

SPICe Briefing

Police and Fire Reform (Scotland) Bill

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In September 2011, following formal consultations on the future of the Scottish police and fire services, the Scottish Government confirmed that the current eight police force and eight fire brigade structure would be replaced with a single police service for Scotland and a single Scottish fire and rescue service. This announcement was accompanied by a second consultation seeking views on the detail of the proposed reforms, including the legislative framework for the new services, along with publication of the Outline Business Cases (OBC) which set out the Government's assessment of the costs and benefits of the reform options.

On 16 January 2012, the Scottish Government introduced the Police and Fire Reform (Scotland) Bill and accompanying documents in the Scottish Parliament to give legislative effect to the reform proposals. The Bill also seeks to place arrangements for independent custody visiting onto a statutory basis.

This briefing considers the proposals brought forward in the Police and Fire Reform (Scotland) Bill. It also provides background to the proposed reforms including discussion of the preceding consultations, consultation responses and the OBCs.

A briefing containing more detailed analysis of the Bill's Financial Memorandum ([SB 12/15](#)) has been published separately.



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EXECUTIVE SUMMARY

Over the last few years, significant work has been undertaken within the Scottish police and fire services to ensure that the services are as well placed as possible to meet the challenges posed by reducing budgets, increasing demand and new roles and responsibilities.

In September 2009, the Association of Chief Police Officers in Scotland (ACPOS) set up an Efficiency and Productivity Sub Group (EPSG) to examine how forces could act collectively in response to the challenging financial environment. In September 2010 the Scottish Policing Board established the Policing Sub-Group to oversee work to explore the potential for further cost savings to protect both frontline policing and the delivery of outcomes for communities. At the same time the Ministerial Advisory Group (MAG) on Fire and Rescue Services set up a Spending Review Sub-Group to examine the potential for short and longer term cost savings, to consider options for change and to review the principles that should underlie a sustainable, locally responsive and accountable fire and rescue service.

Between February and May 2011, the Scottish Government carried out parallel consultations on the future of the Scottish police and fire services; these consultations sought views on the principles of reform of those services. The first consultation produced 219 responses (police) and 171 responses (fire) and garnered wide agreement that some degree of reform of the police and fire services was necessary, but no general consensus on structural change.

The [SNP's manifesto](#) for the 2011 Scottish Parliament elections outlined the Party's intention to reduce the number of police forces in Scotland and to create a single fire and rescue service.

In July 2011, the Government issued draft Outline Business Cases (OBC) on reform of the police and fire and rescue services to stakeholders for comment. The OBCs were developed by professional leads from each service with input from experts and stakeholders using Target Operating Model (TOM) methods. Each assessed the overall service TOM against three reform options: status quo with enhanced co-operation; single force/brigade and regional model.

On 8 September 2011, the Scottish Government [announced](#) that the eight police forces and fire and rescue services would be abolished to be replaced with single national services. The Government also announced a second consultation on reform and published the police and fire OBCs.

This second consultation – "[Keeping Scotland Safe and Strong: A consultation on Reforming Police and Fire and Rescue Services in Scotland](#)" was conducted between September and November 2011. This consultation set out detailed proposals for a single police and single fire service and sought views on these proposals and related legislation.

On 16 January 2012, the Scottish Government introduced the Police and Fire Reform (Scotland) Bill in the Parliament; the Bill seeks to abolish the existing eight police forces and eight fire brigades and their governing boards and to replace them with a single national police service – the "Police Service of Scotland" (PSS), together with a new governing board – the "Scottish Police Authority" (SPA), and a single fire and rescue service - the "Scottish Fire and Rescue Service" (SFRS); the SFRS will be responsible for the governance and administration of fire and rescue services across Scotland.

The chair and members of the SPA and the SFRS will be appointed by the Scottish Ministers through an appointments process regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland; the SPA will appoint a chief constable, subject to approval by the Scottish Ministers, and will also appoint deputy chief constables and assistant chief constables; Ministers will appoint the first chief officer and the SFRS will appoint subsequent chief officers, subject to Ministers' approval.

Most respondents agreed that serving councillors should be represented on the governing boards of the new single services to enhance local democratic accountability and several felt that they should be in the majority on these boards. Many respondents also felt that the boards should comprise more than 11 members, to ensure the correct balance of skills and expertise.

The Bill also seeks to abolish the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA) with most of the functions of these organisations being absorbed into the new PSS; separate provisions are made in the Bill for the forensic services currently provided by the SPSA.

New arrangements for local accountability will be provided through the appointment of local commanders (police) and senior officers (fire and rescue) for each local authority. These officers will have statutory duties to: involve the local authority in setting priorities and objectives for their areas; participate in local planning; and, provide information and reports to the local authority.

Local authorities will, in turn, have the right to scrutinise and monitor service delivery and performance; agree the local police and fire and rescue plan; ask for reports and information and to provide advice and make recommendations on service provision. Local authorities will be free to determine how they will scrutinise police and fire services.

However, concerns remain over: the degree of influence local authorities and community planning groups will have over policing and fire services, and related budgets, for their areas; what happens when local authorities fail to approve a local policing or fire and rescue plan and how national and local priorities will be resolved where these conflict.

The Police Complaints Commissioner will be renamed as the "Police Investigation and Review Commissioner" (PIRC) and its remit will be extended to include investigatory capacity in relation to criminal allegations and serious incidents involving the police.

Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) will retain its existing functions and be given an additional function related to the inspection of the Best Value arrangements put in place by the SPA and the Chief Constable.

Funding arrangements for both the Police and Fire Service will change significantly under the Bill with 100% funding (revenue and capital) for both services coming directly from the Scottish Government.

Significant concern remains, however, over whether the new bodies will be VAT exempt. This issue remains to be resolved.

There is also concern that, unlike existing police authorities, joint police boards and joint fire boards, the new single service police and fire boards will be unable to hold financial reserves, with a consequent loss to the boards of financial flexibility.

The Bill also seeks to place independent custody visiting in Scotland onto a statutory footing.

The Chief Inspector of Fire and Rescue Authorities (CIFRA) will be abolished and replaced with a new inspection regime for the SFRS - the "Inspectors of the SFRS" who have a new independent scrutiny function.

BACKGROUND

The Scottish Police and Fire Services are among the oldest public services of their kind in the World. Scotland's first constables were appointed in 1617 and the UK's first Police Act was the Glasgow Police Act of June 1800. Similarly, the first organised public fire brigade in the UK was formed in Edinburgh in 1824. By the early years of the Twentieth Century, there were over 180 municipal fire brigades operating in Scotland.

In the intervening years both services have undergone many changes in terms of structure, organisation and governance, and also in roles and responsibilities.

The last major structural reform of the Scottish police and fire services was in 1975 as part of the reform of local government when 430 local government units were merged into 12 region and Island authorities and 53 district authorities. Prior to this reorganisation, there were 56 statutory police and fire authorities in Scotland along with 20 police forces and 11 fire brigades. From the new local authority structure emerged eight police forces and eight fire brigades¹ sharing the same geographic boundaries. Subsequent local government reorganisation in 1996 abolished regional and district councils and introduced 32 unitary authorities but retained the eight police forces and eight fire brigades.

