10 per cent since 2010-11, and there has been a 44 per cent decrease since 2006-07.

Alison McInnes (North East Scotland) (LD): Why does the cabinet secretary want to unravel all that good work and put at risk all those improvements? The improvements that we have seen in the crime statistics are surely based on good, sound local knowledge and good connections with communities.

Kenny MacAskill: Because, as we successfully put to the electorate last year, the alternative is to follow what the Liberal Democrats are doing as part of the coalition Government south of the border, which is to get rid of almost as many police officers as we have serving in Scotland—a record number—and, more important, to attack the terms and conditions of those brave officers who serve. We will not do that. We will maintain a visible police presence in our communities, and honour and adhere to the terms and conditions of the service that they have given without attacking them through Winsor. The men and women of those services would be right to be proud of that record. However, as I have just said, those achievements are under threat from the unprecedented cuts that have been imposed by Westminster. We need to make savings now to protect and improve front-line services.

However, reform is not just about saving money. We can make a virtue out of necessity. We have a once-in-a-generation opportunity to create the sort of world-class, public-focused services that we want for Scotland. Most agree with us that restructuring to create single services is the best way to safeguard and improve services. Single services will keep all Scotland’s communities safe and strong by creating more equal access to specialist support and national capacity, such as counterterror investigation, murder investigation, firearms and flood rescue, and strengthening the connection between the services and communities.

The bill provides a blueprint for modern police and fire and rescue services fit to meet the needs of an ambitious 21st century Scotland. It sets out, as never before in legislation, a detailed framework for the new services, modernising their governance to provide an enhanced focus on delivery of local services. It defines, for the first time, the clear roles and responsibilities of the key players, including unprecedented opportunities for Parliament to scrutinise the services regularly and systematically.

I share Graeme Pearson’s ambition for proactive and focused parliamentary scrutiny of policing, if not his suggested approach. That is why I supported John Finnie’s amendment this morning to put beyond doubt that the Parliament can fully scrutinise all the provisions in the bill—fire and rescue as well as policing. We will also be using our influence to establish a dedicated parliamentary committee to carry out that role.

The bill has benefited enormously from the input of stakeholders and the Parliament. For example, at stage 1 we were told that key appointments needed to be made as soon as possible to meet the start date of 1 April 2013. Therefore, in addition to amendments at stage 2, I lodged amendments at stage 3 to enable the early commencement of key provisions to facilitate the early appointment of chief officers, board chairs and members.

As I have made clear, I do not anticipate that the chair of the SPA will take many decisions, aside from those required to facilitate the early appointment of the chief constable in advance of other board members being appointed. Stakeholders, and the Justice Committee, told us that the boards may be too small to operate effectively. Hence I lodged amendments at stage 3 to increase their size to between 11 and 15 members.

At stage 2, I supported John Finnie’s important amendment to place human rights and equal respect at the heart of the oath that is taken by constables. Following concerns raised by David McLetchie and Graeme Pearson on the transparency of the SPA and the SFRS, this morning I supported amendments to place both under a duty to meet in public and publish agendas, minutes and papers.

Following extensive discussions, the Treasury decided that the SPA and the SFRS should not be able to recover VAT, which means that they will be the only police and fire authorities in the UK unable to recover VAT. That decision is in stark contrast to recent ones taken in relation to police commissioners in England and Wales and academy schools in England. It ignores the fact that the SPA will continue to be able to receive funding from Scottish local authorities to pay the costs of agreed local priorities. The draft amendments that I shared with the Treasury and members of the Justice Committee would have put that beyond doubt. We made every effort to reach
agreement with the Treasury and I am bitterly disappointed that it has not only rejected our proposals but failed to come up with any solutions.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I asked this question earlier in the stage 3 proceedings, but I will ask it again. Can the cabinet secretary confirm that the Treasury set out a number of proposals that would have dealt with the VAT issue but which the Scottish Government has chosen to ignore? I do not care about the proposals that the Scottish Government put to the Treasury; I want to know whether the Treasury made proposals that would have dealt with the point adequately.

Kenny MacAskill: No, it did not. We put forward matters, as suggested by the Treasury. We proposed amendments. We asked it to say what was necessary and it refused to do so. This Government did everything that it could to meet the criteria that were specified by the Treasury. We put forward amendments and it refused to accept them. Further, it was not prepared to make any suggestions. It is quite clear that we will be able to change the situation only when we have some control over it ourselves.

John Mason (Glasgow Shettleston) (SNP): Am I right in understanding that the Scotland Act 1998 says that, if we were to do something that would impose extra costs on the Treasury, we would have to refund that money to the Treasury and that, therefore, logically, if we do something that benefits the Treasury, it should refund us?

Kenny MacAskill: Well, we might like to think so, but, unfortunately, that is not the position. Unless the Treasury south of the border is prepared to amend the situation with regard to VAT, which it can do, we will have to have constitutional change that will give the Scottish Parliament the power to do so.

Even with the requirement to pay VAT, the single services will deliver estimated savings of £1.7 billion over 15 years. However, the people of Scotland are being penalised twice: first by the Westminster-imposed cuts; and secondly by the £25 million a year VAT tax grab by the Exchequer. That is manifestly unfair and unwarranted.

The timescale for reform is challenging. Passing the bill is just one step. We are working closely with the services and all the staff associations and unions to achieve a start date of 1 April 2013. We will need strong leaders to lead the services into the future. We are working hard to ensure that key appointments are made as soon as possible. We have already advertised for the chief fire officer and adverts for the SPA and SFRS board chairs and members, and for the chief constable, will be issued in July. I am confident that those posts will attract a strong calibre of candidate.

This is a necessary and important piece of legislation. The reforms that are set out in the bill are necessary to safeguard and improve the front-line services on which communities depend and which are outstanding, but we face unprecedented cuts.

I move,

That the Parliament agrees that the Police and Fire Reform (Scotland) Bill be passed.

16:17

Lewis Macdonald (North East Scotland) (Lab): Our starting point in this debate has been that we want there to be more efficient and effective public services, and that creating single services for police and fire and rescue could help us to achieve that. Indeed, Labour was arguing for a single police force and a single fire service when Scottish National Party ministers were still making their minds up, because we believed that resources could and should be used to strengthen service delivery rather than to maintain existing management structures.

We were also clear about two other requirements of police and fire reform. The first is that public confidence in those services is vital, and that public confidence is based first and foremost on local accountability for local services—that is a strength of the current arrangements, in spite of what we have heard today, and something that should have been at the heart of the bill. The second is that, as we said in our manifesto last year, police officers should not be taken off the front line to cover the duties that should be carried out by police staff. That, too, should have been a guiding principle of police and fire reform.

The bill falls short on both counts. It delivers single services, but it does not provide adequate accountability locally or nationally, and it is being delivered at the expense of dedicated civilian staff in the police service in particular.

We have debated accountability from a number of angles today. Although we have welcomed some concessions, we have, in the main, been disappointed by the Government's response—indeed, the tone of some of its rejections has been more disappointing than the rejections themselves.

We have proposed that councils should have greater statutory rights in dealing with police and fire services at a local level. Preparing a plan is one thing, but funding and staffing are what give real authority and accountability, and statutory rights for councils to access information on budgets and jobs are still resisted by ministers.
We have proposed that councillors should be represented on the new national boards on a statutory and permanent basis, which would maintain a link between local and national strategies and decision making not just for the transitional period, as ministers intend, but over the longer term. Those proposals have also been rejected.

We have supported a proposal to have a parliamentary policing commission to improve accountability at a national level. Many members across the parties will be disappointed that that proposal from Graeme Pearson was not welcomed by ministers, especially given that the Government has had some months to consider it but discovered its allegedly insuperable difficulties only in the past few days.

Alongside accountability goes transparency. Some small steps have been taken on that today, but there is a long way to go to achieve the appropriate levels of openness in the management of the services. That can only become harder as knowledge and power are concentrated in fewer hands than ever before. Ministers have argued that the policing commission is unnecessary because of the powers available to Her Majesty’s inspectorate of constabulary. However, I discovered only this week that the inspectorate lacks access even to some basic information about how services are currently delivered. It could not tell me, because it does not know, how many police officers and how many civilians are currently employed in police call centres. That is only one example, but it illustrates that there is a real information deficit as we head into the era of single national services. The risk is that that deficit will only get worse.

That deficit also highlights our other key concern about the Government’s approach to this process of reform, namely the replacement of civilian staff in backroom jobs by warrant-holding police officers who should be out fighting crime. Even before the last election, the civilianisation of support roles that was taken forward by previous Governments was thrown into reverse. Reform Scotland had to use freedom of information powers to find out that, between 2007 and 2011, one full-time-equivalent police staff member’s job was cut for every new warrant-holding police officer post that was created, and that process has only accelerated since.

This is not about chief constables’ drivers, as the ministers might want us to believe, but about a range of support functions, from the highly skilled to the routine, which were previously transferred from police officers to civilian staff but which are now being transferred back. Kenny MacAskill has voiced his approval of using police officers to operate custody suites, and putting cops in call centres is another potential development, but more backroom bobbies is not what the SNP promised at the previous election and it is not what ministers should be doing in delivering the bill.

The threat to staff jobs does not come only from their jobs being given to police officers. The Scottish Government confirmed to Unison this week that the purpose of section 26(2)(b) is to allow private contractors to be appointed as police staff. The threat is that the moment the bill is out of the way and it becomes clear that the sums do not add up, contracting out or privatisation can be used to make further savings at the staff’s expense. Of course, the sums will not add up, which is the other fundamental flaw in the Government’s approach to the whole process.

Graeme Pearson was offered an explanation just the other day for the Government’s failure to publish a full business case, and we heard it again today. The Government has proceeded to this stage on the basis of outline business cases that are widely recognised as flawed and it seems to confuse a full business case on which decisions should be made with the kind of detailed plans that are needed to implement those decisions thereafter. The Government’s late flurry of special pleading to Treasury ministers is, frankly, embarrassing. The Government has known since 2007 that national bodies such as the Scottish Police Services Authority are liable to pay VAT, but it has done nothing about it. It has known since the start of the bill process that the same would happen with the new services, but it seems to have had no plan B or strategy for seeking a different outcome if Treasury ministers said no.

The so-called solution that the Government put to the Treasury was that the Government would require councils to contribute less than 1 per cent of total funding for the police and fire services, which is a proposal so lacking in credibility that the Government did not trouble to lodge it for debate today. If ministers had not been so keen to take control away from councils and to concentrate all powers at the centre, a solution might have been found. Instead, the new services will begin with a new tax liability amounting to some £26 million a year, which is hardly the best possible start.

The bill will deliver single services, but it will not deliver the savings, accountability and transparency that it might have done, and it comes at a cost in jobs for civilian staff, particularly in the police service. The challenge for the new services will be to continue to deliver for communities in spite of those fundamental flaws. The challenge for the Government, in contrast with some of what we have heard in the debate today, will be to work with others to address those flaws. If it does not do that, the challenge for the next Government will be to sort them out.
John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): I will focus on the single police force proposals. The fire service proposals are certainly less contentious and appear to be a sensible efficiency measure, although any restructuring of the fire service must retain a visible and effective firefighting presence. By making savings in that area, the bill will, I hope, protect front-line services.

The Scottish Conservatives support the reform of our police and fire services. Indeed, our manifesto last year contained a proposal for a single police force while the SNP remained committed only to reducing the number of police forces. A single police force could represent an opportunity to get rid of duplication in backroom functions such as human resource, information technology and administration functions, and, in turn, protect front-line policing. I am therefore pleased that the Scottish Government has come round to supporting a Scottish Conservative election manifesto commitment.

I am less pleased about how the Government has gone about implementing the policy. The bill is far from perfect. Despite the best efforts of the Opposition parties, it will not adequately protect local accountability or ensure that savings are delivered. The Scottish Conservatives support the idea of reform and a single police force, but that support has always been conditional on a number of factors.

Any reform must protect local accountability. Any restructuring must ensure that police services are accountable to local people and the communities that have a direct relationship with them, which they serve. Unfortunately, the bill is very quiet on how the single police force will work with local authorities; instead, the Government has invested a great deal of faith in its pathfinder projects. Only time will tell whether that was a good idea. We would have preferred to have seen real power delivered to local residents by the introduction of directly elected police commissioners. It is unfortunate that the Government has not accepted that proposal or a number of other amendments that the Scottish Conservatives and other Opposition parties proposed that would have provided clarity on local authority engagement with the single force and enhanced local accountability.

Additionally, the creation of a single force must deliver efficiency savings, and it is important that those savings are delivered alongside the protection of front-line services. The Scottish Conservatives, too, are committed to the maintenance of 1,000 additional front-line officers, whom we helped to secure during the previous session. That is all the more important given yesterday’s news that the number of crimes and offences committed in Scotland has risen this year. If the bill enables more money to be spent on front-line policing, it has to be welcomed.

We have heard a number of times in the chamber that a single police force could achieve £130 million-worth of savings within a year and a total saving of £1.7 billion over 15 years, but those figures are based on an outline business case that was produced in July 2011, before the Government had even decided to establish a single police force. We have already heard that Chief Constable Smith said that that document was “never intended by the police officers who were party to it, or by the consultants, to be a document that contained sufficient detail on which to base significant decisions about investment and savings.”—[Official Report, Justice Committee, 28 February 2012; c 971-2.]

We are still waiting for a full business case to be produced. It remains the Government’s position that that is a matter for the police and fire services. The consequence of that is that the Parliament has been forced to debate a critical piece of legislation without full figures on how much the single police force will save, which is unacceptable.

The cabinet secretary has made a bit of a song and dance about the VAT position throughout the passage of the bill. The reality is that, when the Scottish Government first set out the proposals, it had full knowledge that they would result in the loss of the VAT exemption; indeed, its own estimates of the impact of the reforms assume that loss. The United Kingdom Government has tried its best to work with the Scottish Government to make the proposals work and to allow the VAT exemption to be retained, but the Scottish Government has failed to engage. Indeed, the cabinet secretary’s letter to the Treasury minister in June talks about a failure “to offer suggested amendments that would meet your policy without undermining our whole programme of reform”.

The Deputy Presiding Officer (Elaine Smith): Mr Lamont, you must come to a conclusion.

John Lamont: That suggests that there were proposals and amendments but the cabinet secretary chose to ignore them.

The Scottish Conservatives sought to work with the Government to establish a single police force that was locally accountable and would deliver the savings. I am disappointed by the bill and by the Government’s failure to properly engage.

The Deputy Presiding Officer: We now come to the open debate. Time is very tight, so speeches should be of a maximum of four minutes.
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): In my view, from the back benches, we had an interesting and somewhat lively debate on some of the amendments, particularly those on local accountability, gender balance and the proposal for a Scottish policing commission. I have commented on those topics before in committee and in the chamber and will not reprise my remarks, except to say about the Scottish policing commission idea that I hope that the Parliament will move some way towards having a committee of some nature that is dedicated to holding the chief constable of Scotland to account. That issue is still to be looked into.

We must look at why we are here. We are here simply because we had regional reorganisation in 1975 that led us to have eight chief constables, eight constabularies and everything that goes with that. Since then, we have reorganised again and we now have 32 local authorities. They do not all have their own set-ups, but nevertheless the current position is an accident of history. As the cabinet secretary said, in these straitened times, one must make a virtue out of necessity, so it is quite a good time to look at reorganising the police in Scotland.

The purpose of the bill is modernisation, including a recognition that the fire and rescue service has to meet very different demands from those in the last century. Indeed, that is also true of the police. If we think back 50 or 60 years, I cannot think that we would be talking about things such as drug trafficking, people trafficking, serious organised crime, money laundering through environmental agencies and residential homes for the elderly, or international crimes such as internet crime and terrorism. We live in a changed world, and the police, the fire service, the ambulance service, hospitals and the national health service all have to work closely together, so it seems a good time for these national issues to be considered at a national level.

It makes sense to tighten up the administration, the strategy and the operational matters through a single, dynamic, accountable leadership in a chief constable for Scotland who is answerable to the SPA and to the Parliament both at large and, as I said, perhaps through a specific committee. Balanced against that, quite rightly, is the delivery of local policing, local priorities and local accountability. The public in Scotland rightly ask for and deserve both. Concerns were raised that portrayed the restructuring of police and fire services under a single chief constable and a single chief fire officer as centralisation, which is a pretty dirty word, and raised the spectre of political interference. I do not think that either of those concerns is worthy at this time.

I am satisfied that, with the checks and balances through the SPA and the SFRS board, through the Parliament and indeed through the fourth estate, the press, the chief constable will be watched, will act at arm’s length from Government at all times in the interests of his remit and will be held to account for delivery at a national level. At the local level, I am also satisfied. Sections 45 and 46 require local commanders to involve local authorities in setting priorities and objectives for the carrying out of police functions in each local authority area. Localism is paramount because, as we all know, the needs of the cities and of rural areas such as mine are very different.

I am short of time, so—

The Deputy Presiding Officer: You have 30 seconds.

Christine Grahame: We are 5 million-plus people. The bill seems to me to be a sensible and practical solution, and as for scrutiny, it is time that the Justice Committee was made to earn its keep.

Graeme Pearson (South Scotland) (Lab): I say to the previous speaker that I had hoped that the Justice Committee was already earning its keep, but we always want to work harder.

The purpose of the Police and Fire Reform (Scotland) Bill was set out in the financial memorandum, which made it clear that one of the main aspects related to the saving of money. At the beginning of the debates on the bill, it was indicated that those savings would amount to more than £100 million per annum, but the figure has been regulated down since then, hence the importance of the need for a full business case to give us some understanding of what we are trying to achieve, not only in terms of delivering a service, but in terms of how the financial picture plays out in the reality of government.

This is not solely about regulating and holding to account a chief constable; it is important that the board that will oversee that individual behaves in a manner acceptable to this Parliament and the people of Scotland. My previous experience of such boards in the Scottish Police Services Authority does not fill me with confidence that the future for the Scottish police authority will be markedly different. I seem to remember that at board meetings we were assured that VAT would be exempted in due course; indeed, the minutes of those meetings would show that such a decision had been well made and that we were just waiting for the exemption. It was a bit like waiting for Santa Claus at Christmas time; I stood at the
close, I watched the chimney but I never saw him arrive. The same goes for VAT.

I am pleased that the cabinet secretary has acknowledged my point about the threat of a Government abusing its oversight function. There is no doubt that good governance and oversight will be essential to a national police force’s management, and I am certain that the set-up of the proposed parliamentary committee to review the act’s operation will be of deep interest not only to me but to other MSPs.

The Scottish Labour Party has already declared its commitment to a single police force with a slimmed-down executive, a focus on street-level service delivery and democratic accountability fit for the 21st century. As has been said, the current arrangements, which are set out in the Police (Scotland) Act 1967, were designed for a completely different time. Not only has the internet changed the world, but mobile phones, international travel, migration and immigration have all affected the way in which police officers operate on our streets. Ensuring that accountability reflects that new reality should be the Parliament’s focus.

The Government now has the task of working out its priorities and putting in place the management and oversight of the police and fire services. The Parliament must ensure not only that all of that is in good health, but that it is all done in a good light, legally, ethically, morally and in our communities’ best interests. I will contribute as best I can to that endeavour and the deliberations that the cabinet secretary intends to have and I hope that, with good will, he delivers what we sought in the first place.

16:37

**John Finnie (Highlands and Islands) (SNP):** Collaborative working is the future of public services and this reform will not only ensure that, but protect and improve local services, despite financial cuts.

We have heard members talk about stopping duplication eight times over; in fact, it can be nine times over if we include the Scottish Crime and Drug Enforcement Agency and the Scottish Police College. This is not about cutting the front line; indeed, according to figures announced last week, the total number of police officers has gone up by 1,202 since 2007 to a record 17,436. There is no doubt that the visible police presence created by those numbers has brought about the lowest crime rate for 37 years.

**Graeme Pearson:** I hope that the member will acknowledge that the support staff who help police officers to deliver services are equally important and that the loss of 1,000 from their number is a concern.

**John Finnie:** Operational matters are for the chief constable, but I agree that the mix of specialisms that support staff provide is greatly appreciated.

As I was saying, those police officers have brought the crime rate to a 37-year low and the fact that there are 9,000 fewer victims is hugely important.

In the brief time that I have, I want to touch on other positive aspects of this reform: equal access to specialist support and national capacity. At the moment, we have a system of mutual aid, by which those who feel that they cannot deal with an issue within their boundary can call in assistance from elsewhere. For historical, personal and other reasons, there has been a reluctance for the system to be used, often because it is seen as a sign of escalation. As a result of this reform, there will be greater national capacity; a helicopter, for example, will belong not to one force but to everyone.

In evidence to the Justice Committee, Assistant Chief Constable Finlay addressed concerns about the seniority of the local commander and what that would mean with regard to access by referring to the system of tactical tasking, which is well understood in the police service.

A number of people have pooh-poohed the suggestion of giving more elected members a formal say. An example I have given, and unashamedly give again, is that of Orkney. Currently, two delegates go to Aberdeen every six weeks. In future, the entire council will be involved in liaison with the local police commander and the local senior fire officer, who they will scrutinise against a plan. There is an important role for better integration with community planning partnerships, an economy of effort and, indeed, a shared direction. That will strengthen the links between both those services and local communities.

An issue raised with me at one forum was the situation in which, historically, a chief constable had attended a meeting, whereas henceforth it may well be a chief superintendent. Of course, throughout Scotland a chief superintendent generally attends such meetings. As the Cabinet Secretary for Justice said, there is a key role for the superintendent rank. I note something that may not be readily understood by everyone: the comment about the role of the ASPS executive as the representative body, recognised as such by the Scottish Government, is a significant statement. I, too, convey thanks to Chief Superintendent David O’Connor for his constructive engagement throughout the process.
I do not know who Tavish Scott was listening to, but the SPF is full square behind this.

Tavish Scott (Shetland Islands) (LD): Will the member give way?

The Deputy Presiding Officer: The member is concluding.

John Finnie: I will perhaps give way later.

The Deputy Presiding Officer: You have 30 seconds left.

John Finnie: I would like to thank Calum Steele and John Duffy, along with the FBU. Both those individuals are aware of the contrast with England, in relation to 6,000 fewer officers, the Winsor review and the Con-Dem Government’s intention to reduce numbers by 20 per cent, offset by a better offer from Labour to reduce them by only 12 per cent.

Mobility was touched upon, and we must have good practice on that to ensure that no officer is disadvantaged in that respect. Given the time, I will finish there.

16:41

Alison McInnes (North East Scotland) (LD): I offer my thanks to the legislation team for their work over the course of the bill, and, of course, to the Justice Committee clerks, whose help has been invaluable. I also acknowledge the professionalism shown by our police forces and fire services throughout the debate. Led commendably by the Association of Chief Police Officers Scotland and the Chief Fire Officers Association Scotland, they have been charged with finding a way to implement the Government’s flawed vision for the future of our emergency services. Their objections to the Government’s plans were simply ignored, yet they have still dedicated themselves to making the best of this bad job. They have my utmost respect for that.

I have made it clear throughout the process that the Scottish Liberal Democrats do not support the bill. We cannot support the savaging of our outstanding local emergency services for little more than the sake of a ministerial power grab. We will vote no this evening, however futile a move that might be.

During stage 2 and stage 3 proceedings, the Labour, Conservative and Liberal Democrat parties lodged a combined total of 125 amendments to the bill. They aimed to improve accountability, strengthen the role of local authorities and create greater transparency. The Government rejected them all, except for five minor amendments.

I do not have much time, but I must talk about the issue at the core of this debate. Should our emergency services be run locally, guided by local elected representatives, or should they be run centrally, by people appointed by the cabinet secretary? I know which I prefer. At every step of the way, the cabinet secretary has sought to marginalise the legitimate concerns raised by others.

What of the things that we risk losing? A modern police officer’s role is about more than working to reduce crime. It is just as much about reducing the fear of crime and working in partnership with communities to make a real difference and improve quality of life for everyone. Our constables help at midnight football leagues, discuss concerns with community councils, and they talk with young drivers about staying safe on the roads. It is about officers of every rank instilling confidence, building up relationships and trust with local communities, and it is about the senior ranks keeping in day-to-day contact with our community planning partners: social services, court services, councils and health boards.

Our excellent emergency services’ successes over the past decades—the reduction in crime that the cabinet secretary spoke about, safer communities and fewer house fires—have been achieved because those services are funded, managed and delivered locally. They are accountable to local people, they are responsive to local needs and they can prioritise and adapt based on local circumstances.

The Government has tried to answer those concerns through the idea of local commanders and local policing plans, but it has consistently rejected measures put forward by opposition parties to give local authorities some control and some substantive input into those plans. Indeed, the Government’s announcement last week of the proposed area commands is further proof that it just does not get it.

Not only are the areas unwieldy, but they will serve to further remove local authorities from decision making on policing in their regions. For local voices to be heard, councils will have to go through a local commander, an area commander and the chief constable to the police authority. Not even this Government can spin that as being local accountability.

The Scottish Liberal Democrats are not against reforming our emergency services. We fully accept that there is a need to modernise and that there is a need to make greater efficiency savings. However, this bill and these reforms are not about those needs. They are about the Government’s centralisation agenda—about taking power away from local communities and putting it in the hands of ministers. Emergency services must and should be delivered locally. This bill is not just a backwards step—it is a destruction of the
community foundations that our police and fire and rescue services are built on.

16:45

Colin Keir (Edinburgh Western) (SNP): As others mentioned earlier, the situation is obvious. The slashing of the Scottish budget means that if we are to maintain the high standard of police and fire and rescue services that we provide, the services must be run differently.

We started this process from a position of strength in Scotland. Both the police and fire services—at management and at union level—accepted the need for change. It has been clear in the Justice Committee meetings that the engagement with everyone involved has been first class.

Consider the difference between the situation down in England and the situation here in Scotland. In England they will be losing about 16,000 police officers and there is no confidence in the leadership of the Tories and the Liberal Democrats. Here in Scotland, the Government has a good relationship with the professionals, as represented by bodies such as the ASPS, whose contributions have been invaluable in this process. In Scotland we have record police numbers and the lowest crime figures in 37 years, as John Finnie pointed out. I know which side of the border I prefer to be on.

Moving to a single police authority also provides an opportunity for improvement, despite the cuts. Many of the Justice Committee discussions centred on the composition of the national board of governance and on local accountability. I am glad that the Government took on board the concerns that were expressed and agreed to increase the number of members of the national board to somewhere between 11 and 15.

Although I have some degree of sympathy for Graeme Pearson’s earlier comments about empowering a commission to oversee the two services, I am heartened by the cabinet secretary’s comments. A parliamentary process has been found that will easily take up that oversight function. I share the views of the Justice Committee convener on that subject.

The larger number of board members will also allow for specialist management to evolve, which will be an asset given the nature of modern law enforcement.

Of course the service must have a local dimension to it. This is where I disagree with Alison McInnes: sixteen local pathfinder schemes are being trialled and I believe that the Scottish Government is correct in not being too prescriptive about ensuring that the same local model is used across the country. I was rather astounded by Sarah Boyack’s outburst this morning—it was as though the sky was about to fall in and local democracy had died. No single model can fit all and the results of the trials will help local senior officers and partners to work out a system that works for their local authority area. Local democracy is not dead and it will not die under these proposals. Local authorities will have access to senior officers of both services and discussions can ensue.

I cannot sit down without mentioning the VAT situation. It is astonishing that the UK Tory-Liberal Democrat coalition refuses to make changes to VAT rules in the same way that it has done for others. Scotland will have the only police force in the UK that is not VAT exempt. Even academy schools in England have had their VAT status changed. That shows the UK Government’s attitude to Scotland—Scotland cannot have what the UK Government gives to others, because of who is in government. The UK Government is not interested in making things better, only in telling us what we cannot have—does that ring any bells? Here in Scotland, however, we have a Government that is willing to do things for the better.

I agree with the cabinet secretary that the sooner we are allowed to have the full range of powers that we want for this Parliament, the sooner the people of Scotland will see the benefits. This is a Government that can, not one that cannot or will not.

I support the motion.

16:49

Sarah Boyack (Lothian) (Lab): Today’s debate on the detail in the bill has demonstrated the SNP’s centralising instincts—

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): Said with no irony whatsoever.

Sarah Boyack: No, there is no irony, minister. I will explain.

Although there is a powerful argument for better national policing, that must be balanced with effective accountability and local input. Ministers have today not allowed that to be added to the text of the bill.

Other parties in the chamber disagree with the SNP on that matter, and today is a missed opportunity. I am disappointed that local councillors will not play a full enough part in the process, and I thought that Kevin Stewart’s arguments this morning totally undermined the SNP’s case.
Kevin Stewart (Aberdeen Central) (SNP): Will the member give way?

Sarah Boyack: No, I will not—the member has had his time.

Local circumstances are different, and there is a discipline that comes from knowing that one must account to people. I know from my mailbag that it is local policing, working with local agencies, that makes people feel safer. For most of us, that is the only time that we will meet our local police.

I believe that we will return to that issue. Unison’s Dave Watson commented this morning that there will be centralisation at a cost, with privatisation to come. Ministers have said nothing today to refute or allay those fears.

The proposed committee will need proper consultation. It will not be a Justice 2 Committee, but a committee of an entirely different character. We will all need to pause for breath on that, and the matter will need to be handled carefully and sensitively. The jury is out on that proposal.

There are good things about having a national police force, but that must be counterbalanced by local input. The bill is a missed opportunity, and we will have to come back and improve on it in the future.

16:51

Annabel Goldie (West Scotland) (Con): The bill is a very important piece of legislation. As points of conflict and debate have tended to surround the new structure for the police force, I will focus my remarks on that. Other members have eloquently commented on the single fire and rescue service.

The debate about a national police force is not new; it has surfaced over the years. After all, we have a national health service and a national water and sewerage service, so why not a national police service?

