Question 5: Comment on issues relevant to the Review, as they exist

The Police and Fire Reform (Scotland) Act 2012 cannot meet its objectives as the legislation is ultra vires and so invalid. The Scottish Government and the Scottish Parliament were not entitled to introduce a bill that is substantially unlawful and unconstitutional. Consequently, the Act also provides mechanisms by which the Scottish justice system could fall, including the arrangements for policing in Scotland. The government and parliament were acting outside their powers on such a bill. They were acting ultra vires, and as such legally the legislation is deemed ‘invalid’.

1. The Scotland Act 1998 requires that all legislation of the Scottish Parliament is within its legislative competence. There is a specific requirement under section 29 that it also complies with the European-wide law (i.e. not EU) of ECHR.

2. The PFRS 2012 centralises and completes the control of the police under Scottish Ministers and the Scottish Government. They now control all aspects of policing including investigations, the collection and supply of evidence, and in the preparation of prosecutions. They control the policies and appointments. As such, Scotland meets the definition of being a police state.

3. This results in a major breach of Article 6 of ECHR, and the UK-wide Human Rights Act 1998.

4. The Scottish Government was exceeding its powers by introducing legislation that broke ECHR and HRA.

5. The Scottish Parliament exceeded its powers by passing unlawful (and unconstitutional) legislation.

6. When legislation is introduced that is outside the powers, it is ‘ultra vires’ and legally deemed to be ‘invalid legislation’.

7. It requires urgent action to prevent on-going breaches of the law by the Scottish Ministers (the Lord Advocate and the Solicitor General), the Scottish Ministers under collective responsibility, and the Scottish Government.

8. It requires urgent constitutional reform legislation to restore and ensure the retention of the law, the rule of law, and the constitution in Scotland, and remarkably to stop it being a police state.
Notes

1. Under s5 of PFRS 2012, Scottish Government Ministers are prohibited from directing police operations (e.g. investigations). The two law officers, also being ministers, are part of the Scottish government, thus creating an anomaly. (s44 Scotland Act 1998). These law officers/ministers constantly direct the police, either individually or via their Scottish Government’s prosecution service, COPFS.

2. There is no exemption for the Lord Advocate or the Solicitor General. If any exemption was found, or made, it would be unlawful (ECHR, HRA, and binding natural law). The law officers cannot be independent and as the current Lord Advocate told The Times (April 1st 2017), ‘My loyalty is to my government’.

3. In following instructions from government ministers contrary to s5, the Chief Constable is constantly acting on unlawful instructions.

4. The 2012 Act completes the control by the government of the police and criminal justice system. The judiciary only deal in criminal cases, FAIs, and public inquiries, provided by the government. The 2012 Act was made when a single party had control of the government, the legislature, and because of a defective Scotland Act, the judiciary as well. In constitutional terms this is deemed ‘an elected dictatorship’. It is of course exceptionally dangerous and in law and the constitution it is not permitted. Here it directly relates to the law on patient safety not being implemented, not complied with, and compliance not regulated in Scotland. That results in 2,000 preventable deaths a year in Scotland.

5. The Scotland Act 1998 was and is ‘ultra vires’, being unlawful and unconstitutional. ASAP-NHS has produced a report on this. The 1998 Act created a Parliament, Government and Ministers beyond the law and the rule of law. Consequently this questions its legitimacy. This Act gave powers and responsibilities that must be with an independent law-based judiciary instead to the executive, the politically-based government. The 2012 Act almost completed the process of government control of the justice system. The government controls the single police force Police Scotland, the Scottish Police Authority, PIRC, and HMICS. It also controls the prosecution service, the investigation of deaths (both unlawfully so), the Inspectorate of Prosecutions Service, and the Scottish Human Rights Commission.

6. It is foreseeable, that with the fundamental failures involved in the Scottish justice system, it could fall and precipitously so and at any time.

7. For their duration, the Scottish Parliament and the Scottish Government have suffered from extremely poor legal advice and that has pushed Scotland into this unlawful, unconstitutional, and dysfunctional situation. The poor advice was a major factor in creating the unlawful and unconstitutional Scotland Act 1998.

8. Legally and constitutionally the current situation cannot continue.

Roger M Livermore
25 June 2018