More recently, the legislative framework of the Fire Service was significantly amended by the [Fire \(Scotland\) Act 2005](#) (the "2005 Act") with the creation of a national framework for the Service and a greater emphasis on local accountability, community safety and national resilience. The current proposals to create national police and fire services for Scotland, however, represent the biggest reform of these services in a generation and almost certainly the largest and most significant public service reform in Scotland since devolution. Not only will these reforms abolish the current eight police forces and eight fire brigades, together with their governing boards, they will fundamentally alter the existing administrative and funding arrangements for police and fire services, effectively removing both services from direct governance by local authorities.

THE CASE FOR REFORM

There is no doubt that a major driver of these reforms is the reduction in the Scottish block grant which over the next four years the Scottish Government estimates will reduce by £3.3 billion (or 10 per cent) in real terms (Scottish Government 2011r). Like most of the public sector, police and fire service budgets will reduce over this period. Police funding will fall by about 10 per cent in real terms over the next 4 years and spending on fire and rescue services is predicted to reduce by 12.8 per cent (£50m) in real terms² over the same period.

Reform of the police and fire services has therefore become, in the Scottish Government's view, an economic imperative. In this context, the Government has consistently said that maintaining eight police forces and eight fire and rescue brigades is unsustainable and that, without structural reform, smaller forces and brigades, in particular, will be vulnerable to cuts in frontline services.

Financial considerations, however, are not the only factors influencing the reform agenda. Police forces are facing increasing levels of demand for their services and police officers are involved in a wide range of community activities, far removed from "traditional" policing which

¹ Lothian Regional Council and Borders Regional Council shared a single force and single brigade as did Highland Regional Council and Orkney, Shetland and Na h-Eileanan Siar (Western Isles) Islands Councils

² Reform of the Fire and Rescue Service in Scotland: Annexes to the Outline Business Case, Annex E, Figure E7

called upon constables to “guard, patrol and watch” so as to: prevent the commission of offences, preserve order and to protect life and property.³ Scotland’s fire and rescue services also play many roles and deliver a diverse range of services beyond their “traditional” fire-fighting role. Over the last few years, Scottish fire and rescue services have had to adapt to significant changes in their roles and responsibilities as a consequence of the 2005 Act, moving away from prescriptive National Standards of Fire Cover to “integrated risk management planning” (IRMP), a risk-based approach to service delivery, and by their central role in the Government’s National Resilience Strategy.

In May 2011, HMICS produced a thoughtful discussion paper on the [Governance and Accountability of Policing in Scotland](#) (Laing and Fossey).

This report describes the development of the system of police governance over the last 50 years and highlights what it calls the,

“...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”.

The report concludes that there are systemic weaknesses in the governance arrangements for Scottish policing which were identified by the 1962 Royal Commission but were not sufficiently addressed by the 1967 Act. As a consequence, a plethora of bodies have emerged over the last few decades and, in particular, since devolution, in an attempt to correct these weaknesses. The result has been a “complex landscape” of organisations both within and outwith the traditional tripartite structure, with overlapping and sometimes unclear areas of responsibility. This, the report believes, has led to confusion, inefficiency and a lack of democratic accountability.

The Scottish Government say that the new governance arrangements proposed in the Police and Fire Reform (Scotland) Bill respond to the weaknesses identified in this discussion paper. (Policy Memorandum, paragraph 73)

To inform the debate over the future of the police and fire and rescue services, throughout 2011 the Scottish Government held a number of meetings and discussions with stakeholders, issued parallel public consultations in February 2011 on the principles of reform, and developed Outline Business Cases (OBC) for both the police and fire and rescue services.

FIRST POLICE CONSULTATION

The first police consultation, “[A Consultation on the Future of Policing in Scotland](#)” (Scottish Government 2011a), built on previous work on police reform by the [Efficiency and Productivity Sub Group](#) (EPSG) set up by ACPOS in September 2009 to consider how forces could collectively respond to the challenging financial environment and by the Sustainable Policing Sub-Group, established in September 2010 by the Scottish Policing Board. The consultation sought views on how to protect and improve the police service including ways to: create better partnership working with other organisations; engage more closely with communities; identify future challenges and opportunities; improve local and national accountability and protect the policing ‘frontline’. The consultation also sought views on the future structure of the police service around which these improvements would be implemented. The consultation offered three options for comment: a single force; three or four regional forces and the existing eight force structure with increased collaboration.

³ Section 17(1) of the Police (Scotland) Act 1967

While this consultation exercise produced general agreement that the adverse economic climate required changes in the way in which police services are operated and delivered in Scotland, it did not produce consensus for a particular policing structure. Of the 219 respondents, only 22 (10%) opted for a single force structure while 59 (27%) preferred the status quo; 45 (21%) would choose a regional model and the remaining 77 (35%) gave no view or said that there was insufficient information to enable an informed choice on the issue of structure.

First Fire and Rescue Service consultation

The first Fire and Rescue Service consultation, "[A Consultation on the Future of the Fire and Rescue Service in Scotland](#)", built on prior work carried out by Fire Conveners and COSLA, some under the auspices of the Ministerial Advisory Group (MAG). It sought the views of stakeholders on the Scottish Government's "vision" for the Scottish Fire and rescues service (SFRS) which was for the SFRS to become,

“...a world class, public-focused emergency service at the heart of community resilience, with the capacity, flexibility and scale to provide 21st century fire and rescue capabilities to protect the public”. (Scottish Government 2011b)

The consultation also asked for views on the key principles of the SFRS; proposals to decentralise resources and support functions; current service performance and suggestions for improvements; accountability mechanisms and the balance between national and local mechanisms; and the future structure of the SFRS.

This consultation produced 171 responses. There was general support for the vision for the SFRS as delineated by the Scottish Government, and for the option to de-centralise resources and support functions, though many felt that the SFRS was already sufficiently decentralised. There was also wide support for the key principles outlined in the consultation document. In terms of improvements to the SFRS, increased partnership working and collaboration was considered a priority by many as was the need for any future SFRS structure to enable local involvement in decision-making. In relation to current performance of the SFRS, many respondents felt that the SFRS is performing at a high level of efficiency and that any reform of the service should build on successful arrangements and initiatives which are already in place. The need to consider the future of the emergency services alongside the [Christie Commission review](#) (Scottish Government, 2010) on the future delivery of public services in Scotland emerged in many responses.

On the question of structure, there was general agreement that the number of fire and rescue services in Scotland needs to be reduced but, of those who expressed a preference, more chose a regional structure than a single structure. However, as for the police consultation, a large number of respondents (over half) considered that there was insufficient information to make an informed judgement on structure.

OUTLINE BUSINESS CASES

In July 2011, the Scottish Government issued draft Outline Business Cases for the reform of the police and fire and rescue services to stakeholders for comment. The OBCs were developed by professional leads from each service with the input of experts and stakeholders; each used Target Operating Model (TOM) methods to assess the most efficient way of delivering the key service functions; the overall service TOM was then applied to three reform options:

- Status quo (eight forces/brigades) with enhanced collaboration

- A regional structure of three or four forces/brigades
- Single national police and fire and rescue services

Police OBC

The Police OBC (Scottish Government 2011j) built on previous work by the Sustainable Policing Sub-Group. The Sub-Group used a financial model – “Police Objective Analysis” (POA) and TOM methodology to assess potential costs and savings arising from implementing different policing structures. The OBC, adopting the Sub-Group’s model and findings, concluded that substantial 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 four years⁴, reduce the following year then remain at that level for the projected 15 year period. The OBC estimates of the financial costs and benefits of each model over 15 years are presented in Table 1 below.