I have always felt that a country’s law enforcement body occupies a unique position. Given the nature of what it does and the power that it has, there should be a respectful and respectable distance from the political process and a public confidence in how it discharges its role.

Interestingly, since devolution began, there has been discussion about how complaints against the police are handled and how we balance the sensitive and challenging job that we ask the police to do with the legitimate interest of the public, if police conduct gives rise to question, in having that concern addressed.

The present structure of several forces with a complaints investigatory function and a police complaints commissioner has provided that distance from the political process and served the public interest. However, the bill creates a very different beast. Graeme Pearson correctly described it as a national police force, and that is what it is.

I do not instinctively shy away from that beast. Indeed, as my colleague John Lamont said, my party supported the principle of a single police force, subject to two important conditions. Those were that the savings from such a proposal, having been costed in detail, would demonstrably preserve the presence of front-line officers, which my party were instrumental in securing, and that the distance from the political process and the public confidence in the ability to challenge any abuse of power would be protected. That second condition is of paramount importance when there is a single law enforcement body.

At stage 1, the bill as drafted did not allay the concerns of my party, and we chose to abstain at that point. It is disappointing that the strenuous attempts by Graeme Pearson and my colleague John Lamont to address some of those fundamental concerns and to improve the bill have been rejected.

The general tenor of the debate suggests that some of those fundamental issues of public interest are not fully recognised. Sarah Boyack made an important point in that regard. Speaking to a very senior police officer who had genuine concerns about the proximity to Government, I found that there was a legitimate anxiety about how the bill would work in practice.

Roseanna Cunningham suggested that we are being cynical about the ability of politicians to behave with integrity and probity. My view is that, when we are dealing with something so sensitive, we should create a system that anticipates that every barrel can have a bad apple and that identifies and deals with that possibility, rather than waiting for some disaster to happen and saying, “Goodness—why did we not do something better when we framed the legislation?”

I say with reluctance that, under the bill, the principle of a single police force—which my party supports—does not translate into practices that are safe or healthy. Therefore, with regret, I say to the chamber that my party feels unable to support the bill and we will abstain in the vote at decision time.

16:55

Jenny Marra (North East Scotland) (Lab): Scottish Labour was the first party to commit to delivering single police and fire services for Scotland. In our manifesto last year, we made it clear that single services would be delivered nationally but would function locally. Our proposal
stemmed from the knowledge that emergency services are most effective when they operate in the heart of our communities and when they are accountable to those whom they serve. Today, half of that ambition has been fulfilled.

Although the Government has delivered single police and fire services, it has not delivered services with the local accountability that modern services should have or with the transparency that the public demand. Today, provisions that would have provided accountability and scrutiny have been offered in good faith in many amendments but, to the detriment of the bill, those amendments have fallen on the deaf ears of the cabinet secretary and the SNP.

At their core, those amendments sought to redress the bill's insistence on tipping the balance of policing towards the state at the expense of local communities. Labour's amendments were a package to deliver a national police force and a national fire service that would work within local communities. We advocated a police force in which local authorities would have a say in the appointment of a local police commander, would have an insight into the funding for their area, and would be able to raise concerns about local policing issues directly with the chief constable. We envisaged a fire service in which local knowledge would be given due regard by the Scottish ministers. We envisaged that a minimum of a third of the members of the board of that service would be local authority representatives and that local authorities would be consulted before the appointment of local senior officers.

To oversee all those functions, Labour advocated an independent commission that would have been tasked specifically with scrutinising the services to ensure that they acted in the most effective and efficient way possible.

Labour's amendments also sought to bring community benefit. For example, our amendment to empower people in supported workplaces would have given them preference in just one contract every three years. What kind of Government does not wilfully use the power that it already has to save our supported workplaces? This SNP Government.

Labour also lodged an amendment that would have provided a gender balance on the boards of our police and fire services, which deal daily with gender-based justice issues. In responding to that amendment, Roseanna Cunningham said that she could not support it because it did not account for all other minorities. I ask Roseanna Cunningham whether she thinks that Emily Davison, before throwing herself under the king's horse, ever stopped to think that she should not pursue gender equality because making a difference in one area was unfair to others.

Is it not the truth that Roseanna Cunningham's argument, like the SNP's arguments on our amendments for greater transparency and accountability, is merely a fig leaf to cover the real reason for the Government's regressive stance? The ideas are progressive, fair and correct but they were put forward by Labour. It is telling that one of the only Labour amendments to be accepted by the SNP was an amendment in the Government's own words, which it remains convinced would solve the VAT issue.

We support the bill as a foundation—as a first step towards the police and fire services that Scotland deserves. However, we support the principle of the bill in the face of our grave disappointment at the SNP's conduct throughout the bill process. We give a stark warning against the SNP's ethos of dragging our vital local public services closer to the state. The reality is that the SNP, through its stubbornness and its failure from day 1 to listen to Opposition parties in the chamber, to stakeholders and to the Treasury, which has provided clear guidelines, has risked costing the Scottish people millions in VAT. The SNP has nobody to blame but itself, and the Scottish people will blame nobody but it.

Labour members are clear that we will hold the Government to account for the decisions that it has made in the Parliament today and that we will fight for democratic scrutiny and local accountability. We are also clear that, when the next Labour Government comes to power in the Parliament, we will work constructively with parties across the chamber to put in place democratically accountable and fully functioning police and fire services.

17:00

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): It is a good job that Jenny Marra was not here before last year. I do not recall much constructive working across parties in the Parliament when her party was in government with the Liberal Democrats from 1999 to 2007. Far more constructive working has taken place since 2007—that is easily seen by members. Members who have been here since 1999 know perfectly well that, when Labour was in government here, there was nothing by way of constructive engagement.

Annabel Goldie: The minister refers to the interesting period since 2007. Did the minority SNP Scottish Government listen to others because it had to?

Roseanna Cunningham: We listened to others and we are still listening to others, as is evidenced by the fact that we accepted some Opposition amendments today. I do not recall many
Opposition amendments being accepted by the Labour Government before 2007, and I would be surprised if Annabel Goldie can remember any.

Despite those points and the fact that some speeches appeared to relate to another debate entirely, there is consensus behind the proposals, although members would not always know it. Stakeholders and the Parliament agree that the police service and the fire and rescue service need to be reformed, to safeguard and improve the services that they provide to Scotland’s communities.

We and the services have looked at the issue for more than two years. A wealth of evidence demonstrates that single services will deliver the most benefits. The services and stakeholders accept that and are working constructively with us to deliver the reform. John Finnie was right to remind us of the positives of that reform.

I thank the Parliament and the Justice Committee for their positive contributions to the bill. I thank the Local Government and Regeneration Committee for its consideration of key aspects of the bill; I also thank the Finance Committee and the Subordinate Legislation Committee. I extend my thanks to all the stakeholders who worked with us to shape the bill and who continue to contribute to the reform programme’s success. That work goes on—particularly in the services and in staff associations, trade unions, local government and other bodies.

Members would not know it from Alison McInnes’s speech but, when it has been right to do so, we have changed the bill. For example, we listened to the calls for larger boards, to ensure that they have the necessary range of skills and expertise. As for her nonsense about the destruction of community working, it is just that—nonsense. In truth, the opposite will happen—local links will be strengthened, as described by Colin Keir.

As the minister with responsibility for the fire and rescue service, I particularly thank the Chief Fire Officers Association Scotland and the FBU for their constructive approach. I have been greatly impressed by the way in which the existing services and the FBU have worked together, and continue to work together, to plan for the single service. A huge amount of work has been done to ensure that the public continue to receive a high standard of service from day one of the SFRS. The joint working between management and employees has been exemplary and it provides a strong employee relations model for the new service to build on, so the contribution has been invaluable.

We want to build on that partnership approach. That will include the opportunity at some point for a trade union representative to be a member of the SFRS board. To facilitate that, we lodged an amendment to the bill at stage 2 to allow ministers, by order, to lift the disqualification on staff members, including union representatives, being board members. Discussion of that continues to be active.

I will talk about specifics. Graeme Pearson has—with great consistency, to give him his due—suggested a parliamentary commission. The Government fully supports the need for robust parliamentary scrutiny of policing and fire and rescue, but, as Christine Grahame reminded us, Parliament and its committees already have powers to inquire into any aspect of policing or the fire and rescue service, including requiring any person to attend proceedings to give evidence or to produce documents for such an inquiry. In addition, we have built into the new structure plenty of opportunities for Parliament to scrutinise. Strategic priorities, strategic plans and annual plans will all be laid before Parliament, as will the SPA’s annual report and reports from Her Majesty’s chief inspector of constabulary and the police investigations and review commissioner.

Graeme Pearson spoke eloquently about his proposal to establish a Scottish policing commission, but Parliament is already responsible for scrutinising policing and there is a real risk that responsibilities would be blurred if we superimposed a new structure. It was for that reason that we could not support Graeme Pearson’s amendment. However, we were happy to support John Finnie’s amendment, which sought to make clear that scrutiny of police and fire and rescue services is a key role for Parliament but did not seek to dictate how that role should be carried out. I repeat our commitment to work with the Parliamentary Bureau to establish a new committee under existing standing orders, which would be a more flexible solution that could be adapted as the new service beds in.

Lewis Macdonald and others referred to the VAT issue. We are asking not for special treatment for Scotland, but for equal treatment for our essential police and fire and rescue services, and equal respect for this Parliament’s clear wishes. The Treasury’s decision is in stark contrast to its recent decisions in relation to new police commissioners for England and Wales and academy schools in England.

For those who have criticised our approach, I reiterate the fact that we have made every effort to co-operate with the Treasury and achieve a positive outcome for Scotland’s police and fire and rescue services. The Treasury has the powers to enable Scotland’s services to recover VAT; it just
does not choose to exercise them, which is not acceptable. It is a tax on Scotland.

We costed our outline business cases responsibly on the basis that VAT would be payable, not because we assumed that to be the case, but because we knew that it would be the prudent approach. Even without the ability to recover VAT, the establishment of a single police service and a single fire and rescue service is the best option for Scotland and will deliver estimated savings of £1.7 billion over 15 years.

John Lamont talked about resources and savings. We believe that the police and fire budgets provide sufficient funding for the services to fully undertake their functions. Future budgets will be agreed following future negotiations around service requirements. As I said, the single police service and the single fire and rescue service will deliver estimated savings of £1.7 billion over 15 years, with annual recurring cash savings in excess of £130 million expected from 2016-17. CFOAS is certain that savings can be made by removing duplication. ACPOS has assured us that it is committed to implementing the police reform programme within budget.

Lewis Macdonald and John Lamont also talked about the business cases. Both business cases demonstrated that single services were the most likely to deliver the necessary savings and other benefits of reform. It was on that basis that we introduced the bill. Full business cases are produced to set out in detail the effect of delivering single services, but to enable full business cases to be produced, a series of critical decisions on the design and delivery of the services is needed. It is sensible and right that those decisions should be taken by the SPA, the SFRS board and the chief officers once they have been appointed. Parliament and the services would rightly be critical if ministers sought to take such decisions on the services’ behalf. The new services need to take ownership of the new structures that we are creating and make the detailed decisions that will enable full business cases to be produced. It does not therefore make any sense for the Government to produce full business cases before those decisions have been made. Had we done so, I do not doubt that we would be accused of trying to micromanage the new services.

Reform is vital if we are to protect and improve on the services that our communities receive. The bill provides the framework for that necessary reform. I therefore ask that members support our motion and pass the Police and Fire Reform (Scotland) Bill.
Decision Time

17:16

The Presiding Officer (Tricia Marwick): There are eight questions to be put as a result of today’s business. The first question is, that motion S4M-03407, in the name of Kenny MacAskill, on the Police and Fire Reform (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For
Adam, Brian (Aberdeen Donside) (SNP)
Adam, George (Paisley) (SNP)
Adamson, Clare (Central Scotland) (SNP)
Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
Baker, Claire (Mid Scotland and Fife) (Lab)
Baker, Richard (North East Scotland) (Lab)
Beamish, Claudia (South Scotland) (Lab)
Beattie, Colin (Midlothian North and Musselburgh) (SNP)
Biagi, Marco (Edinburgh Central) (SNP)
Bibby, Neil (West Scotland) (Lab)
Boyack, Sarah (Lothian) (Lab)
Brodie, Chic (South Scotland) (SNP)
Brown, Keith (Clackmannanshire and Dunblane) (SNP)
Burgess, Margaret (Cunninghame South) (SNP)
Campbell, Aileen (Clydesdale) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
Constance, Angela (Almond Valley) (SNP)
Crawford, Bruce (Stirling) (SNP)
Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
Dey, Graeme (Angus South) (SNP)
Don, Nigel (Angus North and Mearns) (SNP)
Doris, Bob (Glasgow) (SNP)
Dornan, James (Glasgow Cathcart) (SNP)
Dugdale, Kezia (Lothian) (Lab)
Eadie, Helen (Cowdenbeath) (Lab)
Eadie, Jim (Edinburgh Southern) (SNP)
Ewing, Annabelle (Mid Scotland and Fife) (SNP)
Fabiani, Linda (East Kilbride) (SNP)
Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
Findlay, Neil (Lothian) (Lab)
Finnie, John (Highlands and Islands) (SNP)
FitzPatrick, Joe (Dundee City West) (SNP)
Gibson, Kenneth (Cunninghame North) (SNP)
Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (East Lothian) (Lab)
Griffin, Mark (Central Scotland) (Lab)
Henry, Hugh (Renfrewshire South) (Lab)
Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
Hyslop, Fiona (Linlithgow) (SNP)
Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
Keir, Colin (Edinburgh Western) (SNP)
Kelly, James (Rutherglen) (Lab)
Kidd, Bill (Glasgow Anniesland) (SNP)
Lamont, Johann (Glasgow Pollok) (Lab)
Lochhead, Richard (Moray) (SNP)
Lyle, Richard (Central Scotland) (SNP)
MacAskill, Kenny (Edinburgh Eastern) (SNP)
The Presiding Officer: The result of the division is: For 101, Against 6, Abstentions 14.

Motion agreed to,

That the Parliament agrees that the Police and Fire Reform (Scotland) Bill be passed.
## Police and Fire Reform (Scotland) Bill

[AS PASSED]

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Police and Fire Reform (Scotland) Bill

[AS PASSED]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

PART 1

POLICE REFORM

CHAPTER 1

THE SCOTTISH POLICE AUTHORITY

1 The Scottish Police Authority

(1) There is established a body corporate to be known as the Scottish Police Authority or, in Gaelic, Ùghdarras Poilis na h-Alba.

(2) Schedule 1 makes provision about the Authority’s constitution, members and staff and other matters relating to it.

2 Functions of the Authority

(1) The Authority’s main functions are—

(a) to maintain the Police Service,

(aa) to promote the policing principles set out in section 32,

(b) to promote and support continuous improvement in the policing of Scotland,

(ba) to keep under review the policing of Scotland,

(c) to hold the chief constable to account for the policing of Scotland (including, in particular, the chief constable’s carrying out of the duties imposed by or mentioned in section 17).

(2) The Authority also has the additional functions conferred on it by virtue of this or any other enactment.

(3) The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.
3 Maintenance of the police

(1) In pursuance of its function under section 2(1)(a)—
   
   (a) the Authority must (in accordance with regulations made under section 49)—
       
       (i) pay constables pay and allowances, and
       
       (ii) reimburse any expenses reasonably incurred by a constable, and
   
   (b) the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures,
   
   (c) the Authority must, before the beginning of each financial year, provide to the chief constable details of how it intends to allocate the financial resources it expects to have available to it in respect of that financial year.

(2) In this section, “financial year” means each period of a year ending on 31 March.

4 General powers of the Authority

(1) The Authority may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) The Authority may in particular—
   
   (a) enter into contracts,
   
   (b) borrow money,
   
   (c) acquire and dispose of land and other property,
   
   (d) with the authorisation of the Scottish Ministers, purchase compulsorily land, and
   
   (e) form or promote (whether alone or with another) companies under the Companies Act 2006.

(3) The Authority may not exercise the power in subsection (2)(b) or (e) without the consent of the Scottish Ministers.

(4) Such consent may be given—
   
   (a) with respect to a particular case or a particular class of case,
   
   (b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in subsection (2)(c) includes power to accept, on such terms and conditions as the Authority considers appropriate—

   (a) gifts of money, and
   
   (b) gifts or loans of other property.

(6) The powers in subsection (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 applies in relation to the compulsory purchase of land under subsection (2)(d) as if—

   (a) that provision were contained in an Act in force immediately before the commencement of that Act, and
(b) the Authority were a local authority.

5 Directions
(1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers.

5 (2) A direction may not be given in respect of—
(a) a specific operation being or to be carried out by the Police Service, or
(b) the way in which the Police Service is carrying out (or is to carry out) a specific operation.

(3) The Scottish Ministers must—
(a) publish a direction given under this section in such manner as they consider appropriate, and
(b) lay a copy of it before the Scottish Parliament.

(4) The Scottish Ministers may vary or revoke a direction (and subsection (3) applies in relation to an instrument varying or revoking a direction as it applies to a direction).

CHAPTER 2

THE POLICE SERVICE OF SCOTLAND

The Police Service of Scotland

6 The Police Service of Scotland
There is to be a constabulary to be known as the Police Service of Scotland (or, in Gaelic, Seirbheis Phoilis na h-Alba) comprising—
(a) a constable holding the office of chief constable,
(b) one or more constables holding the office of deputy chief constable,
(c) one or more constables holding the office of assistant chief constable, and
(d) other individuals holding the office of constable.

Constables: appointment, ranks and terms of office

7 Senior officers
(1) The Authority must appoint—
(a) the chief constable,
(b) one or more deputy chief constables, and
(c) one or more assistant chief constables.

(2) An appointment of a chief constable has effect only if approved by the Scottish Ministers.

(3) The Authority must consult the chief constable before appointing a deputy or assistant chief constable.
8 **Regular constables**

It is for the chief constable to appoint constables (other than senior officers).

9 **Special constables**

The chief constable may appoint special constables, being constables who are not entitled to be paid but who may, in accordance with regulations made under section 49, be entitled to receive—

(a) allowances,

(b) periodic payments which acknowledge the giving of, or a commitment to give, services.

10 **Constable’s declaration**

(1) An appointment of an individual as a constable has effect only where the individual has made a declaration in the following terms before a sheriff or justice of the peace—

“I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law.”.

(2) The Scottish Ministers may by order modify the declaration.

11 **Ranks**

(1) The ranks which a constable may hold are—

(a) chief constable,

(b) deputy chief constable,

(c) assistant chief constable,

(d) chief superintendent,

(e) superintendent,

(f) chief inspector,

(g) inspector,

(h) sergeant,

(i) constable.

(2) Constables appointed as senior officers under section 7 are to hold the rank corresponding to the office to which they are appointed.

(3) It is for the chief constable to assign, and to make promotions to, ranks below that of assistant chief constable.

(4) A constable may be demoted in rank only—

(a) if the constable consents, or

(b) in accordance with regulations made under section 49.
(5) The Scottish Ministers may by regulations modify subsection (1) to add or remove any rank below that of chief constable.

(5A) Regulations made under subsection (5) may make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate including (in particular) provision—
(a) creating or removing an office corresponding to the rank,
(b) relating to the functions of senior officers,
(c) modifying this or any other enactment.

(6) Before making regulations, the Scottish Ministers must consult—
(a) the chief constable,
(b) the Authority,
(c) the joint central committee of the Police Federation for Scotland,
(d) such persons as appear to them to be representative of senior officers,
(e) such persons as appear to them to be representative of superintendents (including chief superintendents), and
(f) such other persons as they consider appropriate.

12 Constables: terms of office
A constable is to hold and vacate office in accordance with—
(a) regulations made under section 49, and
(b) any other enactment (for example, the Police Pensions Act 1976 or section 14 of this Act) which makes provision in that regard.

13 Rewards
The Authority may, on the recommendation of the chief constable, pay such sums by way of reward as it thinks fit to—
(a) a constable (other than the chief constable) who in its opinion has carried out the constable’s functions with exceptional diligence or in a specially meritorious manner, or
(b) a person who in its opinion has made a substantial contribution to the carrying out of police functions.

14 Senior officers: resignation or retirement for efficiency or effectiveness
(1) The Authority may call on a senior officer to resign or, where appropriate, retire from office in the interests of efficiency or effectiveness of the Police Service.

(2) Before calling on a senior officer to resign or retire, the Authority must—
(a) give the senior officer—
(i) a written explanation of the reason why the Authority proposes to call on the senior officer to resign or retire, and
(ii) an opportunity to make written representations,
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Chapter 2—The Police Service of Scotland

(b) consider any written representations made, and
(c) where the chief constable is to be called on to resign or retire, consult the Scottish Ministers.

(2A) Where—

(a) a senior officer is called on to resign or retire, and
(b) the officer has made written representations under subsection (2)(a)(ii),
the Authority must provide the officer with written reasons for its decision.

(3) A senior officer called on to resign or retire must do so with effect from—

(a) the date determined by the Authority when calling on the senior officer to resign or retire, or
(b) such earlier date as may be agreed between the senior officer and the Authority.

15 Temporary service outwith the Police Service of Scotland

(1) The chief constable may make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service.

(1A) A constable on temporary service outwith the Police Service—

(a) is to continue to hold the office of constable, and
(b) except where contrary provision is made by regulations under subsection (2) or by or under any other enactment, is to continue to—

(i) have all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
(ii) have the powers and privileges of a constable throughout Scotland, and
(iii) be under the direction and control of the chief constable in relation to the constable’s performance of policing functions.

(2) The Scottish Ministers may by regulations—

(a) prescribe types of temporary service in respect of which a constable—

(i) may not be engaged in pursuance of subsection (1),
(ii) may be so engaged only with the consent of the Authority or the Scottish Ministers (or both),
(iii) is not to have any of the functions, powers or privileges of a constable,
(iv) is not to be under the direction and control of the chief constable, and
(b) make such further provision in respect of constables on temporary service as they consider appropriate.

(4) Regulations made under subsection (2) may in particular make provision—

(a) modifying any provision of this Act or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables) in relation to constables on temporary service,
(b) about the liability for unlawful conduct of a constable while on temporary service.

(5) At the end of a period of temporary service outwith the Police Service, a constable—
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(a) is entitled to revert to serve as a constable of the Police Service in the rank in which the constable was serving immediately before the period began, and

(b) is to be treated as if the constable has served as a constable of the Police Service during the period of temporary service for the purposes of any scale prescribed by virtue of regulations made under section 49 fixing the constable’s rate of pay by reference to length of service.

(6) Subsection (5) does not apply where a pension, allowance or gratuity becomes payable to the constable during the period of temporary service by virtue of regulations made under the Police Pensions Act 1976.

(7) A constable may, during any period of temporary service, be promoted to a higher rank and in such a case—

(a) the reference in subsection (5)(a) to the rank in which the constable was serving immediately before the period began is to be construed as a reference to the rank to which the constable is promoted, and

(b) the constable is, for the purposes of subsection (5)(b), to be treated as having served in that rank from the time of promotion.

16 Temporary service as constable of the Police Service of Scotland

(1) The chief constable may make arrangements for any individual falling within subsection (2) to be engaged on temporary service as a constable of the Police Service.

(2) An individual falls within this subsection if the individual is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force,

(d) the Police Service of Northern Ireland,

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(f) the British Transport Police Force,

(g) the Civil Nuclear Constabulary,

(h) the States of Jersey Police Force,

(i) the salaried police force of the Island of Guernsey, or

(j) the Isle of Man Constabulary.

(3) An individual may be engaged on temporary service under arrangements made under this section only where the individual has made the declaration specified in section 10 before a sheriff or justice of the peace.

(4) An individual engaged on temporary service under such arrangements holds the office of constable.
Chief constable’s responsibility for the policing of Scotland

(1) The chief constable is responsible, and must account to the Authority, for the policing of Scotland.

(2) In particular, the chief constable—

(a) has direction and control of the Police Service (see section 21),
(b) is responsible for the day to day administration of the Police Service, including the allocation and deployment of resources received from the Authority,
(c) is to be involved in the preparation of the strategic police plan and the Authority’s annual report (see sections 34(3A) and 40(4)),
(c) is to prepare annual police plans (see section 35),
(d) must seek to secure continuous improvement in the policing of Scotland (see section 38(2)),
(e) must designate local commanders and ensure that adequate arrangements are in place for the policing of each local authority area (see section 45), and
(f) may be required to provide the Authority with information relating to the Police Service, policing or the state of crime (see sections 41(3), 61(4) and 81(3)).

(3) The chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by—

(a) the appropriate prosecutor in relation to the investigation of offences,
(b) the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995 (c.46),
(c) the Lord Justice General, or
(d) the sheriff principal for the place in which the functions are to be carried out.

(4) The chief constable must seek to ensure that the policing of Scotland is done—

(a) with due regard to the policing principles, and
(b) in accordance with—

(i) the strategic police priorities,
(ii) the most recently approved strategic police plan, and
(iii) the relevant annual police plan.

(4A) The chief constable must ensure that the policing of Scotland is done with due regard to any recommendations made or guidance issued by the Authority on the policing of Scotland.

(5) Any recommendation made or guidance issued by the Authority for the purposes of subsection (4A) must not be inconsistent with—

(a) the strategic police priorities,
(b) the most recently approved strategic police plan, or
(d) any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences.
18 Delegation of chief constable’s functions

(1) The chief constable may direct or authorise any other constable to carry out any of the chief constable’s functions.

(2) A direction or authorisation under subsection (1) does not affect the chief constable’s—

(a) responsibility for the carrying out of delegated functions, or

(b) ability to carry out delegated functions.

(3) The Authority must designate a deputy chief constable to carry out the chief constable’s functions where—

(a) the office of chief constable is vacant, or

(b) the chief constable is unable to carry out those functions by reason of being absent, incapacitated or suspended from duty.

(5) Only one deputy chief constable may be so designated to act at any one time.

(6) This section does not affect any restriction on delegation of the chief constable’s functions contained in any enactment which makes provision in that regard.

19 Constables: functions and jurisdiction

(1) A constable has—

(a) all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,

(b) all the powers and privileges of a constable throughout Scotland.

(2) A constable who is the chief constable, a deputy chief constable, an assistant chief constable or a local commander also has all the additional functions conferred on such a constable by virtue of this or any other enactment or by rule of law.

20 Constables: general duties

(1) It is the duty of a constable—

(a) to prevent and detect crime,

(b) to maintain order,

(c) to protect life and property,

(d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,

(e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and

(f) to attend court to give evidence.

(2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.
(3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

21 Direction and control of the Police Service

(1) Constables are, in the carrying out of their functions (including any functions held by virtue of being a deputy chief constable, an assistant chief constable or a local commander), subject to the direction and control of the chief constable.

(2) A constable must—

(a) carry out lawful orders, and

(b) punctually and promptly perform all appointed duties and attend to all matters within the scope of that constable’s office.

(3) Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable.

22 Failure to perform duty

(1) It is an offence for a constable, without reasonable excuse, to be absent from duty.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(3) It is an offence for a constable to neglect or violate the constable’s duty.

(4) A person who is guilty of an offence under subsection (3) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

23 Failure to return equipment

(1) It is an offence for a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, immediately upon being ordered to do so, any relevant item.

(2) It is an offence for a person who ceases to be a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, when ceasing to be a constable, any relevant item.

(3) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.

(4) Subsection (5) applies where a sheriff or a justice of the peace is satisfied on evidence on oath that—

(a) there has been a failure to return a relevant item, and

(b) the relevant item is in any place.
(5) The sheriff or, as the case may be, the justice of the peace, may grant a warrant to any constable named in the warrant to enter and search the place at any reasonable hour, if necessary by force, and to take any relevant item which is found in the place.

(6) For the purposes of this section, a “relevant item” is anything issued to a constable for the carrying out of the constable’s functions.

24 Liability for unlawful conduct

(1) The chief constable is liable in respect of any unlawful conduct on the part of any person falling within subsection (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(2) A person falls within this subsection if the person is—

(a) a constable under the direction and control of the chief constable, or

(b) a member of an international joint investigation team who is not—

(i) a constable,

(ii) a member of the Authority’s staff, or

(iii) a member of the police staff.

(3) The Authority must pay—

(a) any damages or expenses awarded against the chief constable in any proceedings brought by virtue of this section,

(b) any expenses incurred by the chief constable in relation to such proceedings (in so far as not recovered in the proceedings), and

(c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the Authority).

(4) Where the office of chief constable is vacant, references in subsections (1) to (3) to the chief constable are to be read as references to the person who is for the time being carrying out the chief constable’s functions.

(5) The Authority may, in such cases and to such extent as it thinks fit, pay—

(a) any damages or expenses awarded against a constable in proceedings arising in respect of any unlawful conduct on the part of that constable,

(b) any expenses incurred by the constable concerned in relation to such proceedings (in so far as not recovered in the proceedings),

(c) any sum required in connection with the settlement of any claim which has or might have given rise to such proceedings.

25 Police cadets

(1) The chief constable may appoint police cadets to undergo training with a view to becoming constables.
(2) Subject to section 21 and any other contrary enactment, police cadets are to be treated as employees of the Authority.

Police staff

26 Police staff

(1) The Authority may appoint police staff to assist in the carrying out of police functions.

(2) Police staff appointed under subsection (1) may be—

(a) employed by the Authority, or

(b) provided to the Authority under arrangements between the Authority and a third party.

(3) The chief constable has power to make appointments under subsection (1) on behalf of the Authority.

27 Terms and conditions of police staff

(1) Police staff may be employed on terms and conditions determined by the Authority.

(2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of police staff.

(3) The arrangements mentioned in subsection (2) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.

28 Police custody and security officers

(1) The chief constable may certify a member of the police staff appointed under section 26(1) as having been authorised to carry out functions in relation to custody and security.

(2) An individual so certified is to be known as a “police custody and security officer”.

(3) A police custody and security officer has—

(a) for the purposes of the functions which the officer is authorised to carry out, the powers and duties set out in schedule 2, and

(b) all other functions conferred on police custody and security officers by virtue of this or any other enactment or by rule of law.

