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 1 2(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 counterterrorism 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