Table 1: OBC estimates of Costs and Savings of different structural options projected over 15 years (£000)

Option	Costs (15 years)	Cashable savings	Net Savings
Eight forces (enhanced)	356,197	1,311,160	954,963
Regional Force	367,487	1,454,350	1,086,864
Single Force	485,129	1,660,634	1,175,505

Source: Police Reform Programme Outline Business Case, Tables A13 to A15

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 accrue 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 (year 4 in the reform programme), the single force option would save 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 regional model, in particular, differs only marginally from the single force option in the scale of savings offered.

That said, the police OBC also considers that non-financial benefits would accrue using the TOM and that these would vary in scale under the different structural options. These non-financial benefits are considered under three broad headings; benefits which:

- improve policing outcomes through eg increasing the effectiveness of policing functions;
- improve wider public sector outcomes through eg increasing the effectiveness of partnerships;
- improve underlying organisational ability through eg reducing organisational complexity and streamlining internal processes

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

⁴ It may be noted that the first 5 years (years 0-4 in the reform programme) include what are considered to be ‘one-off’ transition costs and an element for contingency/optimism bias.

that the structural option was capable of maintaining current outcomes and 10 meant it was capable of delivering significant improvement. The 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.

Fire and Rescue Service OBC

The Fire and Rescue Service OBC (Scottish Government 2011k), builds on work by the MAG subgroup, mentioned previously, 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 accrue by adopting a TOM and that these savings would vary depending on which structural option was chosen. Table 2, below presents the OBC's estimates of the financial costs and benefits of each model over 15 years

Table 2: OBC estimates of Costs and Savings of different structural options projected over 15 years (£000)

	Eight brigades plus greater collaboration	Regional Service	National Service
Total Costs (net of asset sales over 15 years)	1,836	36,616	43,752
Savings (Net Present Value over 15 years)	74,906	215,072	293,486

Source: Fire and Rescue Service Reform: Outline Business Case, Table 5.3

As for the Police OBC, the single service option emerges as the biggest potential cost saver. In terms of annual savings, the OBC estimates that the enhanced collaboration eight brigade option would deliver net financial savings of nearly £8m 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 £29m per year.

Using similar methodology to the Police OBC, the Fire OBC included an exercise to estimate the non-financial benefits which would accrue under each structural option using the TOM. A series of outcomes was identified and weighted 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.

Criticism of the Outline Business Cases

The OBCs have been criticised on several grounds, including that they are subjective and partial, that they have not been tested in practice and that it is not clear how the non-financial efficiencies would actually be realised. HMICS, for example, said,

“We also considered that the proposed Target Operating Model was insufficiently tested to attribute the level of year on year savings apportioned to it or the costs of change to implement it”. (Scottish Government 2011e, HMICS response)

In their response to the second police consultation, for example, the Society of Local Authority Chief Executives (SOLACE), say,

“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. (Scottish Government 2011e, SOLACE response)

Another aspect of the Police OBC which has been criticised is its assumption that adopting the TOM will save around 80 per cent of current expenditure on police support costs across police authority baseline budgets, a projected “efficiency saving” of £2m (Police Reform OBC, p80, Table A1). In their response to the Government’s second consultation, Strathclyde Police Authority takes issue with this assumption,

“The Outline Business Case indicates that this may be achieved at 80% of current costs (c£2m) which will mean costs of only £400k. This may be a significant underestimate given the assigned responsibilities for the new Authority, unless support costs and infrastructure are being absorbed elsewhere and will be presented for understanding in due course. As a comparator Strathclyde Police Authority’s total budget is £1.275m per annum covering 12 staff delivering services to 12 local authorities and 34 members i.e. almost half of Scottish policing governance. There is an urgent need to provide full detail and clarify the exact range of functions expected to be achieved in future by the Authority on 20% of current baseline costs”.(Scottish Government 2011e, Strathclyde Police Authority response)

The Scottish Police Authorities Conveners Forum (SPACF) point out that the police OBC intends to achieve “cost saving adjustments” by reducing the current level of police support staff by almost one third through planned redundancy. SPACF conclude,

“It is difficult to appreciate how the current excellent delivery of policing services to the public will continue undiminished by adopting this methodology to the exclusion of having a “balanced workforce””. (Scottish Government 2011e, SPACF response)

CIPFA warn against too much reliance on the OBCs in forecasting savings,

“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”. (Scottish Government 2011e, CIPFA response)

A subsequent criticism is that the OBCs for both police and fire reform went from draft to final version and were then inserted wholesale into the Financial Memorandum taking little or no account of comments received in the consultation process. For example, the Association of Principal Fire Officers (APFOS) in their response to the Finance Committee’s consultation on the Financial Memorandum to the Bill said,

“A number of financial assumptions were set out in the OBC and 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”. (Scottish Parliament 2012, APFOS submission)

Announcement of single national police and fire and rescue services

On 8 September 2011, the Cabinet Secretary for Justice, Kenny MacAskill MSP announced in Parliament the Scottish Government’s intention to legislate for a single national police service

and a single national fire and rescue service (Scottish Government 2011t). In his statement, Mr MacAskill maintained that single services will produce a number of benefits, including:

- Delivering estimated savings of £130 million a year and £1.7 billion over 15 years
- Reducing duplication and overheads across eight police and eight fire and rescue services, freeing up resources for frontline policing and fire and rescue services
- Establishing a strong, formal relationship between each service and each of Scotland's 32 local authorities, creating designated local officers for each council area who will work with the Council and other partners to meet local priorities and needs
- Ensuring clear separation between Ministers and the operational responsibilities of services. As at present, Ministers will not be able to give instructions on such matters
- Giving all communities access to national and specialist services and expertise such as murder investigation teams, firearms teams and fire investigations, as and when they are needed
- Improving Scotland's capacity to tackle national threats such as terrorism and serious organised crime and to respond to incidents such as severe winter weather.

SECOND CONSULTATION

Along with this announcement, the Government published the OBCs for the police and fire and rescue services. It also issued a second consultation [Keeping Scotland Safe and Strong: A Consultation on Reforming Police and Fire and Rescue services in Scotland](#) (Scottish Government 2011d) setting out the Government's proposals for a single police and single fire service and seeking views on the detail of these proposals and related legislation. This consultation received 145 written submissions.

Second consultation - Police

While responses to this consultation produced broad agreement in some areas, such as for modernising the stated purpose of policing, retaining current policing functions, the integration of the SPSA and SCDEA into the new single police service and the inclusion of locally elected councillors in the proposed new police authority, significant concern remained over other key issues. These included the need for greater clarity in the role of local authorities in creating local policing plans and, in particular, the position of the local authority in only being allowed to 'comment' upon the plan, and a need for more clarity on how appropriate resourcing will be achieved to implement these plans. Lines of responsibility between the local police commander, the council, local police committees and the Chief Constable were also unclear to some. On the proposal for all police funding to come directly from central government, of the 79 respondents who addressed this question, 24 expressed support for the proposals on the grounds that they would bring more transparency. Five respondents noted their outright disagreement with proposals (mostly police boards/authorities) arguing for some form of joint responsibility for the funding of local policing or influence over the allocation of financial resources based around identification and agreement of local risks and priorities. There was concern, also, over the ability of a new centrally funded police authority to recover VAT and over its inability to hold financial reserves. Police board respondents were concerned that the consultation was silent in regard to future arrangements for those officers who are either directly employed by police authorities or employed by host local authorities.