(4) A police custody and security officer is to be regarded as acting in accordance with the officer’s powers and duties only if the officer is readily identifiable as such an officer when so acting (whether or not by means of a uniform or badge worn).

(5) Sections 22(3) and (4), 23 and 89 apply in relation to a police custody and security officer as they apply in relation to a constable (and when so applied, a reference to a constable is to be read as a reference to such an officer).
29 Certification of police custody and security officers

(1) The chief constable may issue a certificate under section 28(1) only if satisfied that the member of the police staff concerned—

(a) is a fit and proper person to carry out a police custody and security officer’s functions, and

(b) has received training to such standard as the chief constable considers appropriate for the carrying out of those functions.

(2) The chief constable may revoke a certificate if the certified person appears to the chief constable not to be a fit and proper person to carry out a police custody and security officer’s functions.

(3) The chief constable may (pending consideration of whether to revoke a certificate) suspend the certificate where it appears to the chief constable that the certified person may not be a fit and proper person to carry out a police custody and security officer’s functions.

(4) A certificate is otherwise to continue in force until such date or occurrence as it may specify.

30 False statements in relation to certification

(1) It is an offence for a person to provide information for the purpose of enabling or assisting the person or any other person to be certified as a police custody and security officer if the person knows that, or is reckless as to whether, the information is false or misleading in a material respect.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

CHAPTER 3

FORENSIC SERVICES

31 Forensic services

The Authority must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.

CHAPTER 4

PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

32 Policing principles

The policing principles are—

(a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and

(b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—

(i) is accessible to, and engaged with, local communities, and

(ii) promotes measures to prevent crime, harm and disorder.
33 Strategic police priorities

(1) The Scottish Ministers may determine strategic priorities for the Authority (“strategic police priorities”).

(2) Strategic police priorities may relate to—
   (a) the policing of Scotland, or
   (b) the carrying out of the Authority’s functions.

(3) Before determining strategic police priorities, the Scottish Ministers must consult—
   (a) the Authority,
   (aa) the chief constable,
   (b) such persons as appear to them to be representative of local authorities, and
   (c) such other persons as they consider appropriate.

(4) When determining strategic police priorities, the Scottish Ministers must have regard to the policing principles.

(5) The Scottish Ministers must arrange for the strategic police priorities to be published in such manner as they consider appropriate.

(5A) The Scottish Ministers must lay a copy of the strategic police priorities before the Scottish Parliament.

34 Strategic police plan

(1) The Authority must prepare a strategic police plan.

(2) A strategic police plan is a plan which—
   (a) sets outs the main objectives for the Authority and for the policing of Scotland,
   (b) explains the reasons for selecting each main objective,
   (c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,
   (d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and
   (e) includes any other information connected with the Authority’s functions, or policing, which the Authority considers appropriate.

(3) Before preparing a strategic police plan, the Authority must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in policing.

(3A) The Authority must involve the chief constable in the preparation of a strategic police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.

(4) When preparing a strategic police plan, the Authority must—
   (a) send a copy of a draft plan to—
      (i) each local authority,
(ii) the inspectors of constabulary, and

(iii) such other persons as the Authority considers likely to have an interest in the plan,

(b) invite the recipients to comment on the draft plan within such reasonable period as the Authority may specify, and

(c) have regard to any comments received within that period.

(5) The Authority must—

(a) submit its strategic police plan to the Scottish Ministers, and

(b) use its best endeavours to secure their approval of the plan (with or without modifications).

(6) If the Scottish Ministers approve a strategic police plan submitted to them, the Authority must—

(a) publish the approved plan in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), and

(b) lay a copy of it before the Scottish Parliament.

(7) The Authority—

(a) must review an approved strategic police plan at least once every 3 years (and must, in particular, do so where the strategic police priorities have been significantly revised), and

(b) following such a review, must—

(i) prepare a replacement strategic police plan, or

(ii) notify the Scottish Ministers that, having undertaken a review, the Authority has concluded that there is no need to replace the existing strategic police plan.

(8) Subsections (3) to (7), and section 37, apply in relation to a replacement strategic police plan as they applied in relation to the plan being replaced.

35 Annual police plans

(1) The chief constable must prepare an annual police plan for each yearly period beginning on 1 April.

(2) An annual police plan is a plan which—

(a) sets out the proposed arrangements for the policing of Scotland during the yearly period,

(b) describes how those arrangements are expected to contribute towards the achievement of the main objectives for the policing of Scotland set out in the strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and

(c) includes any other information connected with policing which the chief constable considers appropriate.

(2A) When preparing an annual police plan, the chief constable must—
(a) send a copy of a draft plan to the Authority,

(b) invite the Authority to comment on the draft plan within such reasonable period as
the chief constable may specify, and

(c) have regard to any comments received within that period.

(3) The chief constable must—

(a) publish the annual police plan before the start of the yearly period to which it
relates in such manner as the chief constable considers appropriate (having regard
to the desirability of it being accessible to those whom the chief constable
considers likely to have an interest in it), and

(b) lay a copy of it before the Scottish Parliament.

Planning functions: considerations

In carrying out their respective functions in relation to the preparation of the strategic
police plan and each annual police plan, the Authority and the chief constable must—

(a) have regard to the policing principles,

(b) have regard to, and ensure that the strategic police plan and each annual police
plan is not inconsistent with, the strategic police priorities, and

(c) ensure that an annual police plan is not inconsistent with the most recently
approved strategic police plan.

Chapter 5

Best value

(1) It is the duty of the Authority to make arrangements which secure best value for the
Authority (that is, a continuous improvement in the carrying out of the Authority’s
functions).

(2) It is the duty of the chief constable to make arrangements which secure best value for
the Police Service (that is, a continuous improvement in the carrying out of police
functions).

(3) In securing best value, the Authority and the chief constable must maintain an
appropriate balance among—

(a) the quality of the carrying out of functions,

(b) the cost of carrying out functions,

(c) the cost to persons of any service provided for them on a wholly or partly
rechargeable basis by the Authority or, as the case may be, under arrangements
made by the chief constable.

(4) In maintaining that balance, the Authority and the chief constable must have regard to—

(a) efficiency,

(b) effectiveness,

(c) economy, and
(d) the need to meet the equal opportunity requirements.

(5) The Authority and the chief constable must carry out their duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

39  Best value: further provision

(1) In carrying out their respective duties under section 38(1) and (2), the Authority and the chief constable must have regard to—

(a) any relevant guidance issued by the Scottish Ministers, and

(b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of subsection (1) or, as the case may be, (2) of section 38 (or purposes which include those purposes).

(2) In the event of a conflict in any respect between any matters to which the Authority or the chief constable is to have regard under subsection (1), the Authority or the chief constable must in that respect have regard only to those falling within paragraph (a).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—

(a) the Authority,

(b) the chief constable, and

(c) such other persons as they consider appropriate.

(4) The Scottish Ministers may vary or revoke relevant guidance.

(5) In this section “relevant guidance”—

(a) means guidance on the carrying out of the duties imposed by subsections (1) or (2) of section 38,

(b) includes, in particular, guidance on—

(i) how to make, and what is to be included in, the arrangements mentioned in those subsections,

(ii) how to implement the duties imposed by those subsections.

CHAPTER 6

ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

40  The Scottish Police Authority’s annual report

(1) The Authority must prepare an annual report as soon as practicable after the end of each reporting year.

(2) An annual report is a report setting out—

(a) an assessment of the Authority’s performance during the reporting year in carrying out its functions,
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(b) an assessment of the Police Service’s performance during the reporting year in the policing of Scotland, and 
(c) such other information relating to the Authority’s functions, or to policing, as the Authority considers appropriate.

(3) An annual report must, in particular, contain—
(a) an assessment of the performance by the Authority and the Police Service during the reporting year in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and 
(b) an assessment of the performance by the Police Service during the reporting year in implementing the proposed arrangements set out in the annual police plan for the period to which the report relates.

(4) The chief constable must—
(a) within 3 months of the end of a reporting year, provide the Authority with a report setting out the chief constable’s assessment of the Police Service’s performance during that reporting year in the policing of Scotland, and 
(b) provide the Authority with such other assistance as it may reasonably require in relation to the preparation of an annual report.

(4A) A report provided by the chief constable under subsection (4)(a) must, in particular, contain the chief constable’s assessment of the Police Service’s performance during the reporting year concerned—
(a) in achieving, or in working towards achieving, the main objectives for the policing of Scotland set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and 
(b) in implementing the proposed arrangements set out in the annual police plan for the reporting year concerned.

(5) The Authority must—
(a) publish each of its annual reports in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), 
(b) provide a copy of each of its annual reports to the Scottish Ministers, and 
(c) lay a copy of each of its annual reports before the Scottish Parliament.

(6) In this section “reporting year” means a yearly period ending on 31 March.

41 Accounts

(1) The Authority must—
(a) keep proper accounts and proper records in relation to the accounts, and 
(b) as soon as practicable after the end of each yearly period ending on 31 March, prepare a statement of accounts in respect of that period.

(2) A statement of accounts so prepared must be in such form and contain such information as the Scottish Ministers may determine.
(3) Without prejudice to the generality of section 81, the chief constable must—
   (a) provide the Authority with such assistance and information as it may reasonably
       require for the purposes of subsection (1), and
   (b) seek to ensure that sufficient information is kept for those purposes.

(4) In particular, the Authority is entitled to require the chief constable to provide, within
 such reasonable time as it may specify, accounts of such of the transactions relating to
 the Police Service as it may specify.

### 42 Audit

The Authority must send a copy of each statement of accounts to the Auditor General
for auditing.

### 43 Examination of Police Service by Auditor General

(1) The Auditor General may initiate examinations into—
   (a) the economy, efficiency and effectiveness of the Police Service, and
   (b) the arrangements made by the chief constable under section 38(2).

(2) In determining whether to initiate an examination, the Auditor General must take into
 account any proposals made by the Scottish Parliament.

(3) It is for the Auditor General personally to initiate an examination under this section and
to decide who is to carry it out.

(4) In carrying out the examination that person (“the examiner”—
   (a) is not entitled to question the merits of the policy objectives of the chief constable
       or the Police Service, but
   (b) may consider the appropriateness of any criteria used to assess the use of
       resources available to the Police Service.

(5) The examiner (if not the Auditor General) must report the results to the Auditor General,
who may report the results to the Scottish Parliament and the Authority.

(6) The Auditor General may publish the results of an examination.

(7) Sections 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 (asp
1) apply in relation to an examination under this section as they apply in relation to an
examination under section 23 of that Act.

### 44 Examinations of Scottish Police Authority by Auditor General

The reference in section 23 of the Public Finance and Accountability Act 2000 to
examinations into the economy, efficiency and effectiveness with which resources have
been used is, in relation to the Authority, to include a reference to examinations into the
arrangements made by the Authority under section 38(1).
CHAPTER 7

LOCAL POLICING

45 Local policing

(1) The chief constable must ensure that there are adequate arrangements in place for the policing of each local authority area (and any adjacent territorial waters).

(2) For each local authority area, the chief constable must, after consulting the local authority, designate a constable as local commander.

(3) A constable may be designated as local commander in relation to more than one local authority area.

46 Local authority role in policing

(1) A local commander must involve the local authority in the setting of priorities and objectives for the policing of its area.

(2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander—

(a) its views on any matter concerning or connected to the policing of its area, and

(b) any recommendations for the improvement of the policing of its area that it thinks fit.

(2ZA) A local authority may specify policing measures that it wishes the local commander to include in a local policing plan.

(2A) A local authority may provide feedback by reference to any local police plan in force for the area.

(3) A local commander must provide to the local authority such—

(a) reports on the carrying out of police functions in its area (including by reference to any local policing plan in force for the area),

(b) statistical information on complaints made about the Police Service in, or the policing of, its area, and

(c) other information about the policing of its area, as the local authority may reasonably require.

(4) A local commander may refer a requirement under subsection (3) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—

(a) the carrying out of any operation by the Police Service, or

(b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the chief constable.

47 Duty to participate in community planning

(1) In section 16(1) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning)—
(a) paragraph (c) is repealed, and
(b) in paragraph (e), for “a police force” substitute “the Police Service of Scotland”.

(2) The chief constable must delegate the carrying out of the chief constable’s functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.

(3) Subsection (2) does not affect—
(a) the chief constable’s responsibility for the carrying out of the delegated functions,
(b) the chief constable’s ability to carry out the delegated functions.

48 Local police plans

(1) As soon as is reasonably practicable after the first strategic police plan is approved under section 34, a local commander must prepare and submit a local police plan to the relevant local authority for approval.

(2) A local police plan is a plan which—
(a) sets out the main priorities and objectives for the policing of the local authority’s area,
(b) explains the reasons for selecting each of those priorities and objectives,
(c) sets out the proposed arrangements for the policing of the local authority’s area (and how those arrangements are expected to achieve the main priorities and objectives),
(d) where reasonably practicable, identifies outcomes by reference to which the achievement of those priorities and objectives may be measured,
(e) describes how those priorities, objectives and arrangements are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning, and
(f) includes any other information connected with the policing of the local authority’s area which the local commander considers relevant.

(3) In preparing a local police plan, the local commander must—
(a) have regard to the most recently approved strategic police plan, and
(b) consult—
(i) the joint central committee of the Police Federation for Scotland,
(ii) such persons as appear to the local commander to be representative of senior officers,
(iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),
(iv) such persons as appear to the local commander to be representative of police staff, and
(v) such other persons as the local commander considers appropriate.

(4) If the local authority approves a local police plan submitted to it, the local commander must publish it in such form and manner as the Authority may specify.
(5) The local commander must review the local police plan if—
   (a) a new strategic police plan is approved under section 34, or
   (b) the plan is not replaced under subsection (5A) or modified under subsection (7) during the period of 3 years beginning with the date of publication of the plan.

(5A) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.

(5B) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.

(6) Subsections (3) to (5) apply in relation to a replacement local police plan as they apply in relation to the plan being replaced.

(7) The local commander and the local authority may agree to modify an approved local police plan at any time.

(7A) Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.

(9) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

CHAPTER 8

GOVERNANCE AND ADMINISTRATION OF POLICE

49 Governance and administration of police

The Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets.

50 Appointments, promotions etc.

(1) Regulations made under section 49 may in particular make provision relating to—
   (a) eligibility for appointment as constable or police cadet or for appointment or promotion to a particular rank,
   (b) the procedure for appointment of senior officers or for the appointment or promotion of other constables,
   (c) periods of service on probation,
   (d) the efficiency or effectiveness of constables or police cadets,
   (e) restrictions on the private life or business interests of constables or police cadets,
   (f) resignation or retirement of constables.

(2) Such regulations—
   (a) may provide for appointments of senior officers to be for fixed terms, but
   (b) must not provide for fixed term appointment to any rank below that of assistant chief constable.
51 \textbf{Conditions of service}

(1) Regulations made under section 49 as to conditions of service may in particular make provision about—
   \begin{itemize}
   \item[(a)] pay, allowances and expenses,
   \item[(b)] public holidays and leave,
   \item[(c)] the issue, use and return of police clothing and equipment.
\end{itemize}

(2) In relation to special constables, such regulations must not entitle them to pay but may make provision entitling them to receive periodic payments in acknowledgment of the giving of services (including provision about the minimum aggregate length of service needed within a period in order to give rise to an entitlement to receive a periodic payment in respect of that period).

(3) Regulations made under section 49—
   \begin{itemize}
   \item[(a)] may make retrospective provision about pay or allowances, but
   \item[(b)] must not retrospectively reduce any pay or allowance payable to or in respect of any person.
\end{itemize}

52 \textbf{Regulations: duties}

(1) Regulations made under section 49 may make provision relating to duties of constables or police cadets.

(2) Such regulations may in particular make provision about—
   \begin{itemize}
   \item[(a)] duties which are or are not to be performed,
   \item[(b)] hours of duty,
   \item[(c)] the treatment as occasions of police duty of attendance at meetings of the Police Federations and any other body recognised for the purposes of section 64 of the Police Act 1996 (c.16) as representing members of police forces.
\end{itemize}

53 \textbf{Disciplinary procedures: conduct and performance}

(1) Regulations made under section 49 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.

(2) Such regulations may make provision—
   \begin{itemize}
   \item[(a)] setting out—
      \begin{itemize}
      \item[(i)] standards of behaviour which, if breached, may be treated as misconduct,
      \item[(ii)] standards of performance which, if breached, may be treated as being unsatisfactory performance,
      \item[(iii)] other circumstances in which a constable’s behaviour may be treated as misconduct or in which a constable’s performance may be treated as unsatisfactory (for example, where performance is inefficient or where there has been a failure to perform functions),
\end{itemize}
   \item[(b)] for circumstances in which a constable may be suspended from duty pending investigation into whether the constable has been engaged in misconduct,
(c) subject to subsection (3), for a constable who is found to have been engaged in misconduct or whose performance is found to have been unsatisfactory to be dealt with by being—

(i) dismissed (with or without notice),

(ii) demoted in rank,

(iii) warned that future misconduct or unsatisfactory performance may lead to further disciplinary action,

(iv) admonished, or

(v) dealt with in any other way,

d) conferring functions on the Police Investigations and Review Commissioner in relation to investigations of whether a constable has been engaged in misconduct,

e) applying the procedures (with or without modifications) in relation to a constable engaged on temporary service outwith the Police Service (see section 15).

(3) Such regulations must provide for the Authority to determine any case which relates to the standard of behaviour or performance of a senior officer.

(4) A constable suspended by virtue of regulations made under section 49 is not entitled to carry out any functions as a constable unless the regulations otherwise specify.

54 Personal records
Regulations made under section 49 may make provision relating to—

(a) the keeping of personal records about constables and police cadets,

(b) the taking of fingerprints and samples from constables and police cadets and the retention, use and destruction of such fingerprints and samples or of information derived from such samples.

55 Consultation on regulations

(1) Before making regulations under section 49 about any matter mentioned in section 61(1) of the Police Act 1996 (c.16) (other than pensions), the Scottish Ministers must—

(a) share a draft of the regulations with the Police Negotiating Board for the United Kingdom, and

(b) consider any representations made.

(2) Before making any other regulations under section 49, the Scottish Ministers must—

(a) consult and share a draft of the regulations with—

(i) the chief constable,

(ii) the Authority,

(iii) the joint central committee of the Police Federation for Scotland,

(iv) such persons as appear to them to be representative of senior officers,

(v) such persons as appear to them to be representative of superintendents (including chief superintendents), and

(vi) such other persons as they consider appropriate, and
(b) consider any representations made.

56 Regulations: supplementary
(1) Regulations made under section 49 may—
(a) make provision for the delegation of functions to—
(i) the Scottish Ministers,
(ii) the Authority,
(iii) the chief constable,
(iv) a local commander,
(v) the Police Investigations and Review Commissioner, or
(vi) any other person,
(b) authorise or require the delegation of functions by any person.
(2) In the absence of express contrary intention, nothing in this Part affects the generality of the power conferred by section 49.

CHAPTER 9
POLICE APPEALS TRIBUNALS

57 Right to appeal to police appeals tribunal
(1) A constable may appeal to a police appeals tribunal against any decision to dismiss the constable, or to demote the constable in rank, taken in pursuance of regulations made under section 49.
(2) An appeal is competent only if the constable has exhausted any available process of review or appeal provided for in such regulations.
(3) Schedule 3 makes provision about police appeals tribunals, the rules relating to appeals, and other relevant matters.

58 Representation
(1) Before determining an appeal, a police appeals tribunal must—
(a) give both the appellant and the respondent a chance to make representations (whether by way of written submissions or oral hearing), and
(b) consider such representations.
(2) Either party may require that the representations are to be made by way of oral hearing.
(3) Where an oral hearing is to be held, the parties may elect to be represented (including by a legally qualified person).

59 Determinations by tribunal
(1) A police appeals tribunal may determine an appeal by—
(a) confirming the decision being appealed, or
(b) replacing that decision with any less severe decision which could have been made by the person who made it.

(2) Where the determination replaces the decision appealed against, it takes effect from the date of the decision which resulted in the dismissal or demotion in rank of the appellant.

(3) Subsection (4) applies where a determination made by a police appeals tribunal reinstates the appellant—

(a) as a constable,
(b) in—

(i) the rank previously held by the appellant, or
(ii) a different rank.

(4) The appellant is to be deemed, for the purposes of reckoning service for pension and to such extent (if any) as may be determined by the tribunal for the purposes of pay, to have served as a constable, or in the reinstated or different rank, continuously from the date of the decision which resulted in the dismissal or demotion in rank of the appellant to the date of the tribunal’s determination.

(5) In determining an appeal, the tribunal may deal with such other matters relating to the appellant’s reinstatement or period of service as the tribunal thinks fit including, in particular, any periods where the appellant was suspended in consequence of the proceedings which led to the appellant’s dismissal.

60 Powers to obtain information

(1) The person appointed to chair a police appeals tribunal (the chairing member) may require the appellant, respondent or any other person—

(a) to attend a hearing of the tribunal, at such time and such place as the chairing member may specify, for the purposes of giving evidence,

(b) to give to the tribunal, by such day as the chairing member may specify, such documents or information as the tribunal may reasonably require.

(2) Subsection (1) does not authorise the chairing member or the tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose in civil proceedings in the Court of Session.

(3) It is an offence for any person on whom a requirement under subsection (1) is served to—

(a) fail to attend a hearing of the tribunal as required by the citation,

(b) refuse or fail, while attending such a hearing as so required, to answer any question,

(c) refuse or fail to give the tribunal any document or information so required,

(d) knowingly or recklessly make any statement in respect of any information so required which is false or misleading in a material respect, or

(e) deliberately alter, suppress, conceal or destroy any document so required.

(4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
(5) It is a defence for a person charged with an offence under subsection (3)(a), (b) or (c) to show that the person had a reasonable excuse for the refusal or failure.

CHAPTER 10

COMPLAINTS AND INVESTIGATIONS

61 Complaints handling

(1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.

(2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.

(3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.

(4) Without prejudice to the generality of section 81 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).

(5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).

(6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

62 The Police Investigations and Review Commissioner

(1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.

(2) Accordingly—

(a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute—

“The Police Investigations and Review Commissioner”

(b) for the title of that section substitute—

“The Police Investigations and Review Commissioner”.

(c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

63 General functions of the Police Investigations and Review Commissioner

After section 33 of the 2006 Act, insert—

“33A General functions of the Commissioner”
The Commissioner’s general functions are—

(a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—

(i) the handling of relevant complaints; and

(ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;

(b) where directed to do so by the appropriate prosecutor—

(i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;

(ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);

(c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and

(d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).”.

64 Investigations under supervision of Lord Advocate or procurator fiscal

After section 41 of the 2006 Act, insert—

“Investigations

41A Investigations under supervision of Lord Advocate or procurator fiscal

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A(1), must comply with—

(a) any lawful instruction given by the appropriate prosecutor who issued the direction, and

(b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

65 Serious incidents involving the police

After section 41A of the 2006 Act (inserted by section 64), insert—
“41B Serious incidents involving the police

(1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A(1) is—

(a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—

(i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and

(ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;

(b) any other circumstance in or in consequence of which—

(i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or

(ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or

(c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.

(2) But a matter is not a “serious incident involving the police” if it is—

(b) a matter—

(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or

(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or

(c) a matter which is being, or has been, investigated—

(i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or

(ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

66 Investigations of other matters in the public interest

After section 41B of the 2006 Act (inserted by section 65), insert—

“41C Investigation of matters in the public interest

(1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.

(2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—

(b) a matter—
(i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); or
(ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;

(c) a matter which is being, or has been, investigated—
   (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A(1); or
   (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14); or

(d) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A(1).“.

67 Investigations: procedure etc.

After section 41C of the 2006 Act (inserted by section 66), insert—

“41D Investigations: procedure etc.

(1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A(1) as they consider appropriate.

(2) Regulations may, in particular, make provision—
   (a) requiring the chief constable or the Authority to refer matters to the Commissioner;
   (b) about circumstances in which the Commissioner—
      (i) must, must not or need not carry out an investigation; or
      (ii) may discontinue an investigation;
   (c) about the form and procedure of an investigation;
   (d) imposing restrictions on the extent of any investigation;
   (e) setting time limits within which matters must be investigated;
   (f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);
   (h) for the delegation of functions to the Commissioner.

(3) Before making regulations under this section, the Scottish Ministers must consult—
   (a) the Commissioner;
   (b) the Authority;
   (c) the chief constable;
   (ca) such persons as appear to them to be representatives of senior officers;
   (cb) such persons as appear to them to be representatives of superintendents (including chief superintendents);
68 Reports on investigations

After section 41D of the 2006 Act (inserted by section 67), insert—

“41E Reports on investigations

(1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A(1).

(2) The Commissioner must—

(a) provide a copy of a report prepared under subsection (1) to—

(i) the person (if any) who requested the investigation;

(ii) the Authority; and

(iii) any other person whom the Commissioner considers appropriate;

and

(c) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.

(3) Apart from identifying the Authority or the Police Service, a report must not—

(a) mention the name of any person; or

(b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

69 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 68), insert—

“41F Investigations: obstruction and contempt

(1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—

(a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A(1); or

(b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.

(2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.
70 Complaints against the Commissioner
Before section 43 of the 2006 Act insert—

“42A Complaints against the Commissioner

(1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner’s staff.

(2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.

70A Protection from actions for defamation

After section 46 of the 2006 Act, insert—

“Protection from actions for defamation

(1) For the purposes of the law of defamation—

(a) any statement made by the Commissioner or any of the Commissioner’s staff—

(i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A(1);

(ii) in communicating with any person for the purposes of such a review or investigation;

(iii) in a report on such a review or investigation; or

(iv) in a report made under section 43,

has absolute privilege;

(b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A(1) has absolute privilege; and

(c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).”.

CHAPTER 11

HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

71 Her Majesty’s inspectors of constabulary in Scotland

(1) There are to continue to be inspectors of constabulary in Scotland.

(2) Her Majesty may by Order in Council appoint such number of inspectors of constabulary as the Scottish Ministers may determine.
Police and Fire Reform (Scotland) Bill
Part I—Police reform
Chapter 11—Her Majesty’s inspectors of constabulary in Scotland

(3) The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary.

(4) An inspector of constabulary is to hold and vacate office at Her Majesty’s pleasure.

(5) An inspector of constabulary is otherwise—

(a) to be paid such remuneration or allowances as the Scottish Ministers may determine, and

(b) to hold office in accordance with such other terms and conditions as may be so determined.

72 Assistant inspectors of constabulary

(1) The Scottish Ministers may—

(a) appoint assistant inspectors of constabulary on such terms and conditions as they may determine, or

(b) make arrangements for constables to serve as assistant inspectors of constabulary.

(2) A constable engaged on service as an assistant inspector of constabulary is under the direction and control of the inspectors of constabulary.

(3) The Scottish Ministers are liable in respect of any unlawful conduct on the part of any constable engaged on service as an assistant inspector of constabulary in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

73 Staff officers

(1) The inspectors of constabulary may—

(a) appoint staff officers, on such terms and conditions as they may determine, for the purpose of assisting them in the carrying out of their functions, or

(b) make arrangements for constables to serve as staff officers for that purpose.

(2) A constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary.

(3) The inspectors of constabulary are liable in respect of any unlawful conduct on the part of any constable engaged on service as a staff officer in the carrying out (or purported carrying out) of that constable’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

74 Functions of inspectors

(1) The Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the Authority or the Police Service as they consider appropriate.

(2) The inspectors of constabulary may make such other inquiries as they think fit about—

(a) the state, efficiency and effectiveness of the Authority and the Police Service, and
(b) the arrangements made by the Authority and the chief constable under section 38(1) and (2).

74A HMICS plan

(1) The inspectors of constabulary must prepare a plan setting out—

(a) priorities for inquiries to be carried out by them, and

(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The inspectors of constabulary—

(a) must keep the plan under review, and

(b) may from time to time revise the plan.

(3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.

(4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

75 HMICS powers

(1) The inspectors of constabulary have power to do anything which they consider necessary or expedient for the purposes of, or in connection with, the carrying out of their functions.

(2) The inspectors of constabulary may authorise any assistant inspector of constabulary, or any of their staff officers, to carry out on behalf of the inspectors of constabulary such of their functions as they may determine to the extent so authorised.

(3) Subsection (2) does not affect the inspectors of constabulary’s—

(a) responsibility for carrying out delegated functions, or

(b) ability to carry out delegated functions.

76 Duty to assist and co-operate with HMICS

The Authority and the chief constable must provide the inspectors of constabulary with such assistance and co-operation as they may require for the purposes of, or in connection with, the carrying out of their functions (and must, in particular, comply with any reasonable request made by the inspectors of constabulary in that regard).

77 HMICS reports

(1) The inspectors of constabulary must give the Scottish Ministers—

(a) a report of any inquiry carried out in pursuance of section 74(1) and any other information in relation to the report that the inspectors of constabulary think fit, and
(b) any other information relating to the inquiry that the Scottish Ministers may request.

(2) As soon as is reasonably practicable after giving the report to the Scottish Ministers, the inspectors of constabulary must—

(a) give a copy of the report to the Authority and, where the report relates to the Police Service, to the chief constable, and

(b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of a report given to them under this section.

77A HMICS reports: other inquiries

(1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.

(2) The inspectors of constabulary must—

(a) as soon as is reasonably practicable after giving the report under subsection (1)—

(i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and

(ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and

(b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.

(3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.

77B Inquiry reports: consideration and action

In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 77 or 77A and, having done so, must take such measures (if any) as they think fit in relation to the report.

78 Power to give directions after adverse HMICS report

(1) This subsection applies where a report given by the inspectors of constabulary under section 77 or 77A states that the inspectors of constabulary are of the opinion—

(a) that the Authority or Police Service—

(i) is not efficient or effective, or

(ii) will, unless remedial measures are taken, cease to be efficient or effective, or
(b) that best value for the Authority or the Police Service—
   (i) has not been secured in pursuance of subsection (1) or, as the case may be,
   (2) of section 38, or
   (ii) will not, unless remedial measures are taken, be so secured.

