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

\(^1\) 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 performance\(^2\), 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

\(^2\) ACPOS Annual Performance Report 2010/11: The Scottish Police Performance Framework
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.
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

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.

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>
</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.
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.