Second consultation - Fire and Rescue Service

There was support for the “modernised purpose” of the SFRS as outlined in the consultation document and agreement that the overarching purpose of the SFRS should be to make communities safer, save lives and protect property. While there was broad support for the transfer of Scottish Government fire and rescue assets, such as the Scottish Fire Service College, management of the Firelink Communications System and Chemical, Biological, Radiological and Nuclear (SBRN) resources, to the new national service, there was some concern over continued funding of these assets. As was the case among those responding to the police consultation, fire and rescue respondents were supportive of having serving councillors on the governing boards of the new single service to enhance local democratic accountability and also that board members should have appropriate knowledge of fire and rescue services and of local government. However, many respondents felt that a board of only 11 could not provide the correct balance of skills and expertise. There was a call for greater clarity over lines of responsibility between the local senior officer, the council, community planning partners and the Chief Officer for fire and rescue services. Another concern was how local and national priorities would be decided and what would happen when they conflict. On funding, some local authorities felt that there should remain some responsibility for the setting and deployment of local budgets at the local level. As in the police consultation, there was concern over whether the new fire authority would be able to recover VAT and over the issue of holding financial reserves.

THIS BRIEFING

The remainder of this briefing looks at the current structure and governance arrangements of the police and fire and rescue services in Scotland and at how these will change under the Bill.

The Bill’s accompanying documents provide comprehensive explanation of the contents of the Bill and the policy background to the proposed reforms. This briefing, therefore, does not cover every provision in the Bill but rather describes only the main provisions and relates these, where relevant, to current arrangements and to the preceding public consultations and debate.

More detailed analysis of the financial implications of reform, including analysis of responses to the Finance Committee’s consultation on the Financial Memorandum, is given in a separate SPICe briefing, 12/15 (Burnside 2012).

THE POLICE SERVICE

Current police structure

Scotland currently has eight ‘territorial’ police forces (i.e. police forces based wholly within Scotland). These forces, the proportion of the Scottish population and area of Scotland each covers, are shown in table 3 below.

Table 3: Police Forces – police officers, percentage of population and geographic area

Police Force	Police Officers at 30 September 2011 ¹	% of Scottish Population	Police officers per 100,000 population	Force area as % of Scotland
Central Scotland	872	5.6	299	3.4
Dumfries & Galloway	507	2.9	341	8.2
Fife	1,105	7.0	304	1.7
Grampian	1,468	10.5	269	11.2
Lothian & Borders	2,912	18.1	310	8.3
Northern	777	5.6	269	39.8
Strathclyde	8,404	42.7	379	17.8
Tayside	1,219	7.7	305	9.6
Scotland	17,265	100	332	100

Source: [Police Officer Quarterly Strength Statistics Scotland, 30 September 2011](#)

¹ Scotland total does not agree with totals for individual forces (17,264) due to FTE rounding

In addition to the eight territorial police forces, a number of other UK police bodies operate in Scotland, including:

- [British Transport Police](#) – police force for the railways providing a service for rail operators, their staff and passengers across Britain
- [Ministry of Defence Police](#) – provides security within Ministry of Defence property across Britain (eg the nuclear submarine base at Faslane)
- [Civil Nuclear Constabulary](#) – provides protection for nuclear materials on designated UK nuclear licensed sites and in transit
- [Serious and Organised Crime Agency](#) – SOCA tackles serious organised crime across the UK including Class A drugs, people smuggling and human trafficking, fraud, computer crime and money laundering. SOCA and its functions are to be absorbed into the new National Crime Agency (Home Office 2011)
- [United Kingdom Border Agency](#) – an agency of the Home office tasked to protect the UK’s border

These forces fall under UK rather than Scottish jurisdiction and are not directly affected by the proposed reforms.

Current police governance arrangements

[The Police \(Scotland\) Act 1967](#) (the “1967 Act”) provides for a ‘tripartite’ sharing of responsibility for policing between: (a) the Scottish Ministers; (b) police authorities or joint police boards; and (c) Chief Constables. Their respective functions are considered below.

The Scottish Ministers

The Scottish Ministers have overall responsibility for policing policy in Scotland. In carrying out this responsibility they are answerable to the Scottish Parliament. The Scottish Ministers have the power to make regulations concerning the terms and conditions, and certain duties, of police officers. In exercising this power they are advised by the UK [Police Negotiating Board](#) (pay and conditions) and the Police Advisory Board for Scotland (other matters). It is worth noting at this point that the Police Advisory Board for Scotland will be dissolved under the Bill (s 94(1)).

Police Authorities and Joint Police Boards

Two of the eight Scottish police forces (Dumfries & Galloway and Fife) are administered by police authorities and the remainder are administered by joint police boards. Both police authorities and joint police boards are made up of local authority councillors.

The relevant police authority:

- sets the budget for its force
- appoints senior police officers (with the agreement of the Scottish Ministers)
- determines the numbers of police officers and civilian support staff for its area
- appoints civilian support staff (such staff, once appointed, come under the control of the Chief Constable)
- plays a role in securing Best Value and continuous improvement within its force

Chief Constables

Chief Constables are appointed by the relevant police authority or joint board after consultation with and subject to the approval of the Scottish Ministers. Chief Constables have sole responsibility for operational decisions about police deployment and enforcing the law in their areas.⁵ Chief Constables also appoint all police officers, who are under their direction and control, up to and including the rank of superintendent, for their police forces.

The Scottish Policing Board

The Scottish Policing Board was set up in November 2009 following an Independent Review of Policing (Scottish Government (2009a)). The Board brings together the Scottish Government, the police, Police Authority Conveners and COSLA. Its remit includes providing a forum to identify key national strategic priorities, to add impetus to activities of collective importance and to identify key issues on which to develop a collective position.

⁵ This is subject to the power of the Lord Advocate and the local Procurator Fiscal to direct the police in relation to the investigation of crime.

Scottish Policing Performance Framework

In relation to the measurement and reporting of police performance, the [Scottish Policing Performance Framework](#) (SPPF) (Scottish Government 2007) was first published by the Scottish Government in March 2007 (2007). The key aims of the SPPF are:

- to develop a single suite of performance measures that reflects the breadth and variety of policing activity across Scotland
- to create a framework that supports managers throughout the police service in understanding, reflecting on and improving performance so that forces can provide more effective policing in Scottish communities
- to provide a mechanism for better accountability at local and national levels, through the publication of consistent and transparent performance information that will support the Scottish Government, Police Authorities and the general public in their understanding of policing performance
- to provide a basis for robust performance management and, in turn, performance improvement

The framework has been in place since 1 April 2007. Since then, it has been amended (Scottish Government 2011h) to include a number of new and revised indicators and to achieve greater co-ordination with other performance assessment tools such as ACPOS' [Scottish Strategic Assessment](#) and the Scottish Government's [Purpose and Strategic Objectives](#). The [Accounts Commission's](#) Statutory Performance Indicators are also incorporated within the SPPF.

THE BILL

The Police and Fire Reform (Scotland) Bill (the Bill) was, together with explanatory notes, a policy memorandum, financial memorandum (and other documents), formerly introduced in the Parliament on 16 January 2012 by the Cabinet Secretary for Justice, Kenny MacAskill MSP.