(2) Where subsection (1) applies, the Scottish Ministers may direct the Authority to take such measures as may be specified in the direction.

(3) The Authority must comply with any direction given under this section.

79 HMICS annual report

(1) As soon as is practicable after the end of each yearly period ending on 31 March, the inspectors of constabulary must prepare an annual report on the carrying out of their functions during that period.

(2) The inspectors of constabulary must—
   (a) give a copy of each of their annual reports to the Scottish Ministers, the Authority and the chief constable, and
   (b) publish each of their annual reports in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

(3) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report given to them under this section.

CHAPTER 12

80 Co-operation between Scottish Police Authority and Police Service

(1) The Authority and the chief constable may make arrangements under which—
   (a) the Authority is to provide assistance to the Police Service, or
   (b) the Police Service is to provide assistance to the Authority.

(2) Such assistance may involve—
   (a) members of the Authority’s staff providing services for the Police Service, or
   (b) constables or police staff providing services for the Authority.

81 Police information

(1) The Authority must provide the Scottish Ministers with such reports, statistics or other information relating to the Authority or the Police Service as they may reasonably require.

(2) Such information may, in particular, relate to—
   (a) the Authority or its functions,
   (b) the Police Service or police functions,
   (c) the state of crime.
(3) The chief constable must provide the Authority with such reports, statistics or other
information relating to the Police Service, police functions or the state of crime as it may
reasonably require.

(4) The chief constable may refer a requirement made under subsection (3) to the Scottish
Ministers if the chief constable considers that complying with the requirement would or
might prejudice—
   (a) the carrying out of any operation by the Police Service, or
   (b) the prosecution of offenders.

(5) A requirement referred under subsection (4) has effect only if it is confirmed by the
Scottish Ministers.

(6) The chief constable must provide the Lord Justice General or a sheriff principal with
such reports relating to policing as may be reasonably required.

(7) A requirement by the sheriff principal may relate only to the policing of places in which
the sheriff principal has jurisdiction.

(8) The chief constable must seek to ensure that sufficient information about the state of
crime is kept to enable the compliance with any requirement made under this section for
the provision of information in that regard.

(9) The clerk of any court having criminal jurisdiction must comply with any requirement
made by the chief constable to provide any information available to the clerk which the
chief constable may require for the purposes of subsection (8).

(10) Nothing in this section requires anyone to provide any report, statistic or other
information before the earliest time at which it is reasonable for that person to do so.

82 Scrutiny and investigations: co-operation and information sharing

(1) The inspectors of constabulary, the Auditor General and the Police Investigations and
Review Commissioner must—
   (a) co-operate and co-ordinate activity with each other with a view to improving the
carrying out of their respective functions in relation to the Authority and the
Police Service, and
   (b) in particular, must together make arrangements with a view to—
      (i) securing the exchange of information between them about the Authority
and the Police Service, and
      (ii) preventing any unnecessary duplication in relation to any inspections,
inspections, inquiries or examinations carried out, or to be carried out,
by them in relation to the Authority or the Police Service.

(2) The duty in subsection (1) does not apply in so far as compliance with it would prevent
or delay any of the persons to whom it applies in taking any action which the person
considers to be necessary as a matter of urgency.

(3) In complying with the duty in subsection (1), the inspectors of constabulary and the
Police Investigations and Review Commissioner must—
   (a) comply with any direction (general or specific) given by the Scottish Ministers,
(b) have regard to any guidance given by the Scottish Ministers.

(4) A direction or guidance may relate to all the functions of the inspectors of constabulary and the Police Investigations and Review Commissioner or to such of those functions (or to such functions of any or all of them) as are specified in the direction or guidance.

(5) The Scottish Ministers may vary or revoke any direction or guidance.

CHAPTER 13
PROVISION OF GOODS AND SERVICES

83 Provision of police services

(1) The Authority may authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services.

(2) An authorisation under subsection (1) may be of a general or specific nature and may, in particular, set out a scale by reference to which charges for police services are to be made.

(3) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the police services concerned.

(4) The Authority, when making such an authorisation, must comply with any code about charging for police services issued by the Scottish Ministers.

(5) Any such code—

(a) may be of a general or specific nature,

(b) may be varied or revoked at any time.

(6) The chief constable must ensure that all sums received by way of charges for police services are paid to the Authority.

(7) Nothing in this section permits the making of any charge for police services which exceeds the cost of providing those services.

(8) Except in so far as authorised or required by any other enactment or rule of law, the chief constable may not make charges in respect of the carrying out of police functions otherwise than in accordance with an authorisation under subsection (1).

(9) In this Part, “police services” means services in connection with the maintenance of order, or the protection of persons or property from harm, which are provided on or in relation to land owned or occupied by the person who requests those services.

84 Provision of other goods and services

(1) The Authority may—

(a) provide goods and services to any other public body or office-holder,

(b) provide goods and services of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.

(2) Goods and services may be provided in pursuance of subsection (1) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of its functions.
(3) The Authority may, with the consent of the chief constable, make arrangements for the Police Service—
(a) to provide goods and services (other than police services) to any other public body or office-holder,
(b) to provide goods and services (other than police services) of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.

(4) Goods and services may be provided in pursuance of subsection (3) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of police functions.

(5) The Authority may make charges in respect of any goods or services provided by it, or by the Police Service, in pursuance of subsection (1) or (3).

(6) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the goods or services concerned.

(7) Nothing in this section permits the Authority to make any charge for forensic services it is required to provide in pursuance of section 31.

(8) Goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) include—
(a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),
(b) services involving the inspection, testing, maintenance or repair of vehicles,
(c) any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority’s functions or, as the case may be, police functions.

CHAPTER 14
GRANTS

85 Police grants

(1) The Scottish Ministers may make grants to the Authority of such amounts as they determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

86 Grants to other persons

(1) The Scottish Ministers may make grants of such amounts as they determine, or provide such other financial assistance as they think appropriate, to such persons as they think fit for the purposes of providing services to, or otherwise assisting or supporting, the Authority or the Police Service in the carrying out of the Authority’s functions or, as the case may be, police functions.
Grants may be made or financial assistance provided under this section only where the Scottish Ministers consider it is necessary or expedient to do so for promoting the efficiency or effectiveness of, or securing best value for, the Authority or the Police Service.

A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

Any financial assistance provided is subject to any conditions specified by the Scottish Ministers.

CHAPTER 15

OFFENCES

Assaulting or impeding police

It is an offence for a person to assault—

(a) a person (“A”) acting in a capacity mentioned in subsection (2), or

(b) a person assisting A while A is acting in such capacity.

It is an offence for a person to resist, obstruct or hinder—

(a) a person (“A”) acting in a capacity mentioned in subsection (2), or

(b) a person assisting A while A is acting in such capacity.

The capacities are—

(a) that of a constable,

(b) that of a member of police staff,

(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(d) that of a person who—

(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and

(ii) is carrying out functions as a member of that team.

A person who is guilty of an offence under subsection (A1) or (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (A1) and an offence under subsection (1).

Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.

In this section and section 88, a reference to a member of a relevant police force is a reference to a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,
Police and Fire Reform (Scotland) Bill
Part 1—Police reform
Chapter 15—Offences

(c) the City of London police force, or
(d) the Police Service of Northern Ireland.

88 Escape from custody

(1) It is an offence for a person—
(a) to remove a person from custody, or
(b) to assist the escape of a person in custody.

(2) The reference in subsection (1) to a person in custody is to be construed as a reference to a person—
(a) who is in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (3) or a person assisting A while A is acting in such capacity, or
(b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested.

(3) The capacities are—
(a) that of a constable,
(b) that of a police custody and security officer,
(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
(d) that of a person who—
(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
(ii) is carrying out functions as a member of that team.

(4) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

89 Impersonation etc.

(1) It is an offence for a person (not being a constable)—
(a) to impersonate a constable with an intent to deceive, or
(b) to do anything calculated to suggest that the person is a constable.

(2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.

(3) It is a defence for a person charged under subsection (2) to prove that the article—
(a) was obtained lawfully, and
(b) is in the person’s possession for a lawful purpose.

(4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.
Police and Fire Reform (Scotland) Bill
Part 1—Police reform
Chapter 16—Independent custody visiting

(5) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 4 on the standard scale.

(6) In this section an “article of police uniform” means—
(a) any article of uniform or any distinctive badge or mark usually issued to constables, or
(b) any article having the appearance of such article, badge or mark.

CHAPTER 16
INDEPENDENT CUSTODY VISITING

90 Purpose of custody visiting
The provisions in this Chapter are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

91 Independent custody visiting
(1) The Authority must make arrangements to ensure that independent custody visitors may—
(a) visit detainees,
(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must—
(a) provide for the appointment as independent custody visitors of suitable persons who are independent of both the Authority and the Police Service,
(b) authorise independent custody visitors to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained, and
(c) provide for reporting on each visit.

(3) The arrangements may, in particular, authorise independent custody visitors to—
(a) access, without prior notice, any place in which a detainee is held,
(b) examine records relating to the detention of persons there,
(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
(e) meet such other persons that the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.
The arrangements may allow access to a detainee to be refused only where—

(a) the Scottish Ministers have determined grounds on which access to detainees (or to a category of detainee) can be so refused,

(b) it appears to a constable of the rank of inspector (or above) that such a ground is satisfied in relation to the detainee, and

(c) any other procedural requirements the Authority considers necessary have been met.

(5) The Authority must—

(a) keep the arrangements under review and revise them as it thinks fit,

(b) prepare and publish such reports on independent custody visiting as the Scottish Ministers may reasonably require.

(6) The Authority and members of its staff, the Police Service and police staff and independent custody visitors must have regard to any guidance issued by the Scottish Ministers about independent custody visiting.

(7) Before issuing guidance, or making a determination for the purposes of subsection (4)(a), the Scottish Ministers must consult—

(a) the Authority,

(b) the chief constable,

(c) independent custody visitors or such persons as appear to them to be representative of independent custody visitors, and

(d) such other persons as they consider appropriate.

(8) The Scottish Ministers must lay a copy of guidance issued or any determination made before the Scottish Parliament.

SPT visits

(1) The Authority must make arrangements to ensure that members of the SPT may—

(a) visit detainees,

(b) access information relevant to the treatment of detainees and the conditions in which they are detained, and

(c) monitor the treatment of detainees and the conditions in which they are detained.

(2) The arrangements must authorise members of the SPT to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.

(3) The arrangements may, in particular, authorise members of the SPT to—

(a) access, without prior notice, any place in which a detainee is held (accompanied by such experts as the SPT members think fit),

(b) examine records relating to the detention of persons there,

(c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
(d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and

(e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.

(4) The arrangements may allow access to a detainee to be refused only—

(a) where there are urgent and compelling grounds of public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit, and

(b) the Scottish Ministers have notified the Authority that such grounds exist and that access should accordingly be refused.

(5) The Authority must keep the arrangements under review and revise them as it thinks fit.

(6) The Authority and members of its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits.

93 Interpretation of Chapter 16

(1) For the purposes of this Chapter, a reference to a detainee is a reference to a person in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (2) or a person assisting A while A is acting in such a capacity.

(2) The capacities are—

(a) that of a constable,

(b) that of a police custody and security officer,

(c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,

(d) that of a person who—

(i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and

(ii) is carrying out functions as a member of that team.

(3) For the purpose of subsection (2) a reference to a member of a relevant police force is a reference to a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),

(b) the metropolitan police force,

(c) the City of London police force, or

(d) the Police Service of Northern Ireland.

(4) In this Chapter—

“SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT, and
“OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

CHAPTER 17
MISCELLANEOUS AND GENERAL

94 Dissolution of the Police Advisory Board for Scotland

(1) The Police Advisory Board for Scotland is dissolved.

(2) In section 63 of the Police Act 1996 (c.16) (Police Advisory Boards for England and Wales and for Scotland)—

(a) in subsection (1)—

(i) repeal “and a Police Advisory Board for Scotland”, and

(ii) repeal “in those countries respectively”,

(b) repeal subsection (1ZA), and

(c) in subsection (2), for “each of the Police Advisory Boards” substitute “the Police Advisory Board for England and Wales”.

95 Transitional and transitory provision

(A1) A person mentioned in subsection (A3) must provide the Authority with such information and assistance as the Authority may reasonably require.

(A2) A person mentioned in subsection (A3) must provide the chief constable with such information and assistance as the chief constable may reasonably require.

(A3) Those persons are—

(a) a police authority within the meaning of the Police (Scotland) Act 1967 (“the 1967 Act”),

(b) a joint police Board constituted by an amalgamation scheme made under the 1967 Act,

(c) a chief constable of a police force maintained under the 1967 Act,

(d) the Scottish Police Services Authority.

(1) Schedule 3A makes provision about the period before the Police Service is established.

(2) Schedule 4 contains provision about the transfer of constables, inspectors of constabulary, police cadets, staff, property, rights, liabilities and obligations.

97 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),

“annual police plan” has the meaning given by section 35,
“appropriate prosecutor” means the Lord Advocate or procurator fiscal,
“assistant chief constable” means a constable appointed to the office of assistant chief constable under section 7,
“Auditor General” means the Auditor General for Scotland,
“Authority” means the Scottish Police Authority,
“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),
“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—
(a) the chief constable,
(b) other senior officers,
(c) any special constable,
(d) any constable on temporary service outwith the Police Service, and
(e) any individual engaged on temporary service as a constable of the Police Service under arrangements made under section 16,
“deputy chief constable” means a constable appointed to the office of deputy chief constable under section 7,
“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,
“international joint investigation team” means any investigation team formed in accordance with—
(a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union,
(b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with Article 34 of the Treaty on European Union,
(c) the Convention implementing the Schengen Agreement of 14 June 1985,
(d) the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, or
(e) any international agreement to which the United Kingdom is a party and which is specified for the purposes of (as the case may be) section 24, 87, 88 or 93 in an order made by the Scottish Ministers,
“joint central committee of the Police Federation for Scotland” means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee,
“local commander” means a constable designated under section 45(2),
“local police plan” has the meaning given by section 48,
“member of the Authority’s staff” means an individual appointed under paragraph 7(1) of schedule 1,
“police appeals tribunal” means a tribunal constituted in accordance with schedule 3,
“police cadet” means an individual appointed under section 25,
“police custody and security officer” means an individual certified under section 28(1),
“police functions” means the functions of constables (including the chief constable’s functions and any functions of a deputy chief constable, an assistant chief constable or a local commander),
“policing” means the carrying out of police functions (and references to the policing of Scotland are references to the carrying out of police functions in or as regards Scotland),
“the Police Investigations and Review Commissioner” means the Commissioner established by section 33 of the 2006 Act and renamed by section 62,
“Police Service” means the Police Service of Scotland,
“police services” has the meaning given by section 83(9),
“police staff” means staff appointed under section 26(1) (and “member of the police staff” is to be construed accordingly),
“senior officer” means a constable who holds the office of chief constable, deputy chief constable or assistant chief constable,
“strategic police priorities” has the meaning given by section 33,
“strategic police plan” has the meaning given by section 34,
“terms and conditions” includes terms and conditions about payment of remuneration or allowances or about reimbursement of expenses.

(2) In this Part, references to securing best value are to be construed in accordance with section 38.

98 Crown application

(1) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.

(2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Despite subsection (1), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.

(4) The power conferred by section 4(2)(d) does not apply in relation to Crown land.

(5) In this section, “Crown land” means land held or used by or on behalf of the Crown (and includes an interest belonging to Her Majesty in right of Her private estates).
PART 2

FIRE REFORM

The Scottish Fire and Rescue Service

99 The Scottish Fire and Rescue Service

(1) After section 1 of the 2005 Act, insert—

"1A The Scottish Fire and Rescue Service

(1) There is established a body corporate to be known as the Scottish Fire and Rescue Service or, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba (referred to in this Act as “SFRS”).

(2) SFRS has the functions conferred on it by or under this Act or any other enactment.

(3) Schedule 1A makes further provision about SFRS.”.

(2) After schedule 1 to the 2005 Act, insert—

“SCHEDULE 1A

(introduced by section 1A(3))

THE SCOTTISH FIRE AND RESCUE SERVICE

Status

1 (1) SFRS—

(a) is not a servant or agent of the Crown, and

(b) has no status, immunity or privilege of the Crown.

20 (2) SFRS’s property is not property of, or property held on behalf of, the Crown.

Membership

2 (1) SFRS is to consist of —

(a) a member appointed by the Scottish Ministers to chair SFRS (“the chairing member”), and

(b) not fewer than 10 nor more than 14 other members appointed by the Scottish Ministers.

(3) The Scottish Ministers may appoint as members only persons who they consider to have skills and expertise relevant to the functions of SFRS.

(4) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified such other number as they think fit.

(5) Members of SFRS may elect from their number a member to act as deputy to the chairing member.

Disqualification

3 (1) A person is disqualified from appointment, and from holding office, as a member of SFRS if that person is or becomes—
(a) a member of staff of SFRS,

(b) a member of—
   (i) the Scottish Parliament,
   (ii) the House of Lords,
   (iii) the House of Commons, or
   (iv) the European Parliament,

(c) disqualified from standing for election as a member of—
   (i) the Scottish Parliament,
   (ii) the House of Commons, or
   (iii) a local authority.

(2) The Scottish Ministers may by order modify sub-paragraph (1).

Tenure

4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.

(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(3) On ceasing to be a member, a person is eligible for reappointment.

(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

Removal from office

6 (1) The Scottish Ministers may remove a member from office if—
   (a) the member is an undischarged bankrupt,
   (c) the member has, without reasonable excuse, been absent from meetings of SFRS for a period longer than 4 consecutive months,
   (d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of SFRS,
   (e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,
   (f) the member has failed to comply with the terms or conditions of the member’s appointment,
   (g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—
   (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),

c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),

d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

e) who has been adjudged bankrupt (and has not been discharged), or

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those mentioned in paragraphs (a) to (d), anywhere in the world.

Remuneration, allowances and expenses of members

SFRS may pay to its members such remuneration, allowances and expenses as the Scottish Ministers may determine.

The Chief Officer

SFRS must employ a Chief Officer.

(a) The Chief Officer may not be a member of SFRS.

(b) The first Chief Officer is to be appointed by the Scottish Ministers on such terms and conditions as they may determine.

(c) Each subsequent appointment of a person as the Chief Officer is to be made by SFRS.

(d) The appointment of a person under sub-paragraph (4) is subject to the approval of the Scottish Ministers.

(e) The terms and conditions of a person appointed under sub-paragraph (4) are to be determined by SFRS.

SFRS’s employees

SFRS may employ staff.

(a) Staff are to be employed on terms and conditions determined by SFRS.

(b) SFRS may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who is, or has ceased to be, a member of staff (including the Chief Officer).

(c) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.

(d) The arrangements mentioned in sub-paragraph (3) may include—

(a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and

(b) the establishment and administration of pension schemes.
Committees and sub-committees

10 (1) SFRS may establish committees for any purpose.

(2) Any committee so established may establish sub-committees.

(3) The members of any committee or sub-committee may include persons who are not members of SFRS but such persons are not entitled to vote at meetings.

(4) A committee or sub-committee must not consist entirely of persons who are not members of SFRS.

(5) SFRS may pay such remuneration, allowances and expenses as are determined by SFRS to a member of a committee or sub-committee who is not—

(a) a member of SFRS, or

(b) a member of staff of SFRS.

Procedure

11 (1) SFRS may regulate—

(a) its own procedure (including quorum), and

(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of SFRS is not affected by any—

(a) vacancy in its membership,

(b) defect in the appointment of a member,

(c) disqualification of a person as a member after appointment.

Public access

11ZA(1) SFRS must ensure that its proceedings and those of its committees and sub-committees are held in public.

(2) Despite sub-paragraph (1), SFRS or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.

(3) SFRS must publish—

(a) agendas for its proceedings and those of its committees and sub-committees,

(b) the papers relating to those proceedings,

(c) such reports of those proceedings as it thinks fit.

(4) Despite sub-paragraph (3), SFRS may decide that all or part of any agenda, paper or report need not be published.

(5) SFRS must publish a statement setting out—

(a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and

(b) the circumstances in which agendas, papers and reports need not be published.
Governance and accountability

11A SFRS must try to ensure that each of its members, when acting in the capacity of member—

(a) acts consistently with any principle of good governance which appears to SFRS to constitute best practice, and

(b) acts in a way which is as accountable and transparent as is reasonably practicable.

SFRS’s general powers

12 (1) SFRS may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.

(2) SFRS may in particular—

(a) enter into contracts,

(b) borrow money,

(c) acquire and dispose of land and other property,

(d) with the authorisation of the Scottish Ministers, purchase compulsorily land,

(e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).

(3) SFRS may not exercise the power in sub-paragraph (2)(b) or (e) without the consent of the Scottish Ministers.

(4) For the purposes of sub-paragraph (3) consent may be given—

(a) with respect to a particular case or class of case,

(b) subject to such conditions as the Scottish Ministers consider appropriate.

(5) The power in sub-paragraph (2)(c) includes the power to accept, on such conditions as SFRS considers appropriate—

(a) gifts of money, and

(b) gifts or loans of other property.

(6) The powers in sub-paragraph (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.

(7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under sub-paragraph (2)(d) as if—

(a) that sub-paragraph were contained in an Act in force immediately before the commencement of that Act, and

(b) SFRS were a local authority.
Delegation of functions

13 (1) SFRS may delegate any of its functions to a person mentioned in sub-

paragraph (2).

(2) Those persons are—

(a) the Chief Officer,

(b) any other member of staff of SFRS,

(c) any of its committees.

(3) Sub-paragraph (1) does not affect—

(a) SFRS’s responsibility for the carrying out of the delegated functions, or

(b) SFRS’s ability to carry out the delegated functions.

Location of principal office premises

14 Any determination by SFRS as to the location of the principal office premises

of its members or its Chief Officer is subject to the approval of the Scottish

Ministers.

Grants

15 (1) The Scottish Ministers may make grants to SFRS of such amounts as they may
determine.

(2) A grant is made subject to any conditions specified by the Scottish Ministers
(including conditions about repayment).

Accounts

16 (1) SFRS must—

(a) keep proper accounts and accounting records, and

(b) prepare for each financial year a statement of accounts.

(2) Each statement of accounts must comply with any directions given by the
Scottish Ministers as to—

(a) the information to be contained in it,

(b) the manner in which the information is to be presented,

(c) the methods and principles according to which the statement is to be
prepared.

(4) SFRS must send each statement of accounts to the Auditor General for
Scotland for auditing.

(6) In this paragraph, “financial year” means—

(a) the period beginning on the day on which SFRS is established and
ending on 31 March next occurring, and

(b) each subsequent period of a year ending on 31 March.”.
**Promotion of fire safety**

In section 8 of the 2005 Act (fire safety)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2)—

(i) for “a relevant authority shall” substitute “SFRS must”, and

(ii) for “the authority” substitute “it”.

**Fire safety: enforcement**

(1) In section 61 of the 2005 Act (enforcing authorities)—

(a) in each of subsections (7) and (8)—

(i) for “A relevant authority” substitute “SFRS”, and

(ii) for “the authority” substitute “SFRS”, and

(b) in subsection (9), for paragraphs (b) and (c) substitute—

“(b) in relation to any other relevant premises, SFRS.”.

(2) In section 67 of the 2005 Act (enforcement of Chapter 1 of Part 3 of the 2005 Act: determination of disputes)—

(a) for subsection (1), substitute—

“(1) Subsections (1A) and (1B) apply where—

(a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, and

(b) in relation to the duty in question, the person and the authority cannot agree on the action that requires to be taken to comply with the duty.

(1A) The person and the authority may refer the matter to the person appointed under section 43A(1)(a) for determination.

(1B) If the enforcing authority is SFRS, it or the person may refer the matter to the person appointed under section 43A(1)(a) for determination.”, and

(b) in subsection (4), for “(1) or (2)” substitute “(1A) or (1B)”.

**Fire-fighting**

In section 9 of the 2005 Act (fire-fighting)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

**Road traffic accidents**

In section 10 of the 2005 Act (road traffic accidents)—

(a) in subsection (1), for “Each relevant authority shall” substitute “SFRS must”, and

(b) in subsection (2), for “a relevant authority shall” substitute “SFRS must”.

Functions
104 Conferral of functions in relation to other emergencies
In section 11 of the 2005 Act (conferral of functions in relation to other emergencies)—
(a) in subsection (1), for “a relevant authority (the “specified authority”)” substitute “SFRS”, and
(b) in each of subsections (2) and (3), for “the specified authority”, in each place where it occurs, substitute “SFRS”.

105 Power to respond to other eventualities
In section 13 of the 2005 Act (power to respond to other eventualities)—
(a) in subsection (1), for “A relevant authority” substitute “SFRS”, and
(b) in subsection (2)(b), for “an authority” substitute “SFRS”.

106 Provision of other services
In section 14 of the 2005 Act (provision of other services)—
(a) in subsection (1)—
(i) for “A relevant authority” substitute “SFRS”, and
(ii) for “the authority” substitute “SFRS”, and
(b) in subsection (2), for “An authority” substitute “SFRS”.

107 Provision of centres for education and training
In section 15 of the 2005 Act (provision of centres for education and training)—
(a) for “A relevant authority” substitute “SFRS”, and
(b) for “relevant authorities have” substitute “it has”.

108 Charging
In section 16 of the 2005 Act (charging)—
(a) in subsection (1)—
(i) for “a relevant authority” substitute “SFRS”, and
(ii) for “the authority” substitute “SFRS”,
(b) in subsection (2), for “the authority” substitute “SFRS”,
(c) in subsection (3), for the words from “the”, where it secondly occurs, to the end substitute “SFRS at sea beyond the low water mark”, and
(d) in subsection (4)—
(i) for “a relevant authority” substitute “SFRS is”,
(ii) after “description” insert “and it”, and
(iii) for “the authority”, in both places where it occurs, substitute “SFRS”.

Further amendments of 2005 Act

109 Assistance
In section 35 of the 2005 Act (the title of which becomes “Assistance”)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for securing the provision by that person of assistance for SFRS in the carrying out by SFRS of a relevant function.

(2) A person may provide assistance under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to provide assistance for SFRS in the carrying out by SFRS of the relevant function.”, and

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

110 Delegation
In section 36 of the 2005 Act (power to make arrangements for delegating functions)—

(a) for subsections (1) and (2), substitute—

“(1) SFRS may enter into arrangements with a person for the carrying out by that person of a relevant function.

(2) A person may carry out a relevant function under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to carry out the relevant function.

(2A) SFRS may enter into arrangements under this section in relation to its function of extinguishing fires only if the person employs fire-fighters.”, and

(b) after subsection (3), add—

“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

111 Best value
Before section 40 of the 2005 Act (and the italic cross-heading immediately preceding it), insert—

“Best value

39A Best value

(1) It is the duty of SFRS to make arrangements which secure best value.

(2) Best value is continuous improvement in the carrying out of SFRS’s functions.

(3) In securing best value, SFRS must maintain an appropriate balance among—

(a) the quality of its carrying out of its functions,

(b) the cost to SFRS of that carrying out of its functions,
(c) the cost to persons of any service provided by SFRS for them on a wholly or partly rechargeable basis.

(4) In maintaining that balance, SFRS must have regard to—

(a) efficiency,

(b) effectiveness,

(c) economy, and

(d) the need to meet the equal opportunity requirements.

(5) SFRS must carry out its duties under this section in a way which contributes to the achievement of sustainable development.

(6) In measuring the improvement of the carrying out of SFRS’s functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.

(7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

39B Best value: further provision

(1) In carrying out its duties under section 39A, SFRS must have regard to the matters mentioned in subsection (2).

(2) The matters are—

(a) any relevant guidance issued by the Scottish Ministers,

(b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of section 39A(1) (or purposes which include those purposes).

(3) Before issuing relevant guidance, the Scottish Ministers must consult—

(a) SFRS, and

(b) such other persons as they think appropriate.

(4) In the event of a conflict in any respect between the matter to which SFRS is to have regard under paragraph (a) of subsection (2) and the matter to which it is to have regard under paragraph (b) of that subsection, SFRS must in that respect have regard only to matters within paragraph (a).

(5) In this section “relevant guidance”—

(a) means guidance on the carrying out of the duties imposed by section 39A,

(b) includes in particular guidance on—

(i) how to make and what is to be included in the arrangements mentioned in section 39A(1),

(ii) how to implement the duty imposed by that section.
39C Examinations of SFRS by Auditor General

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to SFRS, to include a reference to examinations into the arrangements made by SFRS under section 39A.”.

112 Strategic plan

After section 41 of the 2005 Act, insert—

“CHAPTER 8A

PLANNING, REPORTS AND INFORMATION

Strategic plan

41A SFRS’s first strategic plan

(1) SFRS must prepare a strategic plan.

(2) A strategic plan is a plan—

(a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the day appointed by order under subsection (6),

(b) setting out outcomes by reference to which the carrying out of its functions may be measured, and

(c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

(2A) Before preparing the strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.

(2B) When preparing the strategic plan, SFRS must—

(a) have regard to the framework document,

(b) send a copy of a draft plan to the persons mentioned in subsection (4),

(c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and

(d) have regard to any comments received within that period.

(4) Those persons are—

(a) each local authority,

(b) such persons as SFRS considers represent local authorities,

(c) such persons as SFRS considers represent employees of SFRS,

(d) such other persons as SFRS considers appropriate.

(5) SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Ministers for approval.
(6) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to the strategic plan (with or without modifications) before such day as the Scottish Ministers may by order appoint.

(7) If the Scottish Ministers approve the strategic plan, SFRS must—

(a) publish the plan, and

(b) lay before the Scottish Parliament a copy of the plan.

41B Review of plan

(1) This section applies where—

(a) a strategic plan is approved under section 41A, or

(b) a new strategic plan is approved under subsection (4) or (6).

(2) SFRS may at any time review the plan.

(3) SFRS must review the plan—

(a) if the Scottish Ministers make an order under section 40(4), and

(b) before the end of the period of 3 years to which the plan relates.

(4) Following a review under subsection (2) or (3)(a), SFRS may prepare and submit to the Scottish Ministers for approval a new strategic plan.

(5) If, following a review under subsection (3)(a), SFRS decides not to prepare a new strategic plan, it must notify the Scottish Ministers of that fact.

(6) Following a review under subsection (3)(b), SFRS must, before the end of the period of 3 years mentioned in that subsection, prepare and submit to the Scottish Ministers for approval a new strategic plan.

(7) A new strategic plan is a plan—

(a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the plan commencement day,

(b) setting out outcomes by reference to which the carrying out of its functions may be measured, and

(c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

(7A) Before preparing a new strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.

(7B) When preparing a new strategic plan, SFRS must—

(a) have regard to the framework document,

(b) send a copy of a draft plan to the persons mentioned in section 41A(4),

(c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and

(d) have regard to any comments received within that period.
(9) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to a new strategic plan (with or without modifications) before the plan commencement day for that plan.

(10) If the Scottish Ministers approve a new strategic plan, SFRS must—

(a) publish the plan, and

(b) lay before the Scottish Parliament a copy of the plan.

(11) In this section, “plan commencement day” means—

(a) in the case of a strategic plan prepared under subsection (4), the day 8 weeks after the day on which SFRS submits a new strategic plan to the Scottish Ministers (or such earlier day as SFRS and the Scottish Ministers may agree),

(b) in the case of a strategic plan prepared under subsection (6), the day after the end of the period of 3 years to which the previous strategic plan relates.

41C Consideration

(1) This section applies where a strategic plan or a new strategic plan has been approved by the Scottish Ministers under section 41A or, as the case may be, section 41B.

(2) In carrying out its functions, SFRS must have regard to the strategic plan in so far as that plan is not inconsistent with the framework document.”.

113 Local fire and rescue plans

After section 41C of the 2005 Act (inserted by section 112), insert—

“Local fire and rescue plans

41D Provision of local services

(1) SFRS must ensure that there are adequate arrangements in place for the carrying out of its functions in each local authority area.

(2) SFRS must involve each local authority in determining priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions.

41E Local fire and rescue plans

(1) As soon as is reasonably practicable after a strategic plan is approved under section 41A, SFRS must prepare a local fire and rescue plan for each local authority area.

(2) A local fire and rescue plan is a plan setting out—

(a) priorities and objectives for SFRS in connection with the carrying out in the local authority’s area of SFRS’s functions,

(b) the reasons for selecting each of those priorities and objectives,

(c) how SFRS proposes to deliver those priorities and objectives,
(d) in so far as is reasonably practicable, outcomes by reference to which delivery of those priorities and objectives can be measured,

(e) how those priorities and objectives are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning,

(f) such other matters relating to the carrying out of SFRS’s functions in the local authority’s area as SFRS thinks fit.

(3) In preparing the local fire and rescue plan, SFRS must—

(a) have regard to the framework document and the strategic plan approved under section 41A,

(b) consult—

   (i) such persons as SFRS considers represent employees of SFRS, and

   (ii) such other persons as SFRS considers appropriate.

(4) SFRS must submit a plan prepared under subsection (1) for approval to the local authority for the area to which the plan relates.

(5) If the plan is approved under subsection (4), SFRS must publish it.

(6) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

41F  Power to review plan

(1) This section applies where a local fire and rescue plan is published under section 41E(5), subsection (4) or section 41G(5).

(2) SFRS may at any time review the plan.

(3) Following a review, SFRS may revise the plan.

(4) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) as they apply in relation to a plan prepared under subsection (1) of that section but subject to the modification in subsection (5).

(5) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

41G  Mandatory review

(1) This section applies where a local fire and rescue plan is published under section 41E(5), section 41F(4) or subsection (5).

(2) SFRS must review the local fire and rescue plan if—

   (a) the Scottish Ministers make an order under section 40(4),

   (b) a new strategic plan is approved under section 41B, or

   (c) the plan is not revised under section 41F(3) or subsection (3) during the period of 3 years beginning with the publication of the plan.
(3) Following a review under subsection (2)(a) or (b), SFRS may revise the plan.

(4) Following a review under subsection (2)(c), SFRS must revise the plan.

(5) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) or (4) as they apply in relation to a plan prepared under subsection (1) of that section (but subject to the modification in subsection (6)).

(6) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

41H Provision of information to local authority

SFRS must give to a local authority such information or reports relating to the carrying out of SFRS’s functions in the authority’s area (including reports given by reference to any local fire and rescue plan in force for the area) as the authority may reasonably request.

41J Local Senior Officers

(1) After consulting the local authority, SFRS must designate an employee of SFRS as Local Senior Officer for each local authority area for the purpose of carrying out on behalf of SFRS the delegated functions.

(2) The delegated functions are—

(a) SFRS’s functions under sections 41E to 41H,

(b) SFRS’s functions under section 16(1)(d) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning),

(c) any other functions of SFRS which SFRS delegates to the Local Senior Officer.

(3) The duty imposed on SFRS by subsection (1) must be carried out by the Chief Officer.

(4) A person may be designated under subsection (1) in relation to more than one local authority area.

(5) Subsection (1) does not affect—

(a) SFRS’s responsibility for the carrying out of the delegated functions,

(b) SFRS’s ability to carry out the delegated functions.

41K Monitoring by local authority

(1) A local authority may monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority’s area and (in particular) may provide to SFRS—

(a) its views on any matter concerning or connected to the manner in which SFRS carries out those functions in the authority’s area,
(b) any recommendations for improvements in the manner in which SFRS carries out those functions in the authority’s area that it thinks fit.

(2) A local authority may provide feedback by reference to any local fire and rescue plan in force for its area.”.

### 114 Annual report

After section 41K of the 2005 Act (inserted by section 113), insert—

“**41L Annual report**

1. As soon as is reasonably practicable after the end of each reporting year, SFRS must—
   1. prepare and publish an annual report,
   1a) give a copy of the report to the Scottish Ministers, and
   1b) lay a copy of the report before the Scottish Parliament.

2. An annual report is a report setting out—
   1. an assessment of SFRS’s performance during the reporting year in acting in accordance with the framework document,
   1b) an assessment of SFRS’s performance during the reporting year in achieving the outcomes set out in the strategic plan approved under section 41A or, as the case may be, 41B, and
   1c) such other information as SFRS thinks fit.

3. In this section, “reporting year” means—
   1. the period beginning on the day on which SFRS is established and ending—
      1i) on 31 March next occurring, or
      1ii) if that period is of less than 6 months’ duration, on 31 March next occurring after that, and
   1b) each subsequent period of a year ending on 31 March.”.

### 115 Provision of information

After section 41L of the 2005 Act (inserted by section 114), insert—

“**41M Provision of information**

1. SFRS must provide the Scottish Ministers with such reports, statistics and other information relating to SFRS or its functions as the Scottish Ministers may require.

2. Information provided under this section may in particular relate to the outcomes of fires, events and other situations in relation to which SFRS makes provision or takes action.

3. Information to be provided under this section must be provided at the times, and in the form, specified by the Scottish Ministers.”.
Directions by Scottish Ministers

After section 42 of the 2005 Act, insert—

“Directions

42A Directions

(1) The Scottish Ministers may give SFRS general or specific directions.

(2) SFRS must comply with a direction under this section.

(3) Directions under this section may vary or revoke earlier directions under this section.

(4) Directions under this section must be in writing.

(5) The Scottish Ministers must—

(a) publish a direction given under this section, and

(b) lay a copy of it before the Scottish Parliament.

(6) Nothing in this section enables the Scottish Ministers to give a direction in circumstances to which subsection (3) or (4) of section 41 applies.”.

Inspectors of SFRS

After section 43 of the 2005 Act, insert—

“CHAPTER 8B

INSPECTION

Inspectors of SFRS

43A Inspectors of SFRS

(1) Her Majesty may by Order in Council appoint—

(a) a Chief Inspector of the Scottish Fire and Rescue Service, and

(b) such number of Inspectors of the Scottish Fire and Rescue Service as the Scottish Ministers may determine.

(2) The Scottish Ministers may appoint Assistant Inspectors of the Scottish Fire and Rescue Service.

(3) The Scottish Ministers must pay to persons appointed under this section such remuneration as the Scottish Ministers may determine.

(4) The Scottish Ministers may authorise an Inspector to carry out any of the functions conferred on the Chief Inspector by or under this Act or any other enactment if—

(a) there is a temporary vacancy in the office of Chief Inspector, or

(b) the Scottish Ministers consider that the Chief Inspector is temporarily unable to carry out the Chief Inspector’s functions.

(5) A person who, immediately before the coming into force of section 117 of the Police and Fire Reform (Scotland) Act 2012 (asp 00), is by virtue of section 43—
(a) the Chief Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(a),

(b) an Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(b), and

(c) an Assistant Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (2).

(6) In this Act—

“Chief Inspector” means a person appointed under subsection (1)(a), and

“Inspector” means a person appointed under subsection (1) or (2).

43B Inquiries by Inspectors

(1) An Inspector may inquire into a matter mentioned in subsection (3).

(2) If directed to do so by the Scottish Ministers, an Inspector must inquire into a matter mentioned in subsection (3).

(3) The matters are—

(a) the state and efficiency of SFRS,

(b) whether in carrying out its functions SFRS is complying with its duty under section 39A to make arrangements which secure best value,

(c) the manner in which SFRS is carrying out any of its functions.

(4) In carrying out an inquiry under this section an Inspector may—

(a) require SFRS to provide any information or documents relating to the functions of SFRS that the Inspector may require,

(b) enter and inspect any premises which are used by SFRS,

(c) inspect any equipment which is used by SFRS.

(5) If an Inspector exercises a power of entry by virtue of subsection (4)(b), the Inspector may—

(a) take onto the premises—

(i) such other persons, and

(ii) such equipment,

as the Inspector considers necessary,

(b) require any person present on the premises to provide the Inspector with any information or documents that the Inspector may reasonably request.

(6) An Inspector may not under subsection (4)(b)—

(a) enter or inspect premises occupied as a private dwelling,

(b) enter premises by force.

(7) SFRS must provide such facilities, assistance and co-operation as an Inspector may reasonably request for the purposes of, or in connection with, an inquiry under this section.
43C Inquiries under section 43B(1): reports

(1) This section applies where an inquiry under section 43B(1) has been completed.

(2) The Chief Inspector must give SFRS a report of the inquiry.

(3) If a report given to SFRS under subsection (2) relates to a matter mentioned in section 43B(3)(a) or (b), the Chief Inspector must—
   (a) as soon as is reasonably practicable after giving the report to SFRS, give the Scottish Ministers a copy of the report, and
   (b) give the Scottish Ministers any other information relating to the inquiry that they may request.

(4) If a report given to SFRS under subsection (2) does not relate to a matter mentioned in section 43B(3)(a) or (b) the Chief Inspector —
   (a) may give the Scottish Ministers a copy of the report if the Chief Inspector thinks fit,
   (b) may give the Scottish Ministers any other information in relation to the report that the Chief Inspector thinks fit,
   (c) must give the Scottish Ministers any information relating to the inquiry that the Scottish Ministers may request.


43D Inquiries under section 43B(2): reports

(1) This section applies where an inquiry under section 43B(2) has been completed.

(2) The Chief Inspector must give the Scottish Ministers—
   (a) a report of the inquiry, and
   (b) any other information relating to the inquiry that the Scottish Ministers may request.

(3) As soon as is reasonably practicable after giving the report to the Scottish Ministers under subsection (2)(a), the Chief Inspector must give a copy of the report to SFRS.

(4) The Scottish Ministers must lay before the Scottish Parliament a copy of the report given to them under subsection (2)(a).

43E Inquiry reports: SFRS consideration

In carrying out its functions, SFRS must have regard to a report given to it under section 43C(2) or 43D(3) and, having done so, must take such measures (if any) as it thinks fit in relation to the report.

43F Chief Inspector’s plan

(1) The Chief Inspector must prepare a plan setting out—
(a) priorities for inquiries to be carried out by Inspectors, and
(b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.

(2) The Chief Inspector—
   (a) must keep the plan under review, and
   (b) may from time to time revise the plan.

(3) The Chief Inspector must, in preparing a plan (and any revised plan), consult such persons as the Chief Inspector considers appropriate.

(4) The Chief Inspector must publish the plan (and any revised plan) in such manner as the Chief Inspector thinks fit.

Co-operation and information-sharing

43G Co-operation and information-sharing: Auditor General

(1) The Inspectors and the Auditor General must co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to SFRS.

(2) In particular, the Inspectors and the Auditor General must together make arrangements with a view to—
   (a) securing the exchange of information between them about SFRS,
   (b) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to SFRS.

(3) The duties imposed by subsections (1) and (2) do not apply in so far as compliance with them would prevent or delay any of the persons on whom they are imposed in taking any action which the person considers to be necessary as a matter of urgency.”.

117A Prohibition on employment of police

In section 51 of the 2005 Act (prohibition on employment of police), after “constable” insert “(other than a special constable appointed under section 9 of the Police and Fire Reform (Scotland) Act 2012 (asp 00))”.

General

118 Transfer of staff, property etc.

Schedule 5 makes provision about the transfer of staff, property, rights, liabilities and obligations.

118A SFRS: transitory provision

   (A1) A person mentioned in subsection (A2) must provide SFRS with such information or assistance as SFRS may reasonably require.

   (A2) Those persons are—
(a) a fire and rescue authority within the meaning of section 1 of the 2005 Act,
(b) a joint fire and rescue board constituted by a scheme made under section 2(1) of
the 2005 Act.

(1) Subsection (2) applies until the coming into force of section 99(1) for the purpose of
inserting section 1A(2) into the 2005 Act.

(2) Despite paragraph 2(1) of schedule 1A to the 2005 Act, SFRS may consist of—
(a) the chairing member, or
(b) the chairing member and fewer than 10 other members.

119 Meaning of ‘the 2005 Act’

In this Part, “the 2005 Act” means the Fire (Scotland) Act 2005 (asp 5).

PART 3
GENERAL

119A Parliamentary scrutiny of operation of Act

(1) The Scottish Parliament must make arrangements for keeping under review the
operation of this Act.

(2) The Scottish Parliament must publish reports in pursuance of subsection (1).

120 Subordinate legislation

(1) Any power of the Scottish Ministers to make an order, regulations or rules under this
Act includes power to make—
(a) different provision for different purposes (for example, for different types or ranks
of constable),
(b) such supplementary, incidental, consequential, transitional, transitory or saving
provision as they consider appropriate.

(2) An order made under section 10(2) or 11(5) is subject to the affirmative procedure.

(3) An order made under section 121 or 122 containing provisions which add to, replace or
omit any part of the text of an Act is subject to the affirmative procedure.

(4) All other orders, and any regulations or rules, made under this Act are subject to the
negative procedure.

(5) This section does not apply to an order made under section 124(2), paragraph 2(1)(b) of
schedule 4 or paragraph 1 of schedule 5.

121 Ancillary provision

(1) The Scottish Ministers may by order make such supplementary, incidental or
consequential provision as they consider appropriate for the purposes of, or in
connection with, or for the purposes of giving full effect to, any provision made by or
under this Act.

(2) An order under this section may modify this or any other enactment.
122  Transitional provision etc.

(1) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

(2) An order under this section may modify this or any other enactment.

123  Minor and consequential amendments and repeals

(1) Schedule 6 contains minor amendments and amendments consequential on the provisions of this Act.

(2) The enactments mentioned in the first column in schedule 7, (which include enactments that are spent) are repealed to the extent set out in the second column.

124  Commencement

(1) The following provisions of this Act come into force on the day after Royal Assent—

(a) in Part 1, sections 1 (and schedule 1), 2(1)(b), (2) and (3), 4, 7, 38, 39, 41(1), (3), (4) and (5), 81(1), (2)(a) and (10), 85, 86, 95(1) (and schedule 3A) and 97,

(b) in Part 2, sections 99(1) (but only for the purpose of inserting section 1A(1) and (3) into the 2005 Act) and (2), 111, 115, 118A(1) and (2) and 119, and

(c) this Part (other than section 123).

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under this section may include transitional, transitory or saving provision.

125  Short title

The short title of this Act is the Police and Fire Reform (Scotland) Act 2012.
SCHEDULE 1
(introduced by section 1)

THE SCOTTISH POLICE AUTHORITY

PART 1

STATUS, STRUCTURE AND GOVERNANCE

Status

1 (1) The Authority—
   (a) is not a servant or agent of the Crown, and
   (b) has no status, immunity or privilege of the Crown.

(2) The Authority’s property is not property of, or property held on behalf of, the Crown.

Membership

2 (1) The Authority is to consist of—
   (a) a member appointed by the Scottish Ministers to chair the Authority (“the chairing
       member”), and
   (b) not fewer than 10 nor more than 14 other members appointed by the Scottish
       Ministers.

(3) The Scottish Ministers must appoint as members only persons who they consider to
    have the skills and expertise relevant to the functions of the Authority.

(4) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the
    minimum or maximum number of members for the time being specified there such other
    number as they think fit.

(4A) Members of the Authority may elect from their number a member to act as deputy to the
     chairing member.

Disqualification

3 A person is disqualified from appointment, and from holding office, as a member of the
Authority if that person is or becomes—
   (a) a member of—
       (i) the Scottish Parliament,
       (ii) the House of Lords,
       (iii) the House of Commons, or
       (iv) the European Parliament,
   (b) disqualified from standing for election as a member of—
       (i) the Scottish Parliament,
       (ii) the House of Commons, or
       (iii) a local authority,
(c) a constable,

(d) a member of—

(i) a police force maintained under section 2 of the Police Act 1996 (c.16),

(ii) the metropolitan police force,

(iii) the City of London police force,

(iv) the Police Service of Northern Ireland,

(v) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),

(vi) the British Transport Police Force,

(vii) the Civil Nuclear Constabulary,

(viii) the States of Jersey Police Force,

(ix) the salaried police force of the Island of Guernsey, or

(x) the Isle of Man Constabulary,

(e) a member of police staff,

(f) a member of the Authority’s staff,

(g) the Police Investigations and Review Commissioner or any member of the Commissioner’s staff, and

(h) a person of such other description as may be prescribed by order made by the Scottish Ministers.

Tenure

4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.

(2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.

(3) On ceasing to be a member, a person is eligible for reappointment.

(4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

Removal from office

6 (1) The Scottish Ministers may remove a member from office if—

(a) the member is an undischarged bankrupt,

(c) the member has, without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months,

(d) the member has, without reasonable excuse, been absent from 3 consecutive meetings of the Authority,

(e) the member has been convicted (whether before or after the member’s appointment) of a criminal offence,
(f) the member has failed to comply with the terms or conditions of the member’s appointment, or
(g) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member’s functions.

(2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),
(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
(e) who has been adjudged bankrupt (and has not been discharged), or
(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

Staff of the Authority

7 (1) The Authority may appoint individuals to assist the Authority in the carrying out of its functions.

(2) Individuals appointed under sub-paragraph (1) may be—

(a) employed by the Authority,
(b) provided to the Authority under arrangements between the Authority and a third party, or
(c) engaged on temporary service with the Authority in accordance with arrangements made under paragraph 8(1).

Constables: temporary service with the Scottish Police Authority

8 (1) The Authority may make arrangements for a constable, or any person falling within sub-paragraph (2), to serve as a member of the Authority’s staff in order to assist it in the carrying out of its functions.

(2) A person falls within this sub-paragraph if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c.16),
(b) the metropolitan police force,
(c) the City of London police force,
(d) the Police Service of Northern Ireland,
(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
(f) the British Transport Police Force,
(g) the Civil Nuclear Constabulary,
(h) the States of Jersey Police Force,
(i) the salaried police force of the Island of Guernsey, or
(j) the Isle of Man Constabulary.

An individual engaged on service with the Authority under arrangements made under
this paragraph is under the direction and control of the Authority.

The Authority is liable in respect of any unlawful conduct on the part of any individual
to whom sub-paragraph (3) applies in the carrying out (or purported to carrying out) of
that individual’s functions in the same manner as an employer is liable in respect of any
unlawful conduct on the part of an employee in the course of employment.

Terms and conditions of the Authority’s staff

A member of the Authority’s staff may be employed on terms and conditions
determined by the Authority.

The Authority may pay or make arrangements for the payment of pensions, allowances
or gratuities (including by way of compensation for loss of employment) to, or in
respect of, any person who has ceased to be employed as a member of the Authority’s
staff.

The arrangements mentioned in sub-paragraph (2) may include—
(a) the making of contributions or payments towards provision for pensions,
allowances or gratuities mentioned there, and
(b) the establishment and administration of pension schemes.

Committees and sub-committees

The Authority may establish committees for any purpose.

Any committee so established may establish sub-committees.

The members of any committee or subcommittee may include persons who are not
members of the Authority but such persons are not entitled to vote at meetings.

A committee or sub-committee must not consist entirely of persons who are not
members of the Authority.

The Authority may pay such remuneration, allowances and expenses as are determined
by the Authority to a member of a committee or sub-committee who is not—
(a) a constable,
(b) a member of the Authority,
(c) a member of police staff, or
(d) a member of the Authority’s staff.

Procedure

The Authority may regulate—
(a) its own procedure (including quorum), and
(b) the procedure (including quorum) of its committees and sub-committees.

(2) The validity of any proceedings or acts of the Authority is not affected by any—
(a) vacancy in its membership,
(b) defect in the appointment of a member, or
(c) disqualification of a person as a member after appointment.

Public access

11A(1) The Authority must ensure that its proceedings and those of its committees and sub-committees are held in public.

(2) Despite sub-paragraph (1), the Authority or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.

(3) The Authority must publish—
(a) agendas for its proceedings and those of its committees and sub-committees,
(b) the papers relating to those proceedings,
(c) such reports of those proceedings as it thinks fit.

(4) Despite sub-paragraph (3), the Authority may decide that all or part of any agenda, paper or report need not be published.

(5) The Authority must publish a statement setting out—
(a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
(b) the circumstances in which agendas, papers and reports need not be published.

Delegation of functions

12 (1) The Authority may authorise—
(a) any of its committees, or
(b) any member of the Authority’s staff,

to perform on behalf of the Authority such of its functions as it may determine to the extent so authorised.

(2) A committee of the Authority may authorise—
(a) any of its sub-committees, or
(b) any member of the Authority’s staff,

to perform on behalf of the committee such of its functions as it may determine to the extent so authorised.

(3) Sub-paragraphs (1) and (2) do not affect the Authority’s—
(a) responsibility for performance of delegated functions, or
(b) ability to perform delegated functions.
Location of principal offices

13 Any determination by the Authority as to the location of the principal office premises of its members or of the chief constable is subject to the approval of the Scottish Ministers.

PART 2

CONSEQUENTIAL MODIFICATIONS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

14 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Freedom of Information (Scotland) Act 2002 (asp 13)

15 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities) after paragraph 50 insert—

“50A The Scottish Police Authority.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

16 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Public Services Reform (Scotland) Act 2010 (asp 8)

17 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies), after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

Public Records (Scotland) Act 2011 (asp 12)

18 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) after the entry for “Scottish Natural Heritage” insert “Scottish Police Authority”.

SCHEDULE 2

(introduced by section 28(3))

POLICE CUSTODY AND SECURITY OFFICERS: POWERS AND DUTIES

1 A police custody and security officer has power—

(a) to transfer persons in legal custody from one set of relevant premises to another,
(b) to have custody of persons held in legal custody on court premises (whether or not such persons would otherwise be in the custody of the court) and to produce them before the court,

c) to have custody of persons temporarily held in legal custody in relevant premises while in the course of transfer from one set of such premises to another,

d) to apprehend a person who was in the custody of the officer in relevant premises or in such course of transfer but who is unlawfully at large,

e) to remove from relevant premises any person—

(i) who the officer has reasonable grounds to believe has committed or is committing an offence, or

(ii) who is causing a disturbance or nuisance,

(f) in any place to search any person who is in legal custody or is unlawfully at large,

g) to search—

(i) any relevant premises or any other place in which there is a person in the officer’s custody who is being transferred from one set of relevant premises to another,

(ii) any person in such premises or other place who the officer has reasonable grounds to believe has committed or is committing an offence or who is seeking access to a person in the officer’s custody or to relevant premises,

(h) in relevant premises, or in any other place in which a person in legal custody is or may be, to require any person who the officer has reasonable grounds for suspecting has committed or is committing an offence—

(i) to give the person’s name and address, and

(ii) either to remain there with the officer until a constable arrives or, where reasonable in all the circumstances, to go with the officer to the nearest police station,

but only if before imposing any such requirement the officer informs the person concerned of the nature of the suspected offence and of the reason for the requirement,

(i) in fulfilment of the officer’s duties under paragraph 2(1)(d), to apprehend any person and to detain that person in custody in the premises of the court in question,

(j) at a constable’s direction, to photograph or take relevant physical data from any person held in legal custody, and

(k) to use reasonable force (which may include the use of handcuffs and other means of restraint) where and in so far as it is requisite to do so in exercising any of the other powers,

and either (but not both) of the sets of premises mentioned in any of paragraphs (a), (c) and (g) may be situated in a part of the British Islands outwith Scotland.

2 (1) It is the duty of a police custody and security officer—

(a) to attend to the well-being of a person in the officer’s custody,

(b) to prevent such a person from escaping from custody,
(c) to prevent, or detect and report on, the commission or attempted commission by such a person of any other unlawful act,

(d) to act with a view to preserving good order in the premises of any court and in land connected with such premises,

(e) to ensure good order and discipline on the part of a person in the officer’s custody (whether or not in the premises of any court or in land connected with such premises), and

(f) to give effect to any order of a court.

(2) A police custody and security officer provided to the Authority by virtue of section 26(2)(b) does not have the powers and duties mentioned in this schedule in the premises of any court or in land connected with such premises.

(3) In this schedule—

(a) “legal custody” has the meaning given by section 295 of the Criminal Procedure (Scotland) Act 1995 (c.46),

(b) “relevant physical data” has the meaning given by section 18(7A) of that Act, and

(c) “relevant premises” means—

(i) the premises of any court, prison, police station or hospital (within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)), or

(ii) the premises of any other place from or to which a person may be required to be taken under that Act of 1995 or that Act of 2003.

SCHEDULE 3
(introduced by section 57)

POLICE APPEALS TRIBUNALS

Constitution and membership

1 (1) A police appeals tribunal is to consist of 3 members, one of whom is to be appointed to chair the tribunal.

(2) The Lord President of the Court of Session must—

(a) establish and maintain a panel of persons who may be appointed as members of a police appeals tribunal, and

(b) from that panel, appoint the members (including the chairing member) of the tribunal.

(3) Every member of the panel must be, and have been for the period of 5 years immediately prior to the member’s appointment, either—

(a) a solicitor holding a practising certificate in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c.46), or

(b) a member of the Faculty of Advocates practising as an advocate in Scotland.
Member remuneration, allowances and expenses

2 The Authority is to pay to the members of a police appeals tribunal such remuneration, allowances and expenses as the Scottish Ministers may determine.

Expenses of proceedings

3 (1) The appellant is liable for the expenses incurred by the appellant in making an appeal.

(2) But the police appeals tribunal may direct that some or all of the appellant’s expenses must be paid by the Authority.

(3) The other expenses of the appeal (including the expenses of the respondent) must be paid by the Authority.

Police appeals tribunal rules

4 The Scottish Ministers may make rules about the procedure on appeals to a police appeals tribunal including, in particular, provision about—

(a) the notices required to start an appeal,

(b) the identity of the respondent, and

(c) holding hearings in private.

SCHEDULE 3A
(introduced by section 95(1))

PERIOD BEFORE ESTABLISHMENT OF POLICE SERVICE

1 This schedule applies during the period before the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6).

2 An appointment under section 7 has effect only where the individual has made the declaration set out in section 10 before a sheriff or justice of the peace.

3 An individual appointed under section 7—

(a) holds the office of constable,

(b) is to hold and vacate office on such terms and conditions as the Scottish Ministers may determine,

(c) has power to do anything that the individual considers appropriate in anticipation of—

(i) the establishment of the Police Service, or

(ii) the coming into force of any provision of this Act, and

(d) in the case of the chief constable, is accountable to the Authority.

4 Sections 18, 19, 21(1) and (2), 22 and 23 apply in relation to an individual who is so appointed as if those sections were in force.

5 Despite paragraph 2(1) of schedule 1, the Authority may consist of—

(a) the chairing member, or

(b) the chairing member and fewer than 10 other members.
It is for the Authority to hold the chief constable to account for the performance of senior officers’ functions.

The Authority may—

(a) pay remuneration and allowances to, and reimburse expenses reasonably incurred by, senior officers, and

(b) provide and maintain anything necessary or desirable in connection with the functions of senior officers.

The reference in section 4(1) to the Authority’s functions includes a reference to any functions which the Authority anticipates having by virtue of the coming into force of any provision of this Act.

**SCHEDULE 4**

*(introduced by section 95)*

**TRANSFER OF CONSTABLES, STAFF AND PROPERTY ETC.**

**Interpretation**

1 In this schedule—

“appointed day” has the meaning given by paragraph 2,

“joint police board” means a joint police board constituted by an amalgamation scheme made under the 1967 Act,

“member of the Authority’s staff” means a member of police staff appointed to assist the Authority in the carrying out of its functions,

“police authority” has the same meaning as in the 1967 Act,

“police force” means a police force maintained under the 1967 Act,

“police member of the SCDEA” means an individual appointed in accordance with paragraph 7 of schedule 2 to the 2006 Act,

“SCDEA” means the Scottish Crime and Drug Enforcement Agency,

“SPSA” means the Scottish Police Services Authority,

“the 1967 Act” means the Police (Scotland) Act 1967 (c.77),

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

**Appointed day**

2 (1) The “appointed day”, for the purposes of this schedule, means—

(a) the day on which the Police Service is established (being the day appointed under section 124(2) for the coming into force of section 6), or

(b) such other day as the Scottish Ministers may by order appoint.