The main purpose of the Bill is to restructure the police and fire and rescue services in Scotland to establish a single national police service and a single national fire and rescue service and to make consequential provision related to these changes. The Bill also seeks to create a new statutory framework for the police service in Scotland and to give statutory status to independent custody visiting.

The Policy Memorandum highlights three policy objectives of the Bill. These are:

- to protect and improve local services
- to create more equal access to specialist support and national capacity
- to strengthen the connection between services and communities

This is a substantial Bill in three parts and seven schedules. Part 1, by far the largest part, is concerned with police reform and is divided into 17 chapters and 98 sections. In effect, Part 1 of the Bill, together with associated schedules, replaces the Police (Scotland) Act 1967, repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 and amends Part 1, Chapter 2 of that Act, to create a new statutory basis for the Police Service in Scotland. Part 2 (21 sections) is concerned with fire reform and makes extensive amendments to the Fire (Scotland) Act 2005. Part 3 (6 sections) is concerned with general provisions applicable to Parts 1 and 2, including subordinate legislation, transitional provisions, commencement and short title.

Passage of the Bill through the Scottish Parliament

The Scottish Government intends the new services to be in place by, at the earliest, April 2013. Clearly that timetable is dependent on the Bill completing its passage through Parliament before this year's summer recess. Stage 1, therefore, will have to be completed by early May. The Parliament has agreed to impose a Stage 1 deadline of 4 May for the Bill to facilitate this.

On 24 January, the Parliamentary Bureau recommended to the Parliament that the Justice Committee be designated as the lead committee for the Bill and that the Local Government and Regeneration Committee be designated as a secondary committee.

THE POLICE SERVICE OF SCOTLAND

Part 1, Chapter 2 of the Bill proposes to create a new national constabulary – the Police Service of Scotland (PSS). The PSS will replace the existing eight Scottish territorial police forces described above which, along with the Scottish Police Service Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA), will be abolished. The functions of the SPSA and the SCDEA will be absorbed within the new single service. However, the provision of forensic services to the new PSS (Ch3, s31), currently provided by the SPSA, will become the responsibility of the new Scottish Police Authority (SPA), also established under the Bill (Ch1, s1).

The PSS will comprise a number of office holders including a chief constable, one or more deputy chief constables (DCC) and one or more assistant chief constables (ACC) and others holding the office of constable (Ch2, s6).

Appointment of senior officers and constables

As noted above, chief constables are currently appointed by the police authority for their force subject to the approval of the Scottish Ministers. Under the Bill, this will continue with the SPA taking over responsibility for appointing the Chief Constable subject to the approval of the Scottish Ministers (Ch2, s7). The SPA will also appoint officers of the rank of DCC and ACC, subject to consultation with the Chief Constable (Ch2, s3). The current requirement for the Scottish Ministers to agree the appointment of these officers will not be continued under the Bill. The Chief Constable will appoint constables of the rank of chief superintendent and below (s8).

Constable's declaration

The current declaration, or oath, made by police officers on appointment is contained in the [Police \(Scotland\) Regulations 2004](#). This declaration, made before a sheriff or justice of the peace, has been in place since 1892 and is as follows:

"I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable."

The Bill proposes to "update" and extend the declaration and to include it, for the first time, in primary legislation. The proposed declaration is:

"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". (Scottish Government 2012a, (s10))

Consultation responses – constable's declaration

In the second consultation, there was a mixed response to the proposal to modernise the oath. While over half of all respondents supported a change, police bodies, in particular, were unconvinced of the need for any change. ACPOS, for example, argued that including the words "fairness, integrity, diligence and impartiality" in the declaration gives these personal qualities undue prominence compared to other personal qualities which could equally have been included (Scottish Government 2011e, ACPOS response). HMICS considered that the addition of these words seemed an unnecessary and retrograde step. ACPOS also opposed the inclusion of, the phrase "according to law" on the grounds that it is, "... restrictive and implies an officer operates solely through application of the law". (Scottish Government 2011e, ACPOS response)

The Association of Scottish Police Superintendents (ASPS), while agreeing that reviewing wording which is over 100 years old is sensible, cautioned that the revised wording should not stray too far from the 1967 Act. ASPS also reported that its members questioned whether a change of oath would necessitate officers already in service having to restate their commitment. Schedule 4, paragraph 3(2)(b) of the Bill, however, makes it clear that constables transferred to the new PSS are to be treated as having made the declaration required by section 10. COSLA, on the other hand, supported by a number of individual local authorities, supported the revised declaration but suggested that it might include something to cover "community accountability".

Duties of constables

Part 1 of the Bill also sets out the functions, duties and jurisdiction of constables. The Explanatory Notes which accompany the Bill explain that the general duties of constables described in the Bill 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. (Scottish Government 2012b, paragraph 30)

The Bill also provides that,

“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”. (Scottish Government 2012a, (s20 (2))

Failure to perform duty

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. These offences also apply to police custody and security officers. The offence of absence from duty is subject only to summary proceedings and would attract a penalty of 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, which under the 1967 Act could only be prosecuted under summary procedure, can now be tried under either summary or solemn procedure. If convicted, a constable would be 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 not exceeding statutory maximum, or both.

Responsibilities of the Chief Constable

The Chief Constable will be accountable to the SPA for carrying out all of the responsibilities of the Chief Constable, including the direction and control of officers (s17(2)(a)) and (s21). It might be noted that this provision gives the Chief Constable clear authority over his or her force, unlike the 1967 Act which was silent on the extent of the Chief Constable's responsibility in this respect. The Chief Constable's responsibilities will also include: the day to day administration of the PSS; involvement in the preparation of the strategic police plan, annual police plans and the SPA's annual report. The Chief Constable will be responsible for securing continuous improvement in policing and for providing information to the SPA with relevant information on policing and crime.

The Chief Constable will also have responsibility for designating local commanders and for ensuring that each local authority area has in place adequate arrangements for policing (s17(2)(e)).

Consultation responses – responsibilities of the Chief Constable

There was some discussion in the consultation responses as to the extent of the Chief Constable's accountability. One council, for example, said,

“The Chief Constable should be accountable not only to the Scottish Police Authority, but also to Councils, and there should be a mechanism that would ensure the new Service's executive can be called to account where the Local Commander is unable or unwilling to

address a Council's concerns". (Scottish Government 2011e, Dumfries and Galloway Council)

Consultation responses – local accountability

In responses to the first consultation, concern was expressed, particularly by COSLA, local authorities and community groups, that the creation of a single force may serve to weaken the local democratic arm of police governance and move the administration of policing further from local people, increasing distance between senior management and local operations. Severing the local level of governance and accountability was seen to bring with it the risk of losing community trust and confidence in the police service. There were fears that the strong local multi-agency and partnership links which the eight police forces currently have in place, particularly in relation to prevention and early intervention, could be at risk from a centralised police service.

There was also concern that there would be insufficient separation between Scottish Ministers, the Scottish Police Authority and the Chief Constable with the risk of interference by Ministers in operational matters.

THE SCOTTISH POLICE AUTHORITY

Part 1, Chapter 1 of the Bill (s1 and Schedule 1) proposes to establish the Scottish Police Authority (SPA) as a new body corporate. The purpose of the SPA will be to maintain the PSS, including paying constables and providing appropriate (necessary or desirable) resources, including forensic services (s31); to promote and support continuous improvement in the policing of Scotland; and to hold the Chief Constable to account.