2 (2) An order under sub-paragraph (1)(b) may appoint different days for different purposes.
Constables to continue to hold office and rank

3 (1) Sub-paragraphs (2) to (6) apply to an individual who, immediately before the appointed day, holds the office of constable by virtue of being appointed in accordance with the 1967 Act (including any individual who, immediately before that day, is engaged in service which is “relevant service” for the purposes of section 38A of the 1967 Act).

(2) An individual to whom this sub-paragraph applies is, on and after the appointed day—
   (a) to hold the office of constable,
   (b) to be treated as having made the declaration required by section 10, and
   (c) to otherwise be treated as having been appointed in accordance with this Act as a constable of the Police Service.

(3) Paragraphs 5 to 7 make provision for the transfer of an individual to whom this sub-paragraph applies on the appointed day.

(4) Subject to paragraphs 4(2) and (4) and 7(4B), an individual to whom this sub-paragraph applies is, on the appointed day, to be transferred in accordance with this schedule at the same rank as the individual holds immediately before the appointed day.

(5) Sub-paragraph (4) does not affect any temporary promotion arrangements which are in place immediately before the appointed day.

(6) Any contractual terms on which an individual to whom this sub-paragraph applies is appointed to serve as a constable to a police force (for example, in relation to fixed periods of tenure of constables holding the rank of superintendent or above) are, on and after the appointed day, to have effect as if the appointment were originally an appointment to serve as a constable of the Police Service.

Senior officers appointed under section 7

3A An individual who, immediately before the appointed day, holds the office of chief constable, deputy chief constable or assistant chief constable by virtue of appointment in accordance with section 7 is, on and after the appointed day, to serve as a constable of the Police Service.

Senior officers

4 (1) Sub-paragraph (2) applies to an individual who—
   (a) holds the rank of chief constable immediately before the appointed day,
   (b) is not appointed to the office of chief constable of the Police Service in accordance with section 7, and
   (c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.

(2) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of deputy chief constable in accordance with section 7 (and accordingly to hold the rank of deputy chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the chief constable of the police force which has ceased to exist.

(3) Sub-paragraph (4) applies to an individual who—
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(a) holds the rank of deputy chief constable immediately before the appointed day,

(b) is not appointed to the office of chief constable, or to the office of deputy chief constable, of the Police Service in accordance with section 7, and

(c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.

(4) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the deputy chief constable of the police force which has ceased to exist or, as the case may be the Director General of the SCDEA.

(5) An individual who is, in accordance with this schedule, transferred to serve as a constable of the Police Service at the rank of assistant chief constable is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.

Constables serving in police forces

Any individual serving as a constable of a police force immediately before the appointed day (including anyone on temporary service from another police force) is, on the appointed day, to transfer to serve as a constable of the Police Service.

Constables serving in SPSA or SCDEA

(1) An individual who, immediately before the appointed day, is the Director General or Deputy Director General of, or is a police member of, the SCDEA is, on the appointed day, to transfer to serve as a constable of the Police Service.

(2) Sub-paragraph (1) does not apply to a police member of the SCDEA serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act (see sub-paragraphs (5) and (6)(a) below).

(3) Sub-paragraph (4) applies where, immediately before the appointed day, an individual—

(a) is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(2) of schedule 1 to the 2006 Act, and

(b) is not a police member of the SCDEA.

(4) Where this sub-paragraph applies, it is for the Scottish Police Authority to determine whether the individual concerned is, on the appointed day, to transfer—

(a) to serve as a constable of the Police Service, or

(b) to be engaged on temporary service as a member of the Authority’s staff.

(5) Sub-paragraph (6) applies where, immediately before the appointed day, an individual is serving as a member of the SPSA’s staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act.

(6) Where this sub-paragraph applies, the arrangement is, on and after the appointed day, to have effect as if made by the Scottish Police Authority under section 16 and—
(a) where the individual concerned is a police member of the SCDEA, the individual is, on the appointed day, to transfer to be engaged on temporary service as a constable of the Police Service, or

(b) where the individual concerned is not a police member of the SCDEA, it is for the Scottish Police Authority to determine whether the individual is, on the appointed day, to transfer—

(i) to be engaged on temporary service as a constable of the Police Service, or

(ii) to be engaged on temporary service as a member of the Authority’s staff.

**Constables – temporary service arrangements**

7 (1) Sub-paragraph (2) applies where, by virtue of any arrangement made or consent given, an individual is, immediately before the appointed day, engaged in service as a constable of a police force.

(2) Where this sub-paragraph applies—

(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service as a constable of the Police Service, and

(b) the individual concerned is, on the appointed day, accordingly to transfer to be engaged in such service.

(3) Sub-paragraph (4) applies where, by virtue of any arrangement made or consent given, a constable of a police force is, immediately before the appointed day, engaged in service outwith that force which is “relevant service” for the purposes of section 38A of the 1967 Act.

(4) Where this sub-paragraph applies—

(a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service outwith the Police Service,

(b) the individual concerned is, on the appointed day, accordingly to continue to be engaged in such service, and

(c) the individual’s rights under section 38A(3)(a) of the 1967 Act are, on and after the appointed day, to be treated as having arisen under section 15 of this Act.

(4A) Sub-paragraph (4B) applies to an individual who—

(a) is to revert to the Police Service by virtue of sub-paragraph (4)(c),

(b) would have (but for this paragraph) reverted to the individual’s police force at the rank of deputy chief constable, and

(c) is not appointed to the office of deputy chief constable of the Police Service in accordance with section 7.

(4B) An individual to whom this sub-paragraph applies is, on and after the date that the individual reverts to the Police Service by virtue of sub-paragraph (4)(c), to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly is to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be a deputy chief constable of the police force which has ceased to exist.
(5) An individual who reverts to the Police Service by virtue of sub-paragraph (4)(c) at the rank of assistant chief constable is, on and after the day of reversion, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.

(6) This paragraph does not apply in relation to an individual transferred under paragraph 5 or 6.

Acts done before transfer

8 (1) Anything done before the appointed day by or in relation to a police authority, a joint police board, the SPSA or the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

(2) Anything done before the appointed day by or in relation to a chief constable of a police force or the Director General of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to the chief constable of the Police Service.

(3) Anything done before the appointed day by or in relation to a constable of a police force or a police member of the SCDEA in respect of an individual transferred under any of paragraphs 5 to 7 is to be treated on and after that day as having been done by or in relation to a constable of the Police Service.

Limitation on mobility of transferred constables

9 (1) Sub-paragraph (2) applies to a constable of the Police Service who, immediately before the appointed day, is a constable of a police force (including any such constable who is, at that time, engaged in service outwith that force).

(2) A constable to whom this sub-paragraph applies must not be assigned duties which, in the opinion of the Scottish Ministers, would necessitate that constable moving home to a place outwith what was the area of the police force which has ceased to exist.

(3) Sub-paragraph (2) does not apply to a constable who, immediately before the appointed day, is engaged in service outwith that constable’s force until—

(a) in the case of a constable who is not, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the constable reverts to so serve, and

(b) in the case of a constable who is, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the chief constable may determine.

(4) Sub-paragraph (2) ceases to apply to a constable if, on or after the appointed day, the constable—

(a) is or becomes a senior officer of the Police Service,

(b) is promoted to a higher rank,

(c) gives the chief constable written consent to the lifting of the limitation imposed by sub-paragraph (2).
Transfer of police staff

10 (1) An individual is a “police employee” for the purposes of this paragraph if the individual—

(a) is employed, immediately before the appointed day—

(i) by a joint police board under section 9 of the 1967 Act (or is otherwise employed by a joint police board),

(ii) by the SPSA under paragraph 9(1) or 10(1) of schedule 1 to the 2006 Act, or

(b) being an employee of a local authority, is identified by a staff transfer scheme made under paragraph 11 as an individual, or type of individual, who is to be treated as a police employee.

(2) A police employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and the Scottish Police Authority.

(3) It is for the Scottish Police Authority to determine whether a police employee is, on and after the appointed day, to be treated as having been appointed as a member of the police staff under section 26 or as a member of the Authority’s staff under paragraph 7 of schedule 1.

(4) The rights, powers, duties and liabilities of the relevant authority under or in connection with the contract of employment are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(5) Anything done before the appointed day by or in relation to the relevant authority in respect of the contract of employment or the police employee is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

(6) If, before the appointed day, a police employee informs the relevant authority that the person does not wish to become an employee of the Scottish Police Authority—

(a) sub-paragraphs (2), (4) and (5) do not apply in relation to the police employee, and

(b) the employee’s contract of employment is terminated on the appointed day.

(7) A police employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.

(8) Nothing in this paragraph affects any right of a police employee to terminate the police employee’s contract of employment if a substantial detrimental change in the police employee’s working conditions is made.

(9) No such right arises by reason only that, by virtue of this paragraph, the identity of the police employee’s employer changes.

(10) In this paragraph “relevant authority” means the joint police board or authority which employs the individual concerned immediately before the appointed day.

Staff transfer scheme

11 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme which—
(a) identifies or prescribes methods for identifying individuals, or types of individuals, employed by local authorities who are to be treated as police employees for the purposes of paragraph 10,

(b) makes such further provision (including any incidental, consequential, supplementary, transitional, transitory or saving provision) for or in connection with the transfer of individuals identified by or under the scheme to the Scottish Police Authority as the Scottish Ministers think fit.

(3) Before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

Police staff appointed under contract for services

12 (1) A contract for services entered into by a police authority or a joint police board for the purposes of section 9(1)(b) of the 1967 Act has effect on and after the appointed day as if originally entered into by the Scottish Police Authority.

(2) Accordingly, any individual who, immediately before the appointed day, is appointed by a police authority or a joint police board under section 9(1)(b) of the 1967 Act is, on and after the appointed day, to be treated as having been provided to the Scottish Police Authority in accordance with arrangements made by virtue of section 26(2)(b).

(3) The rights, powers, duties and liabilities of the police authority or the joint police board under or in connection with the contract for services are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.

(4) Anything done before the appointed day by or in relation to the police authority or the joint police board in respect of the contract for services or an individual falling with sub-paragraph (2) is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

Police cadets

13 An individual who, immediately before the appointed day, is a police cadet by virtue of appointment under section 8 of the 1967 Act is, on and after the appointed day, to be treated as having been appointed in accordance with section 25 of this Act.

Police custody and security officers

14 An individual who is, immediately before the appointed day, certified as a police custody and security officer under section 9(1A) of the 1967 Act is, on and after the appointed day, to be treated as having been certified as such an officer under section 28(1).

Her Majesty’s inspectorate of constabulary in Scotland

15 (1) An individual who, immediately before the day on which section 71 comes into force, holds office as an inspector of constabulary by virtue of appointment under section 33 of the 1967 Act is, on and after that day, to be treated as having been appointed under section 71.
(2) An individual who, immediately before the day on which section 72 comes into force, is an assistant inspector of constabulary by virtue of appointment under section 34(1) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 72.

(3) An individual who, immediately before the day on which section 73 comes into force, is a staff officer to the inspectors of constabulary by virtue of appointment under section 34(2) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 73.

Police property transfer scheme: transfers to Scottish Police Authority

16 (1) The Scottish Ministers may make a police property transfer scheme.

(2) A police property transfer scheme is a scheme making provision for or in connection with the transfer to the Scottish Police Authority or the chief constable appointed in accordance with section 7 of property, rights, liabilities and obligations of—

(a) the Scottish Ministers,

(b) a local authority,

(c) a joint police board,

(d) the SPSA, or

(e) a chief constable of a police force.

(3) A police property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to the Authority’s functions or police functions.

(3A) A person mentioned in sub-paragraph (2)(b), (c) or (e) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a police property transfer scheme.

(4) On the transfer date—

(a) any property or rights to which a police property transfer scheme applies transfers to and vests in the Scottish Police Authority or, as the case may be, the chief constable,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the Scottish Police Authority or, as the case may be, the chief constable.

(5) A police property transfer scheme may make provision for the payment by the Scottish Police Authority of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer scheme: transfers to local authorities

17 (1) The Scottish Ministers may make a local authority property transfer scheme.

(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a joint police board.
(2A) A joint police board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.

(3) On the transfer date—

(a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,

(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

Property transfer schemes: general

18 (1) This paragraph applies in relation to a scheme under paragraph 16 or 17.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a police property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may make provision about the continuation of legal proceedings.

(9) The scheme may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
Transfer of liabilities of chief constables etc.

19 By virtue of this paragraph, any liabilities of a chief constable of a police force under section 39 of the 1967 Act and of the Director General of the SCDEA under section 22 of the 2006 Act are, on and after the appointed day, to be treated as liabilities of the chief constable of the Police Service under section 24 of this Act.

SCHEDULE 5
(introduced by section 118)

TRANSFER OF STAFF, PROPERTY ETC.

Interpretation

1 In this schedule—

“appointed day” means such day as the Scottish Ministers may by order appoint (and different days may be appointed for different purposes),

“joint board” means a joint fire and rescue board constituted by a scheme made under section 2(1) of the 2005 Act,

“relevant employer”, in relation to—

(a) a person employed by a local authority, means the local authority with which the person has a contract of employment,

(b) a person who is a member of the staff of the Scottish Ministers, means the Scottish Ministers,

“transfer day”, in relation to a person, means the day on which a staff transfer scheme comes into force in relation to the person

“transferring employee” means a person who, immediately before the appointed day, is an employee of a joint board.

Joint board staff

2 (1) A transferring employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and SFRS.

(2) The rights, powers, duties and liabilities of the joint board under or in connection with the contract of employment are by virtue of this paragraph transferred to SFRS on the appointed day.

(3) Anything done before the appointed day by or in relation to the joint board in respect of the contract of employment or the transferring employee is to be treated on and after that day as having been done by or in relation to SFRS.

(4) If, before the appointed day, a transferring employee informs the joint board that the person does not wish to become an employee of SFRS—

(a) sub-paragraphs (1) to (3) do not apply in relation to the transferring employee, and

(b) the transferring employee’s contract of employment is terminated on the appointed day.

(5) A transferring employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.
(6) Nothing in this paragraph affects any right of a transferring employee to terminate the employee’s contract of employment if a substantial detrimental change in the employee’s working conditions is made.

(7) No such right arises by reason only that, by virtue of this paragraph, the identity of the transferring employee’s employer changes.

**Local authority staff and civil servants**

3 (1) The Scottish Ministers may make a staff transfer scheme.

(2) A staff transfer scheme is a scheme making provision for or in connection with the transfer to SFRS of persons who are—

(a) employed by a local authority, or

(b) members of the staff of the Scottish Ministers.

(3) A staff transfer scheme may in particular—

(a) prescribe rules by which the transfer of specified persons, or classes of specified person, can be determined,

(b) provide that specified persons, or classes of specified person, are to become employees of SFRS.

(4) A staff transfer scheme may make provision only in relation to persons whose employment relates to the carrying out of functions conferred on SFRS by or under the 2005 Act or any other enactment.

(5) In this paragraph, “specified” means specified in a staff transfer scheme.

**Transfers under paragraph 3: effect on contract of employment**

4 (1) This paragraph applies where—

(a) a person is to be transferred by virtue of a staff transfer scheme, and

(b) immediately before the transfer day the person has a contract of employment with a relevant employer.

(2) The contract of employment has effect on and after the transfer day as if originally made between the person and SFRS.

(3) The rights, powers, duties and liabilities of the relevant employer under or in connection with the contract of employment are by virtue of this paragraph transferred to SFRS on the transfer day.

(4) Anything done before the transfer day by or in relation to the relevant employer in respect of the contract of employment or the person is to be treated on and after that day as having been done by or in relation to SFRS.

(5) If, before the transfer day, the person informs the relevant employer that the person does not wish to become an employee of SFRS—

(a) sub-paragraphs (2) to (4) do not apply in relation to the person, and

(b) the person’s contract of employment is terminated on the day before the transfer day.

(6) A person is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the person.
(7) Nothing in this paragraph affects any right of a person to terminate the person’s contract of employment if a substantial detrimental change in the person’s working conditions is made.

(8) No such right arises by reason only that, by virtue of this paragraph, the identity of the person’s employer changes.

(9) Before making a staff transfer scheme under paragraph 3, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

Property transfer scheme: transfers to SFRS

5 (1) The Scottish Ministers may make an SFRS property transfer scheme.

(2) An SFRS property transfer scheme is a scheme making provision for or in connection with the transfer to SFRS of property, rights, liabilities and obligations of—
   (a) the Scottish Ministers,
   (b) a local authority,
   (c) a joint board.

(3) An SFRS property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to functions of SFRS conferred by or under the 2005 Act or any other enactment.

(3A) A person mentioned in sub-paragraph (2)(b) or (c) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of an SFRS property transfer scheme.

(4) On the transfer date—
   (a) any property or rights to which an SFRS property transfer scheme applies transfers to and vests in SFRS,
   (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of SFRS.

(5) An SFRS property transfer scheme may make provision for the payment by SFRS of compensation in respect of property and rights transferred by virtue of the scheme.

Property transfer scheme: transfers to local authorities

6 (1) The Scottish Ministers may make a local authority property transfer scheme.

(2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a specified joint board.

(2A) A joint board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.

(3) On the transfer date—
   (a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,
(b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.

(4) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.

(5) In this paragraph, “specified” means specified in the local authority property transfer scheme.

Property transfer schemes: general

7 (1) This paragraph applies in relation to a scheme under paragraph 5 or 6.

(2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.

(3) The scheme may—

(a) specify different dates in relation to different property, rights, liabilities and obligations,

(b) make different provision in relation to different cases or classes of case.

(4) The scheme may make provision for the creation of rights, or the imposition of obligations or liabilities, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.

(5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

(6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of the scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may in particular make provision about the continuation of legal proceedings.

Transfer schemes: additional provision

8 A staff transfer scheme or a property transfer scheme under paragraph 5 or 6 may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.
SCHEDULE 6
(introduced by section 123(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS RELATING TO PART 1

**Police (Scotland) Act 1967** (c.77)

1 (1) The Police (Scotland) Act 1967 is amended as follows.

(2) In section 32A (grants for expenditure on safeguarding national security), in subsection (1), for “a police authority or joint police board” substitute “the Scottish Police Authority”.

(3) In section 42 (causing disaffection)—

(a) in subsection (1), for “any police force” substitute “the Police Service of Scotland”,

(b) in subsection (3), for “any police force” substitute “the Police Service of Scotland”.

**Health and Safety at Work etc. Act 1974** (c.37)

1A In section 51A of the Health and Safety at Work etc. Act 1974 (application of Part to police)—

(a) in subsection (2E), for paragraph (a) substitute—

“(a) section 24 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”

(b) in subsection (3)(b), for “each chief officer of police in Scotland” substitute “the chief constable of the Police Service of Scotland”.

**Rehabilitation of Offenders Act 1974** (c.53)

1B In section 9B of the Rehabilitation of Offenders Act 1974 (unauthorised disclosure of spent alternatives to prosecution: Scotland), in subsection (1)(a)(ii), after “court,” insert “the Police Service of Scotland or another”.

**Slaughter of Animals (Scotland) Act 1980** (c.13)

1C In section 22 of the Slaughter of Animals (Scotland) Act 1980 (interpretation), in the definition of “constable” for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”.

**Law Reform (Miscellaneous Provisions) (Scotland) Act 1980** (c.55)

1D In Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, in Part I, in Group B—

(a) after paragraph (f) insert—

“(fa) members and staff of the Scottish Police Authority;”,

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(b) for paragraph (i) substitute—

“(i) constables of the Police Service of Scotland (including constables engaged on temporary service within the meaning of section 15 of the Police and Fire Reform (Scotland) Act 2012 (asp 00));”,

(c) for paragraph (n) substitute—

“(n) persons appointed under section 26(1) of the Police and Fire Reform (Scotland) Act 2012;”,

(d) after paragraph (w) insert—

“(wza) persons who, at any time within the 5 years immediately preceding the date at which the eligibility, in terms of section 1 of this Act, for jury service is being considered, were members or employees of the Scottish Police Services Authority;”.

Civic Government (Scotland) Act 1982 (c.45)

1E (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 8 (interpretation of Parts 1 and 2)—

(a) for paragraph (a) of the definition of “authorised civilian employee” substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00); and”,

(b) for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;.”.

(3) In section 61(2) (protection of insecure premises), for “police authority” substitute “Scottish Police Authority”.

(4) In section 62(12) (notification of processions), for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland; and”.

(5) In section 77(1) (financial provisions relating to lost or abandoned property) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(6) In section 79 (interpretation of Part 4), for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;”.

(7) In section 85(1) (financial provisions: property of persons in custody) for the words from “police” where it first occurs to “1967” substitute “Scottish Police Authority”.

(8) In section 86(1) (interpretation of Part 7 etc.) for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.
(9) In section 86D (duty of care etc.), for “the proviso to section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”.

(10) In section 86F (retention of relevant property by police authority)—

(a) in subsection (1)—

(i) for “a chief constable” substitute “the chief constable”,

(ii) for “police authority” substitute “Scottish Police Authority”,

(b) the title of the section becomes “Retention of relevant property by Scottish Police Authority”.

(11) In section 86J (references in Part 7A to “chief constable”), for the words from “for” where it first occurs to the end substitute “of the Police Service of Scotland.”.

(12) In paragraph 3 of Schedule 2 (definitions)—

(a) in the definition of “authorised civilian employee”, for paragraph (a) substitute—

“(a) appointed by the Scottish Police Authority under section 26(1) of the Police and Fire Reform (Scotland) Act 2012 (asp 00), and”,

(b) for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;”.

(13) In Schedule 2A (retention and disposal of certain property)—

(a) in paragraph 3, for the words “the proviso in section 17(3)(b) of the Police (Scotland) Act 1967” substitute “section 17(3)(a) of the Police and Fire Reform (Scotland) Act 2012”,

(b) in paragraph 8, for the definition of “chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland;”.

Roads (Scotland) Act 1984 (c.54)

1F (1) The Roads (Scotland) Act 1984 is amended as follows.

(2) In section 33(2) (snow gates), in the entry beginning with “constable” for the words from “sections” to “(interpretation)” substitute “section 97 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(3) In section 37(1)(a) (consultation and local inquiries as regards road humps), for the words from “officer” to “situated” substitute “constable of the Police Service of Scotland”.

(4) In section 59(5) (control of obstructions in roads), for “police authority” substitute “Scottish Police Authority”.

(5) In section 86 (removal of builders’ skips causing danger or obstruction)—

(a) in subsection (4), for “police authority” substitute “Scottish Police Authority”,

(b) in subsection (5), for “police authority” (in both places where it occurs) substitute “Scottish Police Authority”,

Roads (Scotland) Act 1984 (c.54)
(c) in subsection (6), for “police authority” substitute “Scottish Police Authority”.

(6) In section 98 (control of stray and other animals on roads)—

(a) in subsection (2), for “police authority” substitute “Scottish Police Authority”,

(b) in subsection (3), for “police authority” substitute “Scottish Police Authority”,

(c) in subsection (4), for “police authority” substitute “Scottish Police Authority”.

(7) After section 120, insert—

“120A Delegation by the Scottish Police Authority

(1) The Scottish Police Authority may delegate to the chief constable of the Police Service of Scotland any of its functions under the sections mentioned in subsection (2).

(2) The sections are—

(a) section 59;

(b) section 86; and

(c) section 98.”.

Prisons (Scotland) Act 1989 (c.45)

1G In section 14 of the Prisons (Scotland) Act 1989 (legalised police cells)—

(a) in subsection (1)—

(i) for “a police authority” substitute “the Scottish Police Authority”,

(ii) for “police authority” where it second occurs substitute “Scottish Police Authority”,

(b) in subsection (3), in the proviso, for “police authority” substitute “Scottish Police Authority”,

(c) in subsection (4), for “police authority” substitute “Scottish Police Authority”,

(d) in subsection (5), for the words from “police” to “cells” substitute “Scottish Police Authority”.

Criminal Justice and Public Order Act 1994 (c.33)

1H(1) The Criminal Justice and Public Order Act 1994 is amended as follows.

(2) In section 102(5) (arrangements for the provision of prisoner escorts), for “prescribed under section 9(1A)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “under section 28 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(3) In section 163 (local authority powers to provide closed-circuit television)—

(a) in subsection (3), after “area” insert “or, in Scotland, the local commander designated for the local authority’s area”,

(b) in subsection (4), after the definition of “local authority” insert—

““local commander” has the meaning given by section 45 of the Police and Fire Reform (Scotland) Act 2012 (asp 00);”.

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Local Government etc. (Scotland) Act 1994 (c.39)

11 In section 150(1) of the Local Government etc. (Scotland) Act 1994 (traffic signs), for “chief officer of police for the area concerned” substitute “chief constable of the Police Service of Scotland”.

Children (Scotland) Act 1995 (c.36)

1J (1) The Children (Scotland) Act 1995 is amended as follows.

(2) In section 78 (powers of arrest etc. in relation to exclusion order)—

(a) in subsection (4)—

(i) paragraphs (a) and (b) are repealed, and

(ii) after “delivered” insert “to the chief constable of the Police Service of Scotland”,

(b) in subsection (5), for “each chief constable specified in subsection (4) above” substitute “the chief constable of the Police Service of Scotland”.

(3) In section 93(1) (interpretation of Part 2), in the definition of “constable” for “a police force within the meaning of the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Criminal Procedure (Scotland) Act 1995 (c.46)

3 (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.

(2) In section 12 (instructions by Lord Advocate as to reporting of offences)—

(a) for first “a” substitute “the”,

(b) the words from “within” to “therewith” are repealed.

(3) In section 18(4)(b) (prints, samples etc. in criminal investigations), for “any police force” substitute “the Police Service of Scotland”.

(4) In section 18A (retention of samples etc.: prosecutions for sexual and violent offences)—

(a) in subsection (5), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (11), the definition of “the relevant chief constable” is repealed.

(5) In section 18C (section 18B: extension of retention period where relevant offer relates to certain sexual or violent offences)—

(a) in subsection (2), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (11), the definition of “the relevant chief constable” is repealed.

(6) In section 18F (retention of samples etc. relating to children: appeals)—

(a) in subsection (1), for “relevant chief constable” substitute “chief constable of the Police Service of Scotland”,

(b) in subsection (10), the definition of “the relevant chief constable” is repealed.
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(7) In section 19(4)(b) (prints, samples etc. in criminal investigations: supplementary provisions), for “police force which instructed the analysis” substitute “Police Service of Scotland”.

(8) In section 19C (use of certain samples etc.)—

(a) in subsection (1)(e)—

(i) for paragraph (i) substitute—

“(i) the Police Service of Scotland (“the Police Service”),”;

(ii) in paragraph (ii), for “Services Authority” substitute “Authority (“the Authority”),”;

(iii) in paragraph (iii), for “a police force” substitute “the Police Service or the Authority”,

(b) in subsection (4), for the words from “a” where it first occurs to “force” where it third occurs substitute “the Police Service, the Authority or a person acting on behalf of the Police Service or the Authority, the Police Service”,

(c) in subsection (5), for the words from “A” to “force” where it second occurs substitute “The Police Service, the Authority or a person acting on behalf of the Police Service or the Authority”.

(9) In section 194I(4) (power of Scottish Criminal Cases Review Commission to obtain documents), in the definition of “public body”, for paragraph (a) substitute—

“(a) the Police Service of Scotland;”.

(10) In section 307(1) (interpretation)—

(a) in the definition of “constable”, for “Police (Scotland) Act 1967” substitute “Police and Fire Reform (Scotland) Act 2012”,

(b) in the definition of “officer of law”, for paragraph (c) substitute—

“(c) any person who is appointed under section 26 of the Police and Fire Reform (Scotland) Act 2012 who is either authorised by the chief constable of the Police Service of Scotland in relation to such service and execution or is a police custody and security officer;.”.

(11) In Schedule 9 (certificates as to proof of certain routine matters), in the entry for the Firearms Act 1968 (c.27), in the second column, for “police force maintained for the authority’s area” substitute “Police Service of Scotland”.

Police Act 1996 (c.16)

3A(1) The Police Act 1996 is amended as follows.

(2) In section 59(2) (police federations), for “section 26(2A) of the Police (Scotland) Act 1967” substitute “under section 49 of the Police and Fire Reform (Scotland) Act 2012 in so far as relating to the matters described in section 53 of that Act,”.

(3) In section 60(2) (regulations for police federations)—

(a) in paragraph (c), for “police authorities” substitute “the Scottish Police Authority”,

(4) In section 60(4) (police federations), for “police federations under section 41 of the Police (Scotland) Act 1967” substitute “police federations under section 50 of the Police and Fire Reform (Scotland) Act 2012 in so far as relating to the matters described in section 53 of that Act,”.
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(b) in paragraph (d), for “police authorities” substitute “the Scottish Police Authority”,

(c) in paragraph (e), for “26 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

(4) In section 62(1A)(a) (functions of the Board with respect to regulations), for “26 or 27 of the Police (Scotland) Act 1967” substitute “49 of the Police and Fire Reform (Scotland) Act 2012”.

(5) In section 99(1) (jurisdiction of metropolitan police officers), for “a police force maintained under the Police (Scotland) Act 1967” substitute “the Police Service of Scotland”.

Police Act 1997 (c.50)

3B(1) The Police Act 1997 is amended as follows.

(2) In section 93 (authorisations to deal with property etc.)—

(a) in subsection (3)—

(i) after paragraph (za) insert—

“(zb) if the authorising officer is within subsection (5)(d), by a constable of the Police Service of Scotland;”

(ii) in paragraph (a), for “(5)(d) to” substitute “(5)(e),”;

(iii) after paragraph (e) insert—

“(ea) if the authorising officer is within subsection (5)(ia), by a staff officer of the Police Investigations and Review Commissioner;”;

(b) after subsection (3A) insert—

“(3ZA) An authorisation under this section may be given by the authorising officer within subsection (5)(ia) only where it relates to the taking of action in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”,

(c) in subsection (5)—

(i) for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland, or any deputy chief constable or assistant chief constable of the Police Service of Scotland who is designated for the purposes of this paragraph by the chief constable;”,

(ii) after paragraph (i) insert—

“(ia) the Police Investigations and Review Commissioner.”.

(d) in subsection (6)(b), for the words from “of” to “maintained” substitute “or (ia) of subsection (5), means Scotland”.

(3) In section 94 (authorisations given in absence of authorising officer)—

(a) in subsection (1)(b), for “, (c) or (d)” substitute “or (c)”,

(b) in subsection (2), after paragraph (g) insert—
“(ga) where the authorising officer is within paragraph (ia) of that subsection, by a staff officer of the Police Investigations and Review Commissioner who is designated by the Commissioner for the purposes of this section;”.

(4) In section 95 (authorisations: form and duration etc.)—
   (a) in subsection (6), for “or (e),” substitute “(d), (e),”
   (b) in subsection (7), for “, (c), (d) or (j)” substitute “or (c)

(5) In section 105(3) (appeals), for “, (c) or (d)” substitute “or (c)

(6) In section 107(4) (supplementary provisions)—
   (a) in paragraph (a), for “police authority” substitute “the Scottish Police Authority”
   (b) after paragraph (b) insert—
   “(bza) the functions of the Police Investigations and Review Commissioner under section 33A(1)(b)(i) of the Police, Public Order and Criminal Justice (Scotland) Act 2006,”.

(7) In section 120A(4) (refusal and cancellation of registration), for “A chief constable of a police force in Scotland” substitute “The chief constable of the Police Service of Scotland”.

(8) In section 126 (interpretation of Part 5)—
   (a) in the definition of “chief officer”, for sub-paragraph (ii) substitute—
   “(ii) the chief constable of the Police Service of Scotland, and”,
   (b) in the definition of “police authority”, for sub-paragraph (i) substitute—
   “(i) the Scottish Police Authority, and”.

Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)

(1) The Regulation of Investigatory Powers (Scotland) Act 2000 is amended as follows.

(2) In section 5 (lawful surveillance etc.), in subsection (3)(b), for “a police force” substitute “the Police Service”.

(3) In section 8(3) (entitlement to grant authorisations)—
   (a) for paragraph (a) substitute—
   “(aa) the Police Service;”
   (b) after paragraph (c) insert—
   “(ca) the Police Investigations and Review Commissioner;”.

(4) In section 10(1A) (persons who may authorise intrusive surveillance)—
   (a) in paragraph (a), for “every police force” substitute “the Police Service and any other senior officer of the Police Service who is designated by the chief constable for the purposes of this section”,
   (b) after paragraph (a) insert—
   “(aa) the Police Investigations and Review Commissioner;”.

(5) In section 11 (rules for grant of authorisations)—
(a) in subsection (1)—
   (i) for “a police force” substitute “the Police Service”,
   (ii) for “member of the same force” substitute “constable of the Police Service”,

(aa) for subsection (2) substitute—
   “(2) An authorisation for the carrying out of intrusive surveillance shall not be granted by the chief constable or any other senior officer of the Police Service except on an application by a constable of the Police Service.”.

(c) after subsection (2) insert—
   “(2A) The Police Investigations and Review Commissioner shall not grant an authorisation for the carrying out of intrusive surveillance except—
   (a) on an application by one of the Commissioner’s staff officers, and
   (b) where the intrusive surveillance is to be carried out in relation to an investigation carried out in pursuance of paragraph (b)(i) of section 33A(1) of the Police, Public Order and Criminal Justice (Scotland) Act 2006.”

(d) in subsection (4)—
   (i) in paragraph (a)—
      (A) for the words from “by” to “Agency” substitute “—
      (i) by, or on the application of, a constable of the Police Service;”,
      (B) after the words inserted by paragraph (A) insert—
      “(ii) by the Police Investigations and Review Commissioner; or
      (iii) by, or on the application of, a staff officer of the Police Investigations and Review Commissioner”,
   (ii) in paragraph (b)(i), for the words from “member” to “or” substitute “constable of the Police Service, the Police Service, or
   (ia) where that individual is the Police Investigations and Review Commissioner or a staff officer of that Commissioner, the Commissioner”.

(7) After section 12 insert—
   “12ZA  Grant of authorisation in cases of urgency: Police Investigations and Review Commissioner
   (1) This section applies in the case of an application to the Police Investigations and Review Commissioner for an authorisation for the carrying out of intrusive surveillance where the case is urgent.
   (2) If it is not reasonably practicable, having regard to the urgency of the case, for the application to be considered by the Police Investigations and Review Commissioner, the application may be made to and considered by any staff officer of the Commissioner whom the Commissioner designates for the purposes of this section.”.
(8) In section 14(5)(a) (approval required for authorisations to take effect), for the words from “member” to “and” substitute “constable of the Police Service, the chief constable of the Police Service; and

(aa) in relation to an authorisation granted on an application by a staff officer of the Police Investigations and Review Commissioner, the Police Investigations and Review Commissioner.”.

(9) In section 16 (appeals against decisions by Surveillance Commissioners)—

(a) in the opening words of subsection (1), for the words from “A” to “Agency” substitute “A person who granted an authorisation for the carrying out of intrusive surveillance”,

(b) in subsection (1)(a), for the words from “an”, where second occurring, to “surveillance” substitute “the authorisation”,

(c) in subsection (1)(b), for “such an” substitute “the”,

(d) after subsection (1) insert—

“(1A) Where an authorisation for the carrying out of intrusive surveillance is granted by a senior officer of the Police Service designated by the chief constable under section 10(1A)(a), the chief constable shall also be entitled to appeal under this section.

(1B) Where an authorisation for the carrying out of intrusive surveillance is granted by a staff officer designated by the Police Investigations and Review Commissioner under section 12ZA(2), the Commissioner shall also be entitled to appeal under this section.”.

(10) In section 18 (information to be provided to the Surveillance Commissioners)—

(a) in paragraph (a), for “member of a police force” substitute “constable of the Police Service”,

(b) after that paragraph insert—

“(aa) the Police Investigations and Review Commissioner and every staff officer of the Commissioner,”.

(10A) In section 20 (cancellation of authorisations)—

(a) after subsection (2) insert—

“(2A) Where an authorisation under this Act was granted or, as the case may be, last renewed by a senior officer of the Police Service and it is not reasonably practicable for that senior officer to cancel it under subsection (1) above, any senior officer of the Police Service designated by the chief constable for the purposes of section 10 above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.

(2B) Where an authorisation under this Act was granted or, as the case may be, last renewed by the Police Investigations and Review Commissioner and it is not reasonably practicable for the Commissioner to cancel it under subsection (1) above, any person designated by the Commissioner for the purposes of section 12ZA above may cancel the authorisation if satisfied as to either of the matters mentioned in subsection (1) above.”.

(12) In section 23(5)(b) (complaints to the Tribunal)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,
(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(13) In section 24(2)(b) (issue and revision of codes of practice)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or to the Police Investigations and Review Commissioner”,
(c) repeal the words “or to the Scottish Crime and Drug Enforcement Agency”.

(14) In section 26(4)(c) (effect of codes of practice)—
(a) for “a police force” substitute “the Police Service”,
(b) after the words inserted by sub-paragraph (a) insert “or the Police Investigations and Review Commissioner”.

(15) In section 31 (interpretation)—
(a) in subsection (1), for the definition of “police force” substitute—
“Police Service” means the Police Service of Scotland;”,
(aa) after the definition of “residential premises” insert—
““senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012 (asp 00);”
(b) after subsection (4) insert—
“(4A) References in this Act to a staff officer of the Police Investigations and Review Commissioner are references to any person who—
(a) is a member of the Commissioner’s staff appointed under paragraph 7A of schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006, or
(b) is a member of the Commissioner’s staff appointed under paragraph 7 of that schedule to whom paragraph 7B(2) of that schedule applies.”.

**Transport (Scotland) Act 2001 (asp 2)**

5 (1) The Transport (Scotland) Act 2001 is amended as follows.

30 (2) In section 5(4) (consultation as to proposed quality partnership scheme), for paragraph (f) substitute—
“(fa) the chief constable of the Police Service of Scotland;”.

(3) In section 15(3) (consultation as to proposed quality contract scheme), for paragraph (g) substitute—
“(ga) the chief constable of the Police Service of Scotland;”.

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International Criminal Court (Scotland) Act 2001 (asp 13)

6 In section 15(2) of the International Criminal Court (Scotland) Act 2001 (service of process), for “for the area in which the person appears to be” substitute “of the Police Service of Scotland”.

Protection from Abuse (Scotland) Act 2001 (asp 14)

7 In section 3 of the Protection from Abuse (Scotland) Act 2001 (notification to police), in the closing words of subsection (1), for the words from “any” to “recalled.” substitute “the Police Service of Scotland.”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

8 (1) The Scottish Public Services Ombudsman Act 2002 is amended as follows.

(2) In schedule 2 (listed authorities), for paragraph 32A substitute—

“32A The Police Investigations and Review Commissioner.”.

(3) In paragraph 1 of schedule 4 (matters which the Ombudsman must not investigate) for sub-paragraph (c) substitute—

“(c) by the Police Investigations and Review Commissioner.”.

Freedom of Information (Scotland) Act 2002 (asp 13)

9 (1) In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities)—

(za) in paragraph 6, for “Chief Inspector” substitute “Inspectors”,

(a) in paragraph 50, for “a police force in Scotland” substitute “the Police Service of Scotland”,

(b) for paragraph 75A (as inserted by paragraph 11(b) of schedule 6 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 and relating to the Police Complaints Commissioner for Scotland), substitute—

“75AB The Police Investigations and Review Commissioner.”.

Criminal Justice (Scotland) Act 2003 (asp 7)

10 (1) The Criminal Justice (Scotland) Act 2003 is amended as follows.

(2) In section 56(4) (retaining sample or relevant physical data where given voluntarily)—

(a) in paragraph (a), for the words from “police” to “provided;” substitute “Police Service of Scotland;”,

(b) in paragraph (b)—

(i) in the opening words, repeal the words “within the area of that force”,

(ii) in sub-paragraph (i), repeal the words “of the force”.
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Dog Fouling (Scotland) Act 2003 (asp 12)

11 In section 3 of the Dog Fouling (Scotland) Act 2003 (exceptions to offence), in subsection (1)(c)—
   (a) for “Forces,” substitute “Forces or”, and
   (b) for “the police force for any area” insert “by a constable of the Police Service of Scotland”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

12 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
   (2) In section 8(3) (duty to bring specific matters to attention of Scottish Ministers and others etc.), for paragraph (l) substitute—
      “(la) the Police Service of Scotland;”.
   (3) In section 17(2) (duties of the Scottish Ministers, local authorities and others as respects Commission), for paragraph (f) substitute—
      “(fa) the Police Service of Scotland;”.
   (4) In section 35(2)(a) (warrants relating to inquiries into individual cases), for sub-paragraph (iii), substitute—
      “(iii) any constable of the Police Service of Scotland,”.
   (5) In section 292(3) (warrant to enter premises for purposes of taking patient)—
      (a) in paragraph (a), for sub-paragraph (iii) substitute—
      “(iiia) any constable of the Police Service of Scotland,”,
      (b) in paragraph (b), for the words from “of” where it first occurs to “situated” substitute “of the Police Service of Scotland”.
   (6) In section 293(3) (removal to place of safety), in paragraph (a), for paragraph (iii) substitute—
      “(iii) any constable of the Police Service of Scotland,”.

Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)

13 (1) The Antisocial Behaviour etc. (Scotland) Act 2004 is amended as follows.
   (2) In section 1 (antisocial behaviour strategies)—
      (a) in subsection (1), for “relevant” substitute “the”,
      (b) in subsection (11), for the entry for “relevant chief constable” substitute—
      ““chief constable” means the chief constable of the Police Service of Scotland.”.
   (3) In section 2(6) (reports and information), for “relevant chief constable” substitute “chief constable”.
   (4) In section 15(4) (records of orders), for paragraph (d) substitute—
      “(d) the chief constable of the Police Service of Scotland;’.”.
(5) In section 18 (interpretation), in the entry for “relevant consultees”—
   (a) in paragraph (a), for sub-paragraphs (i) and (ii) substitute—
      “(ia) the chief constable of the Police Service of Scotland;”;
   (b) in paragraph (b)—
      (i) for sub-paragraph (i) substitute—
         “(i) the chief constable of the Police Service of Scotland;”;
      (ii) in sub-paragraph (ii), for “that person” substitute “the person in respect of
            whom the order is sought or made”.

(6) In section 31(4) (enforcement), for “for the area in which the premises are situated” substitute “of the Police Service of Scotland”.

(7) In section 35 (reimbursement of expenditure)—
   (a) in subsection (1), for “a police authority” substitute “the Scottish Police Authority”;
   (b) in subsection (3)(a)—
      (i) in sub-paragraph (i), for the words from “police” to “situated;” substitute “Scottish Police Authority;”;
      (ii) in sub-paragraph (ii), for “a police authority” substitute “the Scottish Police Authority”.

(8) In section 119(4) (records of antisocial behaviour orders made in criminal courts), for paragraph (d) substitute—
      “(d) the chief constable of the Police Service of Scotland;”.

(9) In section 139(5) (disclosure and sharing of information), for paragraph (b) substitute—
      “(b) the chief constable of the Police Service of Scotland;”.

Emergency Workers (Scotland) Act 2005 (asp 2)

14 In the Emergency Workers (Scotland) Act 2005, for section 7 (saving for certain other offences) substitute—

    “7A Interaction with offence of assaulting or impeding police

    Nothing in this Act affects (or is affected by) section 87(1) of the Police and
    Fire Reform (Scotland) Act 2012 (asp 00) (assaulting or impeding police).”.

Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)

15 (1) The Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 is amended as follows.

(2) In section 2(1) (risk of sexual harm orders: applications, grounds and effect)—
    (a) for “a police force” substitute “the Police Service of Scotland”;
    (b) repeal the words from “who” where it first occurs to the word “area” where it
         second occurs.

(3) In section 4 (RSHOs: variations, renewals and discharges)—
(a) in subsection (2), after paragraph (a) insert—

“(aa) the chief constable of the Police Service of Scotland.”,

(b) in subsection (3)(a)—

(i) repeal the words from “, except” to “above”,

(ii) for the word “that” where it second occurs substitute “the”,

(c) in subsection (3)(b), for the words “any of the other persons” insert “the other person”.

Charities and Trustee Investment (Scotland) Act 2005 (asp 10)

16 In section 86(2) of the Charities and Trustee Investment (Scotland) Act 2005 (local authority consents), for “police force for the area” substitute “Police Service of Scotland”.

Management of Offenders etc. (Scotland) Act 2005 (asp 14)

17 In section 10(7) of the Management of Offenders etc. (Scotland) Act 2005 (arrangements for assessing and managing risks posed by certain offenders), for paragraph (a) substitute—

“(a) the chief constable of the Police Service of Scotland;”.

Licensing (Scotland) Act 2005 (asp 16)

18 (1) The Licensing (Scotland) Act 2005 is amended as follows.

(2) In each of the provisions mentioned in subsection (3), for each occurrence of the expression “appropriate chief constable” substitute “chief constable”.

(3) The provisions are—

section 6(5)(a),
section 7(4)(a),
section 21(1)(d), (2)(a), (3),
section 22(2A),
section 23(6)(a) and (b),
section 24(5)(b), (6) and (10)(a),
section 24A(1) and (2),
section 26(3),
section 27A(9)(b)(i),
section 33(4), (5) and (7),
section 40A(3),
section 44(2), (3), (6) and (7),
section 47(4A),
section 48(2A),
section 49(2A),
section 51(1)(b),
section 56(10),
section 57(1)(a),
section 61(1)(b),
section 67(4)(a)(i),
section 69(1)(a) and (2),
section 70(1)(a) and (4)(b),
section 73(1), (2) and 73(4),
section 74(2)(b), (5)(b), (5A)(b) and (7),
section 75(4)(b) and 75(5),
section 79(2)(b),
section 83(2), (3), (5), (6), (7), (8)(b)(ii) and (10)(b).

(4) In section 12A(1) (chief constables’ reports to Licensing Boards and Local Licensing Forums)—

(a) for “Every” substitute “The”,
(b) repeal the words “whose area falls within the police area of the chief constable”.

(5) The title to section 12A becomes “Chief constable’s reports to Licensing Boards and Local Licensing Forums”.

(6) In section 84A (power of chief constable to report conduct inconsistent with the licensing objectives)—

(a) in subsection (1), for “a chief constable” substitute “the chief constable”,
(b) in subsection (2), for “a chief constable” substitute “the chief constable”.

(7) In section 105(3) (purchase of alcohol by or for a child or young person), for “A chief constable” substitute “The chief constable”.

(8) In section 147(1) (interpretation), for the entry for “appropriate chief constable” substitute—

“‘chief constable’ means the chief constable of the Police Service of Scotland,”.

(9) In section 148 (index of defined expressions) for the words “appropriate chief constable” substitute “chief constable”.

(10) In paragraph 2(6) of schedule 2 (membership of local licensing forums), for paragraph (b) substitute—

“(ba) the chief constable,”.

Housing (Scotland) Act 2006 (asp 1)

19 In section 166 of the Housing (Scotland) Act 2006 (interpretation of Part relating to houses in multiple occupation), for the entry for “chief constable” substitute—
“‘chief constable’ means the chief constable of the Police Service of Scotland,”.

Edinburgh Tram (Line Two) Act 2006 (asp 6)

20 In section 62(1) of the Edinburgh Tram (Line Two) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Edinburgh Tram (Line One) Act 2006 (asp 7)

21 In section 62(1) of the Edinburgh Tram (Line One) Act 2006 (power to contract for police services) in subsection (1)—

(a) in paragraph (a), for the words “chief officer of police of any police force and the police authority” substitute “Scottish Police Authority”,

(b) in the closing words, for “members of the police force” substitute “the Police Service of Scotland”.

Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)

22 (1) The Police, Public Order and Criminal Justice (Scotland) Act 2006 is amended as follows.

(2) In section 34 (“relevant complaint” and “person serving with police”)—

(a) in subsection (1), after “is” insert “made,”,

(b) in subsection (2)—

(i) for “written statement” substitute “statement (whether oral, written or electronic)”,

(ii) for paragraphs (a) to (e) substitute—

“(a) by the Authority;

(b) by the Police Service; or”,

(c) after subsection (2), insert—

“(2A) A “complaint” may relate to—

(a) any action taken, or failed to be taken, by or on behalf of the subject of the complaint;

(b) the standard of any service which the subject of the complaint has provided or failed to provide.”.

(3) In section 35 (examination of manner of handling of complaint)—

(za) in subsection (3), after paragraph (b) insert “; and
(c) if the Commissioner considers it appropriate to do so, publish the report
drawn up under paragraph (b) in such manner as the Commissioner
considers appropriate.

(a) in subsection (8)(b), for the words from “any” to “authority” substitute “the
Authority where the appropriate authority is the chief constable”;

(b) in subsection (10), for the words from “proceedings” to “procedures)” substitute
“procedures made by regulations made under section 49 of the Police and Fire
Reform (Scotland) Act 2012 for dealing with constables whose standard of
behaviour or performance is unsatisfactory”.

(3A) In section 36—

(a) in subsection (1), after “subsection” insert “(1A) or”,

(b) after subsection (1) insert—

“(1A) This subsection applies to a complaint handling review if—

(a) it relates or, if it took place, would relate to a relevant complaint in
respect of which the appropriate authority in relation to the complaint—

(i) has concluded its consideration of the complaint; and

(ii) has communicated its findings to the complainer;

(b) a period of 3 months or longer has elapsed between the date on which
those findings were so communicated and the date on which the
Commissioner was requested to carry out the complaint handling review;

and

(c) the Commissioner is not satisfied that there are exceptional
circumstances which justified the delay in requesting the review.”.

(4) After section 40, insert—

“40A Arrangements for handling relevant complaints

(1) The Commissioner must—

(a) keep under review all arrangements maintained by the Commissioner,
the Authority and the chief constable for the handling of relevant
complaints; and

(b) seek to secure that those arrangements—

(i) are efficient and effective;

(ii) contain and manifest an appropriate degree of independence; and

(iii) are adhered to.

(2) The Commissioner may make such recommendations, or give such advice, for
the modification of—

(a) the arrangements mentioned in subsection (1); or

(b) the practice of the Authority or the chief constable in relation to other
matters,

as appear from the carrying out of the Commissioner’s other functions to be
necessary or desirable.”.
(5) In section 41 (appropriate authority in relation to complaint), for paragraphs (a) to (j) of subsection (1) substitute—

“(a) the Authority in cases where the complaint is about an act or omission by—

(i) the Authority;

(ii) a senior officer of the Police Service; or

(iii) a member of the Authority’s staff; and

(b) the chief constable in cases where the complaint is about an act or omission by—

(i) the Police Service;

(ii) a constable of the Police Service who is not a senior officer; or

(iii) a member of the police staff.”.

(6) In section 43 (reports to Scottish Ministers)—

(a) in subsection (4), for “42(d)” substitute “40A(2)”,

(b) in subsection (6)—

(i) in paragraph (a), for the words from “all” to “Act” substitute “the Authority, the chief constable and the inspectors of constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012”,

(ii) in paragraph (b), for “all relevant authorities and to” substitute “the Authority, the chief constable and”,

(c) after subsection (7) insert—

“(8) Nothing in this section requires or authorises the Commissioner to report on the carrying out of a particular investigation carried out on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1).”.

(7) In section 44 (provision of information to the Commissioner)—

(a) in subsection (1), for “A relevant authority” substitute “The Authority and the chief constable”,

(b) in subsection (2)—

(i) for “A relevant authority” substitute “The Authority and the chief constable”,

(ii) for “that person” (in paragraph (a)) substitute “the Authority or, as the case may be, the chief constable”,

(c) in subsection (3), for “any person” substitute “the Authority or the chief constable”,

(d) in subsection (4)—

(i) for “a relevant authority” substitute “the Authority or the chief constable”,

(ii) for “the authority” substitute “the Authority or, as the case may be, the chief constable”.

(8) In section 45 (power of Commissioner to issue guidance)—
(a) in subsection (1)(a), for “relevant authorities” substitute “the Authority or the chief constable”;

(b) in subsection (2), for paragraph (a) substitute—

“(a) the Authority and the chief constable;”.

(9) In section 46, after subsection (5) insert—

“(6) Nothing in this section requires or authorises the disclosure of any information relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to such disclosure).”.

(10) For section 47 substitute—

“47 Interpretation of Chapter 2

In this Chapter—

“appropriate prosecutor” means the Lord Advocate or procurator fiscal;

“the Authority” means the Scottish Police Authority;

“chief constable” means the chief constable of the Police Service;

“the Commissioner” means the Police Investigations and Review Commissioner;

“constable” means a constable of the Police Service;

“financial year” means each yearly period ending with 31 March;

“firearm” has the meaning given by section 57(1) of the Firearms Act 1968;

“member of the Authority’s staff” and “member of the police staff” have the same meanings as in the Police and Fire Reform (Scotland) Act 2012;

“person serving with the police” means—

(a) a constable of the Police Service;
(b) a member of the police staff; or
(c) a member of the Authority’s staff;

“Police Service” means the Police Service for Scotland;

“relevant complaint” has the meaning given by section 34;

“senior officer” has the same meaning as in the Police and Fire Reform (Scotland) Act 2012.”.

(10A) In section 52(1) (application for football banning order)—

(a) in the opening words, for “a police force” substitute “the Police Service of Scotland”;

(b) paragraphs (a) and (b) are repealed.

(10B) In section 57(3) (variation of football banning order)—

(a) in paragraph (b), for the words from “police” to “resides” substitute “Police Service of Scotland”,
(b) paragraphs (c) and (d) are repealed.

(10C) In section 69(1) (interpretation), in the definition of “the football banning orders authority”, for the words from “police force” to “area” substitute “Police Service of Scotland”.

(11) In section 103(4)(a) (subordinate legislation)—

(a) “or”, where second occurring, is repealed, and
(b) after “schedule 2” insert “or paragraph 7A(8) or 7B(4) of schedule 4 or regulations under section 41D(1)”.

(12) For the title of schedule 4 substitute—

“THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER”.

(13) In schedule 4—

(a) in paragraph 2—

(i) in sub-paragraph (1)(b), for “a police force” substitute “the Police Service (or of a police force previously maintained under the 1967 Act)”;

(ii) after sub-paragraph (d) insert—

“(da) is or has been a member of the Authority;”,

(iii) in sub-paragraph (e), after “Authority” insert “or has been a member of staff of the body which was known as the Scottish Police Services Authority”,

(iv) in paragraph (g) after “been” insert “employed as a member of police staff or as a member of the Authority’s staff or has been”,

(aa) in paragraph 3—

(i) in sub-paragraph (2)(a), for “3” substitute “5”,

(ii) in sub-paragraph (2)(b), for “2” substitute “3”,

(b) after paragraph 7 insert—

“Staff officers

7A (1) The Commissioner may make arrangements for constables of the Police Service to be appointed to serve as members of the Commissioner’s staff.

(2) The Commissioner may make arrangements for a person falling within sub-paragraph (3) to be appointed to serve as a member of the Commissioner’s staff.

(3) A person falls within this sub-paragraph if the person is a member of—

(a) a police force maintained under section 2 of the Police Act 1996 (c. 16);

(b) the metropolitan police force;

(c) the City of London police force;

(d) the Police Service of Northern Ireland;

(e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c. 4);
(f) the British Transport Police Force;
(g) the Civil Nuclear Constabulary;
(h) the States of Jersey Police Force;
(i) the salaried police force of the Island of Guernsey; or
(j) the Isle of Man Constabulary.

(4) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2) is to be appointed on such terms and conditions (including as regards remuneration, allowances and expenses) as the Commissioner determines.

(5) The Commissioner’s determination under sub-paragraph (4) may be made by reference to provision made by regulations made under section 49 of the Police and Fire Reform (Scotland) Act 2012.

(6) A constable or other person appointed under arrangements made under sub-paragraph (1) or (2)—

(a) has all the powers and privileges of a constable throughout Scotland, and
(b) is subject to the direction and control of the Commissioner.

(7) The Commissioner is liable in respect of any unlawful conduct on the part of any constable or other person appointed under arrangements made under sub-paragraph (1) or (2) in the carrying out (or purported carrying out) of that person’s functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

(8) The Scottish Ministers may by order apply any provision of the Police and Fire Reform (Scotland) Act 2012 or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables), with such modifications as are considered appropriate, in relation to a person appointed under arrangements made under sub-paragraph (2).

Staff involved in investigations

7B (1) The Commissioner may designate—

(a) any member of the Commissioner’s staff appointed under paragraph 7 or 7A to take charge of any investigation on behalf of the Commissioner; and
(b) other members of the Commissioner’s staff to assist the member designated to take charge.

(2) This sub-paragraph applies to a person who is a member of the Commissioner’s staff appointed under paragraph 7 and is designated under sub-paragraph (1).

(3) A person to whom sub-paragraph (2) applies—

(a) has all the powers and privileges of a constable throughout Scotland, but
(b) is not as a result of the designation to be treated as being in police service for the purposes of—
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(i) section 280 of the Trade Union and Labour Relations (Consolidation) Act 1992; or
(ii) section 200 of the Employment Rights Act 1996.

(4) Ministers may by order apply any enactment relating to the investigation of offences by constables (subject to such modifications as they consider appropriate) in relation to investigations carried out in pursuance of paragraph (b)(i) of section 33A(1) by a member of the Commissioner’s staff designated under sub-paragraph (1).”,

(c) in paragraph 11—

(i) the existing text becomes sub-paragraph (1),
(ii) after that text insert—

“(2) Nothing in this paragraph requires or authorises the provision of any information or document relating to a particular investigation carried out by the Commissioner on the direction of the appropriate prosecutor in pursuance of paragraph (b) of section 33A(1) (unless the appropriate prosecutor consents to disclosure of the information or document).”.

Animal Health and Welfare (Scotland) Act 2006 (asp 11)

23 In section 49(6) of the Animal Health and Welfare (Scotland) Act 2006 (vets, inspectors and constables), for the words “a police force” substitute “the Police Service of Scotland”.

Adult Support and Protection (Scotland) Act 2007 (asp 10)

24 (1) The Adult Support and Protection (Scotland) Act 2007 is amended as follows.

(2) In section 5(1) (co-operation), for paragraph (e) substitute—

“(e) the chief constable of the Police Service of Scotland,”.

(3) In section 27(3) (notification to police), for the words from “police” to “situated.” substitute “Police Service of Scotland.”.

(4) In section 42(3) (adult protection committees), for paragraph (d) substitute—

“(d) the chief constable of the Police Service of Scotland.”.

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

24A(1) The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.

(2) In section 18 (police information etc.)—

(a) in subsection (1)—

(i) the words “of a police force or the Scottish Crime and Drug Enforcement Agency” are repealed,

(ii) the words “or the Scottish Crime and Drug Enforcement Agency” (where second occurring) are repealed,

(b) in subsection (2)—
(i) for “A person” substitute “The chief constable”,
(ii) for “person”, where second occurring, substitute “chief constable”,
(c) in subsection (3), for “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(3) In section 38 (police access to lists of individuals barred from regulated work)—
(a) in subsection (1), for the words from “chief” to “Agency” substitute “the chief constable”,
(b) in subsection (2), for the words from “police” to “Agency” substitute “constables of the Police Service of Scotland”.