Unlike the SPSA, the SPA will not be an NDPB but rather will be classified as an '[Other Significant National Body](#)' along similar lines to HMICS and Audit Scotland. The Scottish Government considers that establishing the SPA in this form will ensure a clear separation between Ministers and the Authority. (Scottish Government 2012c, paragraph 81)

This may also address a concern expressed by COSLA in the second consultation that an NDPB would not be able to adequately deliver both the enhanced national and local accountability that the Scottish Government want to achieve through the reform process. COSLA said that,

“While some work better than others, all such bodies find to a greater or lesser extent difficulties in establishing a balance between the ‘local’ and the ‘national’, with a tendency to centralisation”. (Scottish Government 2011e, COSLA response)

Membership of the SPA

Membership of the SPA will comprise at least 7 but no more than 11 members (Schedule 1). Members, and the chair, will be appointed by the Scottish Ministers from persons they consider have the skills and expertise relevant to the functions of the SPA. Scottish Ministers will have an order-making power (negative procedure) to vary the number of members. Membership of the SPA will be for renewable four year periods as will appointments to the chair. All appointments will be regulated under the Public Appointments Commissioner for Scotland.

Consultation responses – membership of the SPA

In the course of the second police consultation, strong feelings were expressed that new governance arrangements should ensure that representation by locally elected politicians is maintained and that the new Police Board should not be an unelected “quango” answerable directly to the Cabinet Secretary for Justice. Several local authorities felt that the governing board of the single police service should comprise either all or a majority of councillor members. Highland Council, for example, argued that,

“...all of the appointments to the new police authority should come from existing constituent authorities and current police boards thus giving consideration to political and geographical coverage”. (Scottish Government 2011e, Highland Council response)

Some respondents felt that a board of 11 members was too small and would be unable to provide a sufficient balance of skills and expertise. There was also concern that a Board of only 11 would inevitably mean that some local authority areas would have insufficient representation. The Scottish Police Authorities Conveners Forum (SPACF) suggested that a board of 13 to 18 would be required with a minimum of 50% local authority membership (Scottish Government 2011e, SPACF response). COSLA welcomed the Scottish Government’s stated intention to include those with experience and knowledge of local government and local policing in membership of the board.

Ministerial directions

Section 5 of the Bill requires the SPA to follow general or specific ministerial directions which must be published and laid before the Scottish Parliament (ss3). The Scottish Ministers, however, cannot issue directions which relate to specific police operations (ss2).

The Scottish Ministers may also set the SPA’s strategic objectives (s33), approve the Authority’s strategic plans (s34 (6)), set the SPA’s total budget and can make grant conditions.

Consultation responses – ministerial directions

In the second police consultation paper Ministers’ power of direction is qualified by a statement that such powers are rarely invoked and would only be used as a last resort, for example, to give effect to the will of the Scottish Parliament. In their consultation response, ASPS say that this statement does not provide the necessary level of reassurance from political influence and that, “... the mere existence of such a power without suitable checks and balances is potentially critical”. (Scottish Government 2011e, ASPS response). ASPS went on to express the view that, “... there is a real opportunity to involve MSPs in the Scottish Police Authority with links to the Justice Committee, Finance Committee and ultimately the Scottish Parliament”.

Powers of the SPA

Unlike an NDPB, the SPA will have powers to borrow money, subject to the approval of the Scottish Ministers (s4(2)(b) and s4(3)). The SPA will also have powers to enter into contracts, acquire property, including, with the consent of Scottish Ministers, compulsory purchase powers, and to form companies.

The SPA will have powers to appoint its own staff (s26), second police officers and make its own provisions with regard to terms and conditions of employment.

Consultation responses – independence of the SPA

A significant concern for some local authorities in their consultation responses was the independence of the national board and the separation between Ministers and board members. Members of the SPA would be appointed by Ministers, funded by Ministers, its strategic objectives determined by Ministers and its strategic police plan approved by Ministers. Ministers would also retain the power of direction of the SPA, albeit as a last resort. As noted above, however, all appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland.

COSLA consider that these arrangements would result in the SPA being less empowered than the police boards which it will replace as, unlike existing police boards, the SPA will not have requisition powers over the budget.

Forensic services

The Bill proposes (Chapter 3) that the SPA will have a statutory duty to provide forensic services to the PSS and to the Crown Office and Procurator Fiscal Service (COPFS) and a discretion to provide such services to others, as it sees fit (s 31). Forensic services will be directly accountable to the SPA rather than to the Chief Constable. The Scottish Government contend that this will create a “sterile corridor” between police investigations and forensic investigations. (Scottish Government 2012c, paragraph 82)

Consultation responses – forensic services

In the second police consultation, there was wide approval of the decision to integrate the SPSA and SCDEA into the PSS. However, there was also criticism of the proposal to make forensic services and related functions, including the Scottish DNA Database, directly accountable to the SPA rather than to the Chief Constable. CIPFA argued that this would, “... blur the distinction between the roles of management and governance”. (Public Finance, December 2011) ACPOS called for more discussion on this matter as it felt that the separation of forensic support services and the DNA Database from other police support services and criminal justice databases, created a substantial risk to joined-up policing for no obvious benefit. (Scottish Government 2011e, ACPOS response)

In his response to the Finance Committee’s consultation on the Financial Memorandum, the Police Complaints Commissioner for Scotland (PCCS) points out that one effect of the SPA’s discretionary power to provide forensic services to “other persons as it thinks fit” (s 31) may be to make any forensic costs associated with an investigation conducted by the new Police Investigations and Review Commissioner (PIRC) under its discretionary powers relating to serious incidents and the public interest, prohibitive. By contrast, forensic services required to support investigations by PIRC when directed by COPFS, would be free. (Scottish Parliament 2012, PCCS submission)

Policing principles, strategic and annual plans

Policing principles

Chapter 4 of the Bill seeks to provide, for the first time, a set of statutory policing principles. These are that:

- the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland.
- the Police Service, working in collaboration with others as appropriate, should seek to achieve that main purpose by policing in a way which
 - engages with, and is accessible to, local communities and
 - promotes measures to prevent crime, harm and disorder.

Police priorities

This chapter is also concerned with the setting of strategic police priorities for the SPA (s33), discussed earlier. Before determining these priorities, the Scottish Ministers must consult with the SPA, local authority representatives and others as they consider appropriate. The strategic police priorities must also “have regard to” the policing principles (s33(5)) and be published in a manner which the Scottish Ministers consider appropriate (ss(5))

Strategic police plan

Section 34 of the Bill requires the SPA to prepare a strategic police plan setting out the main objectives for the Authority and for the policing of Scotland (s34 (2)(a)). Before preparing the strategic plan, the SPA is obliged to consult with persons it considers likely to have an interest in the plan and to send a copy to each local authority, HMICS and others likely to have an interest in the plan and to invite comments. It is through this process that the Government intends to involve local authorities in strategic police planning. However, it is not clear what would happen in this case of a conflict of opinion between local authorities and the SPA and, as noted earlier, between national and local priorities.

The strategic plan must then be submitted to the Scottish Ministers (ss5) for approval. Once approved by the Scottish Ministers, the plan must be published and laid before the Scottish Parliament (ss(6)).

The strategic plan must be reviewed by the SPA at least every three years or where the strategic police priorities have been revised. The consultation process described above applies equally to any revised strategic plan (ss(8))

Annual police plan

Section 35 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.

The annual police plan must be published before the start of the year to which it refers and it must be laid before the Scottish Parliament.

Best Value

Current statutory requirements

The [Local Government in Scotland Act 2003](#) (the “2003 Act”) introduced new statutory duties relating to Best Value and Community Planning. Its provisions apply to local authorities, including police authorities, and require specifically that:

- councils and police authorities secure Best Value (defined as achieving continuous improvement in the performance of functions)
- police authorities and chief constables participate in the community planning process.

The Act also amended the audit arrangements set out in the [Local Government \(Scotland\) Act 1973](#) to cover Best Value and gave powers to the Accounts Commission to examine Best Value in police authorities.

HMICS has a statutory duty under section 33 of the Police (Scotland) Act 1967 to inspect police forces and common police services, and to report to ministers on their state and efficiency. The 2003 Act extends this to include provision for HMICS to inquire into and report to Scottish ministers on whether a local authority is carrying out its functions both as a police authority and in relation to a number of matters including Best Value.

The 2003 Act is supported by more detailed statutory guidance on Best Value and Community Planning, and a series of advisory notes on specific topics such as elected member leadership. This guidance is designed to be descriptive rather than prescriptive, defining the goals that organisations should aim for but allowing them local discretion on the methods and routes they use. The Scottish Government has issued further guidance for police authorities and forces. This guidance includes Justice Department Circular 11/2003 (Scottish Executive 2003), Best Value Guidance and Guidance for Members of Police Authorities and Joint Boards (June 2007).

Five Best Value police reports have been published so far. These audit and inspection reports, on the performance by police authorities and forces of their statutory duties on Best Value and Community Planning, have been produced jointly by the Controller of Audit to the Accounts Commission under section 102(1) of the Local Government (Scotland) Act 1973 and by HMICS under section 33 of the Police (Scotland) Act 1967. The remaining three (Dumfries & Galloway, Central and Fife) will be published by the end of this calendar year. Audit Scotland is also considering whether to prepare a national report to summarise findings of all Best Value police audits in early 2013.

Best Value – provisions in the Bill

Chapter 5 of the Bill will place a statutory duty on the SPA (s38(1)) and the Chief Constable (ss(2)) to achieve “Best Value” for the Authority and Police Service respectively, with Best Value defined as, “a continuous improvement in the carrying out of the Authority’s functions.” In so doing, the SPA and the Chief Constable will have regard to relevant guidance issued by the Scottish Ministers⁶ (s39 (1)(a)) and to any other relevant published code (ss(1)(b)). Where these conflict, the guidance issued by Ministers will take precedence. The SPA and the Chief Constable will also be required to maintain a balance between quality and cost, including the cost of rechargeable services. In maintaining this balance, ss(4) obliges the SPA and the Chief Constable to have regard to efficiency, effectiveness, economy and equal opportunity requirements (ss(4)) and to carry out these duties in a way which contributes to the achievement of sustainable development (ss(5)).

Joint police boards and unitary police authorities currently have a statutory duty to achieve Best Value and that duty is continued under the Bill. For the first time, however, this duty is extended to the Chief Constable.

⁶ The Scottish Ministers are required under (ss3) to consult with the SPA, the Chief Constable and other such persons as they consider appropriate before issuing relevant guidance under this section.

SPA's annual report

Chapter 6 requires the SPA to produce an annual report (s (40)) with the involvement of the Chief Constable. The annual report must contain an assessment of the SPA's and PSS's performance in:

- achieving the main objectives set out in the most recently approved strategic police plan, and
- implementing the arrangements set out in the annual police plan

The SPA is obliged to publish the annual police report, provide a copy to Ministers and to lay a copy before the Scottish Parliament.

Chapter 6 also makes provision for the preparation and submission of accounts and arrangements for audit by the Auditor General.

Local policing and accountability

The Government intends that the provisions in this part of the Bill will replace local authorities' current role as police authorities (Scottish Government 2012c, paragraph 42). To this end, Chapter 7 of the Bill seeks to make new arrangements to strengthen local engagement and partnership working. It also seeks to establish local police commanders for each local authority area and to make statutory provision for the involvement of local authorities in the policing of their areas and in the development of local policing plans. The Government believes that these new arrangements will engage many more local authority councillors in the running of the police service in their area than are currently involved through police committees or regional joint boards (Scottish Government 2012c, paragraph 45)

Designation of local commander

Section 45 (ss(1)) will require the Chief Constable to ensure that there are "adequate" arrangements in place for the policing of each local authority area. The Chief Constable will also have to designate a police officer as local commander for each local authority area (ss(2)) but that officer may cover more than one such area (ss(3)). While the Bill does not specify the rank of the local police commander, the Scottish Government has said that this could vary depending on the local commander's span of control (Scottish Government 2011d, paragraph 3.24). The local commander will have primary responsibility for policing within his or her area. The 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 require the service to balance national and local priorities (Scottish Government 2012c, paragraph 50).

Local authority role

Under section 46 of the Bill, local authorities would have the right to be involved in the setting of policing priorities and objectives for their area and the local commander will have a duty to this effect (ss1). Councils will also have the right to monitor performance and to provide feedback to the local police commander (ss(2)). In addition, local authorities would be able to bring forward proposals for how performance could be improved and how particular issues are addressed by the police, the council and, presumably, other agencies. However, it is worth noting that there is no reference in the Bill to any requirement for engagement between the SPA, local authorities and the public.

The local commander will also be required to provide the local authority with any reports, statistical or other information reasonably required by the council in relation to the carrying out of policing functions in its area (ss(3)).

Community planning

The [Local Government in Scotland Act 2003](#) (asp1) (the “2003 Act”) 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. [Part 2](#) of that Act contains a definition of what constitutes “community planning”.

Section 47 of the Bill will place 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 2003 Act. The local police commander will, therefore, be the lead officer for the police in community planning as well as acting as the first point of senior contact for local councillors and local partners on policing matters. It may be worth noting that the SPA is not placed under a similar statutory obligation.

Local police plans

Section 48 will place a duty on the local commander to prepare a local police plan, first having had regard to the most recent approved strategic police plan and after “appropriate” consultation, and to submit the plan to the local authority for approval (ss(2)). The plan, among other things, will set out the main priorities, objectives and arrangements for the policing of the local authority area. It will explain why those priorities and objectives have been selected and how the arrangements will achieve these. It will also describe how those priorities and objectives will contribute to any other relevant outcomes identified through the community planning process (ss(2)(e)). Local policing plans must be reviewed at least once every three years (ss(5)) and may be revised at any time following agreement between the local commander and the local authority (ss(7)). Revised local plans are treated in the same way as the plan they replace in terms of consultation, approval and publication (ss(6)).

It seems clear, therefore, that in preparing or in approving the local police plan, the local commander and the local authority will have to have regard to matters and outcomes beyond policing, including, for example, taking account of the plans of Community Planning Partnerships and Single Outcome Agreements.