(4) In section 75 (sources of information)—
(a) in subsection (2), for the words from “A” to “Agency” substitute “The chief constable”,
(b) in subsection (3)—
(i) for “A person” substitute “The chief constable”,
(ii) for “person”, where second occurring, substitute “chief constable”,
(c) in subsection (4), for the words “appropriate police authority or the Scottish Police Services Authority” substitute “Scottish Police Authority”.

(5) In section 76 (police access to scheme information)—
(a) in subsection (1)—
(i) in the opening words, for the words from “chief” to “Agency” substitute “the chief constable”,
(ii) in paragraph (c), for the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”,
(b) in subsection (2) the words from “police forces” to “Agency” substitute “constables of the Police Service of Scotland”.

(6) In section 97 (interpretation)—
(a) in the definition of “chief constable”, for “a police force in Scotland” substitute “the Police Service of Scotland”,
(b) the definition of “police authority” is repealed.

30 Edinburgh Airport Rail Link Act 2007 (asp 16)

25 In section 38(5) of the Edinburgh Airport Rail Link Act 2007 (traffic regulation), for “Lothian and Borders Police” substitute “the Police Service of Scotland”.

Glasgow Commonwealth Games Act 2008 (asp 4)

26 (1) The Glasgow Commonwealth Games Act 2008 is amended as follows.

(2) In section 30(1) (compensation and recovery of losses), in paragraph (b), for “chief constable of the constable’s police force” substitute “Scottish Police Authority”.

(3) In section 37(2) (transport plan), for paragraph (c) substitute—
“(c) the chief constable of the Police Service of Scotland.”.

Marine (Scotland) Act 2010 (asp 5)

27 In paragraph 12(2)(b) of schedule 2 to the Marine (Scotland) Act 2010 (disclosure of information), for “a police force in Scotland” substitute “the Police Service of Scotland”.

Public Services Reform (Scotland) Act 2010 (asp 8)

28 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In section 114 (scrutiny: duty of co-operation)—

(a) in subsection (2)—

(i) the word “and” at the end of paragraph (b) is repealed, and

(ii) after paragraph (c) insert “, and

(d) policing.”,

(b) in subsection (3)(a)—

(i) the word “or” at the end of sub-paragraph (ii) is repealed, and

(ii) after sub-paragraph (iii) insert—

“(iv) policing, or”,

(c) in subsection (10)—

(i) for “or health services” substitute “, health services or policing”, and

(ii) after “services”, where last occurring, insert “or, as the case may be, policing”;

(d) in subsection (11), after the definition of “local authorities” insert—

““policing” has the same meaning as in Part 1 of the Police and Fire Reform (Scotland) Act 2012;}”.

(3) In section 115(6) (joint inspections), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

(4) In schedule 5 (improvement of public functions: listed bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(5) In schedule 8 (information on exercise of public functions: listed public bodies), for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.

(6) In schedule 19 (scrutiny functions: persons etc. subject to user focus duty), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.
(7) In schedule 20 (scrutiny functions: persons etc. subject to duty of co-operation), for the entry beginning “Her Majesty’s Chief Inspector of Constabulary”, substitute—

“Her Majesty’s Inspectors of Constabulary appointed under section 71 of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

Control of Dogs (Scotland) Act 2010 (asp 9)

29 In section 13 of the Control of Dogs (Scotland) Act 2010, after the entry for “local authority” insert—

“police” means the Police Service of Scotland,”.

Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)

31 (1) The Criminal Justice and Licensing (Scotland) Act 2010 is amended as follows.

(2) In section 117(4)(a) (meaning of “investigating agency”), for “a police force” substitute “the Police Service of Scotland”.

(3) In section 164(3) (persons to have regard to code of practice on disclosure), for paragraph (a) substitute—

“(a) constables of the Police Service of Scotland,”.

Alcohol etc. (Scotland) Act 2010 (asp 18)

32 (1) The Alcohol etc. (Scotland) Act 2010 is amended as follows.

(2) In section 14 (licence holders: social responsibility levy)—

(a) in subsection (3)(b), for “appropriate” substitute “the”, and

(b) in subsection (5), for the entry for “appropriate chief constable” substitute—

“chief constable” means the chief constable of the Police Service of Scotland,”.

(3) In section 15(3) (further provision about regulations relating to the social responsibility level), after paragraph (b), insert—

“(ba) the chief constable,”.

Children’s Hearings (Scotland) Act 2011 (asp 1)

33 In section 61(3) of the Children’s Hearings (Scotland) Act 2011 (constable’s duty to provide information to Principal Reporter), for “section 17(1)(b) of the Police (Scotland) Act 1967 (c.77)” substitute “section 20(1)(d) of the Police and Fire Reform (Scotland) Act 2012 (asp 00)”.

Public Records (Scotland) Act 2011 (asp 12)

34 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) for the entry for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.


PART 2

AMENDMENTS RELATING TO PART 2

Gas Act 1965 (c.36)

35 In section 17(5) of the Gas Act 1965 (notification of accidents)—

(a) in paragraph (a) the words “fire and rescue authority,” are repealed, and

(b) after that paragraph insert—

“(aza) for the Scottish Fire and Rescue Service if it appears to them that the Scottish Fire and Rescue Service will or may have duties to discharge, or will or may have to take precautionary or preventative action in any such event,”.

Transport Act 1968 (c.73)

36 In section 102(4) of the Transport Act 1968 (exemption for police and fire), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Pensions (Increase) Act 1971 (c.56)

37 In paragraph 44 of Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Health and Safety at Work etc. Act 1974 (c.37)

38 In section 23(4)(b) of the Health and Safety at Work etc. Act 1974 (consultation requirements relating to notices), for “relevant authority (as defined in section 6 of that Act) for the area where the premises are (or are to be) situated” substitute “Scottish Fire and Rescue Service”.

Control of Pollution Act 1974 (c.40)

39 In section 62(2)(a) of the Control of Pollution Act 1974 (exemption from control of loudspeakers in roads), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Water (Scotland) Act 1980 (c.45)

40 (1) The Water (Scotland) Act 1980 is amended as follows.

(2) In section 9A(1)(a) (exemption from Scottish Water charges), for “a fire authority” substitute “the Scottish Fire and Rescue Service”.

(3) In section 19 of Schedule 4 (undertakers to fix and maintain fire hydrants), for “fire authority concerned” substitute “Scottish Fire and Rescue Service”.

(4) In section 20 of Schedule 4 (undertakers to deposit keys of hydrants), for “fire authority”, in both places where it occurs, substitute “Scottish Fire and Rescue Service”.

45
(5) In section 21 of Schedule 4 (cost of hydrants), for “fire authority” substitute “Scottish Fire and Rescue Service”.

(6) In section 21A of Schedule 4 (regulations on recovery of costs of hydrants), for “fire authorities” substitute “the Scottish Fire and Rescue Service”.

Zoo Licensing Act 1981 (c.37)

41 In section 3(3) of the Zoo Licensing Act 1981 (appropriate authority for purposes of representations on an application)—

(a) for paragraph (a)(ii) substitute—

“(ii) the Scottish Fire and Rescue Service, if it is not the enforcing authority”, and

(b) in paragraph (b) for “relevant authority in whose area the zoo or any part of it is, or is to be, situated” substitute “Scottish Fire and Rescue Service”.

Civic Government (Scotland) Act 1982 (c.45)

42 (1) The Civic Government (Scotland) Act 1982 is amended as follows.

(2) In section 54(4)(a) (use of loudspeaker exempt from offence), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

(3) In section 89(4A) (safety of platforms etc.), in the words after paragraph (b) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

(4) In section 93 (fire precautions in common stairs etc.)—

(a) for “appropriate relevant authority”, where it occurs in each of subsections (3), (4) and (7), substitute “Scottish Fire and Rescue Service”, and

(b) in subsection (6) for “an appropriate relevant authority” substitute “the Scottish Fire and Rescue Service”.

(5) In section 98 (luminous tube signs)—

(a) in subsection (1) for “appropriate relevant authority”, where it occurs in each of paragraphs (a), (b) and (c), substitute “Scottish Fire and Rescue Service”, and

(b) in subsection (1A) for “appropriate relevant authority” substitute “Scottish Fire and Rescue Service”.

(6) In schedule 1 (licensing - further provision as to the general system), for “appropriate relevant authority”, where it occurs in each of paragraphs 2(1)(b), 5(5)(d), 7(3)(a)(ii), 9(5)(b), 9(7)(b), 10(2)(a), 10(2A), 10(4)(b), 11(7)(d), 12(4)(b), 12(7)(b), 17(4)(c)(ii) and 17(4)(d)(ii), substitute “Scottish Fire and Rescue Service”.

(7) In schedule 2 (control of sex shops), for “appropriate relevant authority”, where it occurs in each of paragraphs 8(1)(b), 10(1)(d), 13(5)(d), 14(5)(b), 14(7), 15(2)(a), 15(2A), 15(5) and 23(4)(b)(ii), substitute “Scottish Fire and Rescue Service”.
Road Traffic Regulation Act 1984 (c.27)

43 In section 87(1)(a) of the Road Traffic Regulation Act 1984 (exemptions from speed limits), for “a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005” substitute “the Scottish Fire and Rescue Service”.

Cinemas Act 1985 (c.13)

44 (1) The Cinemas Act 1985 is amended as follows.

(2) In section 3(10) (definition for purposes of the Act), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

(3) In section 8(2) (definition for purposes of the section), in paragraph (b) of the definition of “appropriate fire authority” for the words from “authority discharging” to the end of the paragraph substitute “Scottish Fire and Rescue Service”.

Housing (Scotland) Act 1987 (c.26)

45 In section 61(11) of the Housing (Scotland) Act 1987 (persons providing houses for purpose of occupation requirement for exercise of right to purchase), for paragraph (k) substitute—

“(k) the Scottish Fire and Rescue Service or its statutory predecessors;”.

Strathclyde Regional Council Order Confirmation Act 1991 (c.xx)

46 In section 3(8)(a) of the schedule to the Strathclyde Regional Council Order Confirmation Act 1991, for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Vehicle Excise and Registration Act 1994 (c.22)

46A In Schedule 2 to the Vehicle Excise and Registration Act 1994 (exempt vehicles)—

(a) in paragraph 4(2)(b), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(b) in paragraph 5—

(i) for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”, and

(ii) for “authority’s” substitute “Scottish Fire and Rescue Service’s”.

Merchant Shipping Act 1995 (c.21)

47 In section 135(1) of the Merchant Shipping Act 1995 (restrictions on transfer of oil at night), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

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Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (c.xii)

48 In section 6(9) of the schedule to the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 (entry to closed public roads), for “a relevant authority (as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5))” substitute “the Scottish Fire and Rescue Service”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

49 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Environmental Protection Agency” insert— “The Scottish Fire and Rescue Service”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

50 In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities), for paragraph 13 substitute—

“13 The Scottish Fire and Rescue Service.”.

Freedom of Information (Scotland) Act 2002 (asp 13)

51 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities)—

(a) for paragraph 9 substitute “Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service”, and

(b) after paragraph 85 insert—

“85ZA The Scottish Fire and Rescue Service.”.

Local Government in Scotland Act 2003 (asp 1)

52 In section 16(1) of the Local Government in Scotland Act 2003 (duty to participate in community planning), for paragraph (d) substitute—

“(d) the Scottish Fire and Rescue Service,”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

53 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

Fire and Rescue Services Act 2004 (c.21)

54 (1) The Fire and Rescue Services Act 2004 is amended as follows.

(2) For subsection (10) of section 34 (pensions etc.) substitute—

“(10) In this section “Scottish fire authority”—
(a) means the Scottish Fire and Rescue Service, and
(b) except in subsections (2)(e) and (h), includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5) (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00))”.

5 (3) In subsection (6) of section 35 (definitions for purpose of information in connection with pensions etc.), after the definition of “prescribed” add—

““Scottish fire authority”—

(b) means the Scottish Fire and Rescue Service, and
(c) in subsection (5) includes a relevant authority as defined in section 6 of the Fire (Scotland) Act 2005 (asp 5) (despite the repeal of that section by the Police and Fire Reform (Scotland) Act 2012 (asp 00))”.

Emergency Workers (Scotland) Act 2005 (asp 2)

55 In section 1(3) of the Emergency Workers (Scotland) Act 2005 (definition of capacity for the purpose of section 1(1) offence)—

(a) in paragraph (zb) for the words from “a relevant” to “authority’s functions” substitute “the Scottish Fire and Rescue Service while discharging any of the Service’s functions”, and
(b) in paragraph (b) for the words from “a relevant” to “on the authority” substitute “the Scottish Fire and Rescue Service for the purpose of carrying out any of the functions conferred on the Service”.

Fire (Scotland) Act 2005 (asp 5)

56 (1) The Fire (Scotland) Act 2005 is amended as follows.

(2) For the title of Part 1 of the 2005 Act and the italic cross heading immediately preceding section 1 of that Act, substitute—

“THE SCOTTISH FIRE AND RESCUE SERVICE”.

(3) In section 17 (duty to secure water supply)—

(a) in subsection (1)—

(i) for “A relevant authority” substitute “SFRS”, and
(ii) for “the authority’s” substitute “its”, and
(b) in subsection (2), for “the authority”, where it occurs in each of paragraphs (a), (e) and (f), substitute “SFRS”.

(4) In section 18 (use of water)—

(a) in subsection (1) for “a relevant authority” substitute “SFRS”, and
(b) in subsection (2) for “A relevant authority” substitute “SFRS”.

(5) In section 19 (agreements in relation to water supply), for “a relevant authority”, where it occurs in each of subsections (1) and (3), substitute “SFRS”.
(6) In section 20(1) (emergency supply by Scottish Water) for “a relevant authority” substitute “SFRS”.

(7) In section 21 (fire hydrants: provision etc.)—
   (a) in subsection (4) for “the relevant authority in whose area the hydrant is located” substitute “SFRS”, and
   (b) in subsection (6) for “a relevant authority) the relevant authority in whose area the hydrant is located” substitute “SFRS) SFRS”.

(8) In section 23(2)(b) (use of fire hydrants exempt from offences) for “a relevant authority” substitute “SFRS”.

(9) In section 24 (notice of works affecting water supply and fire hydrants)—
   (a) in subsection (1)—
      (i) for “a relevant authority” substitute “SFRS”, and
      (ii) for “the authority” substitute “SFRS”, and
   (b) in subsection (3) for “the relevant authority in whose area the hydrant is situated” substitute “SFRS”.

(10) In section 25 (powers of authorised employees in relation to emergencies), in subsection (1)—
    (a) for “a relevant authority” substitute “SFRS”, and
    (b) for “the authority”, in both places where it occurs, substitute “SFRS”.

(11) In section 27 (powers of authorised employees in relation to obtaining information), in subsection (1)—
    (a) for “a relevant authority” substitute “SFRS”,
    (b) for “the authority” substitute “SFRS”, and
    (c) for “the authority’s” substitute “SFRS’s”.

(12) In section 29 (powers of authorised employees in relation to investigating fires), in subsection (1)—
    (a) for “a relevant authority” substitute “SFRS”, and
    (b) for “the authority” substitute “SFRS”.

(13) In section 30 (exercise of authorised employee powers) for “a relevant authority” substitute “SFRS”.

(14) In section 39 (assaulting or impeding employees discharging certain functions)—
    (a) in subsection (1)—
       (i) in paragraph (a) for “a relevant authority” substitute “SFRS”, and
       (ii) in paragraph (b) for “the authority” substitute “SFRS”,
    (b) in subsection (2)—
       (i) for “a relevant authority” substitute “SFRS”, and
       (ii) for “that authority” substitute “SFRS”, and
    (c) in subsection (3) for “a relevant authority” substitute “SFRS”.
(15) In section 40 (framework document)—

(a) in subsection (1)—

(i) in paragraph (a) for “relevant authorities” substitute “SFRS”,

(ii) in paragraph (a) for “their functions” substitute “its functions under this Act
or any other enactment,”, and

(iii) in paragraph (b)(ii) for “those authorities” substitute “SFRS”,

(b) in subsection (3)—

(i) in paragraph (b) for “fire and rescue authorities” substitute “SFRS”, and

(ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and

(ba) for subsection (6), substitute—

“(6) Those persons are—

(a) SFRS,

(b) such persons as the Scottish Ministers consider represent employees of
SFRS,

(c) such persons as the Scottish Ministers consider represent local
authorities, and

(d) such other persons as the Scottish Ministers consider appropriate.”.

(16) In section 41 (adherence to framework document)—

(a) for subsection (1), substitute—

“(1) In carrying out its functions, SFRS must have regard to the framework
document.”,

(b) in subsection (2)—

(i) for “a relevant authority” substitute “SFRS”, and

(ii) for “document prepared under section 40(1)” substitute “framework
document”,

(c) in subsection (4), for “the authority”, in both places where it occurs, substitute
“SFRS”,

(d) in subsection (5)—

(i) in paragraph (b) for “the authority” substitute “SFRS”, and

(ii) in paragraph (c) for “relevant authorities have” substitute “SFRS has”, and

(e) in subsection (6), for “the authority in respect of which it is proposed to be made”
substitute “SFRS”.

(17) For the italic cross-heading immediately preceding section 45, substitute—

“CHAPTER 8C

EQUIPMENT, FACILITIES AND SERVICES”.

(18) In section 47(1) (provision of equipment etc. by Scottish Ministers) for “relevant
authorities” substitute “SFRS”.

(19) In section 51 (prohibition on employment of police)—
(a) for “A relevant authority” substitute “SFRS”, and
(b) for “the authority” substitute “it”.

(20) In section 52 (interpretation of Part 2), in the appropriate place in alphabetical order insert the following definitions—

“Chief Inspector” has the meaning given by section 43A(6),”,

“Chief Officer” means the person appointed under paragraph 8 of schedule 1A, “,

“framework document” means the document prepared under, and having effect by virtue of, section 40,”,

“Inspector” has the meaning given by section 43A(6),”.

(21) In section 59(1) (application of power to make further provision for protection of firefighters) for “relevant authorities” substitute “SFRS”.

(22) In section 79 (interpretation of Part 3) in the definition of “relevant person” for “a relevant authority” substitute “SFRS”.

(23) In section 80 (inquiries), for “a relevant authority”, where it occurs in each of paragraphs (a) and (b)(iii), substitute “SFRS”.

(24) In section 81(2) (inquires about which Ministers may not make regulations) for “44” substitute “43B”.

(25) In section 85(1) (false alarms), for “a relevant authority” substitute “SFRS”.

(26) In section 86 (disposal of land), for “A relevant authority” substitute “SFRS”.

(27) Before section 87, insert—

“86A Interpretation

(1) In this Act—

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39); and “area” in relation to a local authority, means the local government area for which the authority is constituted,

“SFRS” has the meaning given by section 1A(1).

(2) References in this Act to the area of SFRS are to be construed as references to Scotland, but taking the seaward boundary of the area to be the low water mark.”.

Gambling Act 2005 (c.19)

57 In section 157 of the Gambling Act 2005 (responsible authorities in relation to premises), for paragraph (f) substitute—

“(f) the Scottish Fire and Rescue Service,”.
Housing (Scotland) Act 2006 (asp 1)

58 In paragraph 4 of schedule 2 to the Housing (Scotland) Act 2006 (duty to consult on provision for detecting fires), for “fire and rescue authority for the area in which the house concerned is situated” substitute “Scottish Fire and Rescue Service”.

Corporate Manslaughter and Corporate Homicide Act 2007 (c.19)

58A In section 6(2) of the Corporate Manslaughter and Corporate Homicide Act 2007 (duty of care for certain organisations in emergencies), for paragraph (b) substitute—

“(b) the Scottish Fire and Rescue Service;”.

Public Services Reform (Scotland) Act 2010 (asp 8)

59 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.

(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

(3) In schedule 8 (information on exercise of public functions: listed public bodies)—

(a) for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service”, and

(b) after the entry for “Scottish Environmental Protection Agency” insert—

“Scottish Fire and Rescue Service”.

(4) In schedule 19 (persons subject to user focus duty), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”.

Public Records (Scotland) Act 2011 (asp 12)

60 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of the Act applies), for the entry “Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities (appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5))” substitute—

“Her Majesty’s Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty’s Inspectors of the Scottish Fire and Rescue Service and Assistant Inspectors of the Scottish Fire and Rescue Service appointed under section 43A of the Fire (Scotland) Act 2005 (asp 5)”.

1722
PART 3

AMENDMENTS RELATING TO BOTH PARTS

Pipe-lines Act 1962 (c.58)

61 In section 37 of the Pipe-lines Act 1962 (persons to be notified of certain pipe-line accidents)—

(a) in subsection (1), for paragraph (a) substitute—

“(a) to the Scottish Fire and Rescue Service and the chief constable of the Police Service for Scotland,”

(b) in subsection (2)—

(i) after “by” (where it occurs in the opening words), insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(ii) after “furnish” insert “the Scottish Fire and Rescue Service, the chief constable of the Police Service for Scotland,”,

(iii) in paragraph (a), for “a fire and rescue authority or police authority” substitute “the Scottish Fire and Rescue Service or the chief constable of the Police Service for Scotland”.

Local Government etc. (Scotland) Act 1994 (c.39)

62 In section 43(4) of the Local Government etc. (Scotland) Act 1994 (consultation on guidance as to exercise of traffic powers)—

(a) after “consult” insert—

“(a), and

(b) for the words from “and”, where it first occurs, to the end substitute—

“(b) the chief constable of the Police Service of Scotland,

(c) the Scottish Fire and Rescue Service, and

(d) the authorities for the areas to which the guidance relates.”.

SCHEDULE 7
(introduced by section 123(2))

REPEALS

PART 1

REPEALS RELATING TO PART 1

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<tr>
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<th>Extent of repeal</th>
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<tr>
<td>Children and Young Persons (Scotland) Act 1937 (c.37)</td>
<td>Section 101(3).</td>
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<tr>
<td>Police (Scotland) Act 1967 (c.77)</td>
<td>The whole Act except for sections 32A and 42.</td>
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<tr>
<td>Enactment</td>
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<tr>
<td>Social Work (Scotland) Act 1968 (c.49)</td>
<td>In section 94, the definition of “constable”.</td>
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<tr>
<td>Local Government (Scotland) Act 1973 (c.65)</td>
<td>Section 56(9)(b).</td>
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<td>Section 236(2)(g).</td>
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<tr>
<td>Criminal Justice (Scotland) Act 1980 (c.62)</td>
<td>In section 81(1), the definition of “constable”.</td>
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<tr>
<td>Civic Government (Scotland) Act 1982 (c.45)</td>
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<td>Section 86F(4).</td>
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<tr>
<td>Prisons (Scotland) Act 1989 (c.45)</td>
<td>In section 14(4), the words “in their area”.</td>
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<td>Criminal Justice and Public Order Act 1994 (c.33)</td>
<td>In section 163(4), the definition of “chief officer of police”.</td>
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<tr>
<td>Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)</td>
<td>In Schedule 2, Part 3, the entries relating to the Police (Scotland) Act 1967 (c.77).</td>
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<td>Criminal Procedure (Scotland) Act 1995 (c.46)</td>
<td>In section 194I(4), the definition of “police force”.</td>
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<td>Police Act 1996 (c.16)</td>
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<td>Section 61(1)(ca), (cb), (cc), (cd) and (6).</td>
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<td>Section 62(1A)(b), (1AA), (1AB) and (1AC).</td>
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<td>In section 62(2), the words “, or for the purposes of subsection (1AA) or (1AC) above,”.</td>
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<td>In section 62(3), the words “, section 27 of the Police (Scotland) Act 1967”.</td>
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<td>Crime and Punishment (Scotland) Act 1997 (c.48)</td>
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<td>In section 94(2)(a), the words “or (d)”.</td>
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<td>Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)</td>
<td>In schedule 3, the entry for “The Scottish Police Services Authority”</td>
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<td>Enactment</td>
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<td>Section 11(4)(b)(ii).</td>
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<td>Section 15(7)(aa).</td>
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<td>Section 18(b).</td>
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<td>Section 20(3), (6) and (7).</td>
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|                                                                          | In section 31(1), the entries for “joint surveillance operation” and “police member”.

<p>| Transport (Scotland) Act 2001 (asp 2)                                    | In section 48(1), the entry for “police area”.                                  |
| Scottish Public Services Ombudsman Act 2002 (asp 11)                      | In schedule 2, paragraph 14.                                                    |
| Freedom of Information (Scotland) Act 2002 (asp 13)                       | In schedule 4, paragraphs 1(b) and 16.                                           |
| Local Government in Scotland Act 2003 (asp 1)                             | In schedule 1, paragraphs 51, 52 and 52A                                        |
|                                                                          | In section 46(1), the words “or a joint police board”.                          |
|                                                                          | In section 46(3)(a), the words “or, as the case may be, board”.                 |
|                                                                          | In section 46(3)(b), the words “or board” and “or, as the case may be, board”.  |
|                                                                          | Section 61(b).                                                                  |
|                                                                          | In section 61(c)(iii) the words “and a joint police board”.                     |
| Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)    | In schedule 2 (specified authorities), the entry “Scottish Police Services Authority”. |
| Criminal Justice (Scotland) Act 2003 (asp 7)                              | Section 75.                                                                     |
|                                                                          | In section 76, subsections (1) to (9).                                          |
| Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)                     | In section 1, the word “relevant” at each place it occurs in subsections (3)(f)(i), (ii) and (iii), (4), (8) and (10). |
|                                                                          | In section 2, the word “relevant” at each place it occurs in subsections (1)(a) and (2)(a). |</p>
<table>
<thead>
<tr>
<th>Enactment</th>
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<tr>
<td>Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)</td>
<td>In section 20(3)(b), the words “whose police area includes the relevant locality and”.</td>
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<td>Edinburgh Tram (Line Two) Act 2006 (asp 6)</td>
<td>In section 4(2), paragraphs (b), (c) and (d).</td>
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<tr>
<td>Edinburgh Tram (Line One) Act 2006 (asp 7)</td>
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<tr>
<td>Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)</td>
<td>In section 62(5), the entry beginning “chief officer of police”.</td>
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<tr>
<td>Public Services Reform (Scotland) Act 2010 (asp 8)</td>
<td>Sections 1 to 32.</td>
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<td>Section 34(7).</td>
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<td>In section 99, the entry for “the 1967 Act”.</td>
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<td>In schedule 4, paragraph 2(1)(f).</td>
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<td>In schedule 6, paragraphs 1, 7, 11 and 12.</td>
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<tr>
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<td>In schedule 8, the entry for “Scottish Police Services Authority”.</td>
</tr>
<tr>
<td>Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)</td>
<td>In schedule 1, the entries for “constable”, “police area”, “police authority” and “police force”.</td>
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<td>Alcohol etc. (Scotland) Act 2010 (asp 18)</td>
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<td>Section 56.</td>
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<td>In the schedule, the entries for “Joint police boards”, “Police Advisory Board for Scotland” and “Scottish Police Services Authority”.</td>
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### Schedule 7—Repeals

#### Part 2—Repeals relating to Part 2

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<td>Gas Act 1965 (c.36)</td>
<td>In section 28(1) (interpretation of Part 2), the definition of “fire and rescue authority”.</td>
</tr>
<tr>
<td>Local Government (Scotland) Act 1973 (c.65)</td>
<td>Section 63A.</td>
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<tr>
<td>Water (Scotland) Act 1980 (c.45)</td>
<td>In section 109(1), the definition of “fire authority”.</td>
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<td>In section 1(1) of Schedule 4, the definition of “fire authority”.</td>
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<tr>
<td>Local Government, Planning and Land Act 1980 (c.65)</td>
<td>Section 2(1)(h).</td>
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<tr>
<td>Civic Government (Scotland) Act 1982 (c.45)</td>
<td>In section 8, the definition of “appropriate relevant authority”.</td>
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<td>Section 89(4A)(b) and the word “and” immediately preceding it.</td>
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<td>Section 89(4B).</td>
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<td>Section 93(9).</td>
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<td>In section 98(2), the definition of “appropriate relevant authority”.</td>
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<td>In paragraph 3 of schedule 2, the definition of “appropriate relevant authority”.</td>
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<tr>
<td>Housing (Scotland) Act 1987 (c.26)</td>
<td>In section 82, the definition of “fire authority”.</td>
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<td>Section 43(3)(a)(vii) and the word “or” immediately preceding it.</td>
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<td>Section 45(4)(g).</td>
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<tr>
<td>Housing (Scotland) Act 2001 (asp 10)</td>
<td>In paragraph 2 of schedule 1, the words from “A tenancy”, where they first occur, to “such an authority”.</td>
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<tr>
<td>Local Government in Scotland Act 2003 (asp 1)</td>
<td>In section 22(9), the words “Subject to section 16(3) of the Fire (Scotland) Act (asp 5),” and paragraph (c).</td>
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<tr>
<td></td>
<td>In section 61, paragraph (a) and, in paragraph (c), the words “a joint fire board”, in each place where they occur.</td>
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<tr>
<td>Fire (Scotland) Act 2005 (asp 5)</td>
<td>Section 1.</td>
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<td>Sections 2 to 7.</td>
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### Part 3—Repeals relating to both Parts

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<th>Enactment</th>
<th>Extent of repeal</th>
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</thead>
<tbody>
<tr>
<td><strong>Pipe-lines Act 1962 (c.58)</strong></td>
<td>Section 37(4)(a).</td>
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</table>
| **Local Government etc. (Scotland) Act 1994 (c.39)** | Section 8(5). In section 8(7), the definitions of “fire personnel” and “police personnel”. Section 55(7). In section 55(12), the words from “any” to “1967”.
| **Local Government in Scotland Act 2003 (asp 1)** | Section 25. |
Police and Fire Reform (Scotland) Bill
[AS PASSED]

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

Introduced by: Kenny MacAskill
On: 16 January 2012
Supported by: Roseanna Cunningham
Bill type: Executive Bill