As noted above, the Bill gives local authorities the right to “approve” the local police plan and so addresses a concern which several consultees highlighted in their response to the second police consultation. The section of the consultation paper on local council involvement refers to, “... creating a strong formal relationship between the council and the local commander focused around the joint development and delivery of a Local Policing Plan” and the council’s, “...central role in shaping the priorities and objectives to which these resources should be directed”. However, it also appeared to restrict council influence to merely “commenting” on the local police plan (Scottish Government 2011d, paragraph 3.20).

The Bill is silent, deliberately so according to the Policy Memorandum (Scottish Government 2012c, paragraph 44), as to how local authorities should implement their arrangements for scrutiny of local policing, including consideration and approval of the local police plan. Local authorities will be able to create a new committee, or rely on an existing committee to perform these functions. They could choose to create a joint police and fire committee or to collaborate with other councils to exercise these rights and decide whether to invite people other than councillors to serve on these committees.

Consultation responses – local accountability

The consultation listed as one of the new Chief Constable's duties that he or she would be, "...responsible for delivering local and national outcomes, the efficient use of resources and for securing Best Value" (Scottish Government 2011d, paragraph 3.15). This duty is reflected in the requirement in the Bill for the Chief Constable to ensure that there are adequate arrangements in place for the policing of each local authority area (s45(1)). However, it is not clear what is meant by "adequate", how budgets and resources will be negotiated between local commanders and the Chief Constable and how accountability will operate at the local level. CIPFA, for example, expressed concern over lines of accountability and highlighted potential conflict between local and national decision making,

"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." (Scottish Government 2011e, CIPFA response)

A view strongly expressed by a number of respondents concerned the relationship between local accountability and the power to influence local budgets. COSLA, for example, argued that there are strong links between decision-making, financial responsibility and accountability,

"... true local accountability cannot take place without a local budget being set and forming part of the arrangement. It is difficult to agree a plan, however well formed, being approved by a Council if the budget for their area was unsatisfactory and not likely to be adequate to deliver it. Without delegated budgetary control there would be little credibility in the case that a single service has improved or enhanced accountability at a local level. Further, it also risks undermining the current consensual provision of local policing within local communities if local communities are unable to have a meaningful input in to local policing strategy. In sum, COSLA believes decision making and financial responsibility cannot be separated. If local accountability is to be enhanced local budgets must be aligned to where decisions are being taken". (Scottish Government 2011e, COSLA response)

Similarly, Reform Scotland commented,

"Reform Scotland disagrees with the funding proposals set out in the consultation. 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. (Scottish Government 2011e, Reform Scotland response)

In the context of budgets and resource allocation, some respondents worry that local police commanders of senior rank may have an advantage over more junior local commanders in securing the resources they require,

"The concern ... is that the police have a very established hierarchy where officers of a more senior rank will clearly have greater influence than more junior officers. This creates the risk that more junior officers will defer to the wishes of their more senior officers who are responsible for larger local authority areas and this could generate an impression that smaller councils are being treated less favourably than their larger counterparts". (Scottish Government 2011e, Renfrewshire Council response)

Consultation responses – local police plans

A desire to be closely involved in the development of local police plans emerged strongly from the responses of Community Planning Partnerships to the second consultation. However, there was concern over the extent to which this would happen,

“The impact a single Service would have on the Service’s ability to continue to take part in Community Planning with a similar commitment both at a strategic and an operational level to both the process and the delivery concerns the Community Planning Partnership, particularly in the delivery of the Single Outcome Agreement”. (Scottish Government 2011e, Community Planning Aberdeen response)

Fife Partnership also questioned the ability of national bodies to effectively scrutinise local police plans,

“A significant proportion of expenditure will be incurred in delivering local policing plans. The consultation document suggests that the overall budget would be set by Scottish Ministers and the Scottish Police Authority would scrutinise the use of funding by the Chief Constable. The Parliament would then hold the Scottish Police Authority accountable for its own expenditure and for scrutiny of the Chief Constable. There is a concern that the National Board, Ministers and Parliament are too remote to bring an effective scrutiny of local policing plans. There is no mention of Councils in the scrutiny of local spending plans”. (Scottish Government 2011e, Fife Partnership response)

A criticism in the consultation responses (mostly from local authorities) was that there was no mention of how any disagreement on local police plans between local authorities and local police commanders would be resolved or how a local committee would have its concerns heard by the SPA. For example, Renfrewshire Council said,

“There will be a need for some formal and structured mechanism that details the relationship between the SPA and local Councils regarding scrutiny of Local Policing Plans e.g. what dialogue needs to take place if the SPA is satisfied with a Local Policing Plan but the Council is not and vice versa”. (Scottish Government 2011e, Renfrewshire Council response)

There was also concern over how local and national priorities would be decided and what would happen when they conflict. For example, the Auditor General for Scotland stated that,

“The consultation document does not make clear what would happen in the event of disagreement between a council and the local commander, the Chief Constable or the SPA in relation to the local policing plan.” (Scottish Government 2011e, Auditor General response)

Local engagement - cost implications of the Bill

The Financial Memorandum (Scottish Government 2012b, paragraph 184), estimates that the financial impact of the Bill for local authorities engaging with the PSS and the SFRS will be between £3 and £4 million. These costs are estimated by COSLA and include costs for elected members, policy support, research and analysis and administrative support. The Government believes that these costs will be largely offset against savings from the abolition of existing police and fire and rescue joint boards and unitary authorities.

The Chief Fire Officers' Association Scotland (CFOAS) expressed the hope that, if these costs were to exceed COSLA's estimates, they would be found outwith operational budgets. (Scottish Parliament, CFOAS submission)

Police complaints and investigations

Current arrangements for handling complaints against the police

Under current arrangements, complaints against police officers are investigated by a senior police officer ('the investigating officer'); on the basis of a report produced by the investigating officer, an Assistant or Deputy Chief Constable determines an appropriate course of action. Where police officers are considered to have acted in an inappropriate fashion, but without committing a criminal offence, this course of action could be to deal with the police officer under police misconduct procedures.

Where it appears that a police officer may have committed a criminal offence, the matter may be referred to the relevant area procurator fiscal for investigation and possible prosecution. Police authorities and joint police boards have a responsibility to keep themselves informed of the manner in which the Chief Constable deals with complaints about police officers.

In the case of serious incidents, such as deaths in custody, serious and fatal road accidents involving police vehicles, and serious crimes potentially involving fault on the part of the police, an independent investigation is normally carried out by a different force at the request of the force concerned. A police force might also be asked to carry out a review of an investigation by another police force where there is doubt over the conduct of that investigation and where it is considered to be in the public interest.

Police authorities and joint boards also have a direct responsibility for dealing with complaints about chief officers and for those regarding the police authority itself.

The Police Complaints Commissioner

The Police Complaints Commissioner for Scotland (PCCS) currently has the power to review the handling of a non-criminal complaint against police officers or staff. The Police Complaints Commissioner ('the Commissioner') was created by section 33 (and Schedule 1) of the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) (the "2006 Act") as an independent organisation unconnected to the police. The Commissioner took up his functions on 1 April 2007 and, since then, has been responsible for reviewing complaints about the police.

The Commissioner has powers to conduct an independent review of the way the police handle non-criminal complaints from the public and to set standards for complaints handling by the police. Depending on the outcome of the review, the Commissioner can direct the force in question to reconsider the complaint. The Commissioner also has a general responsibility for ensuring that police forces and organisations in Scotland have in place appropriate procedures for handling complaints and that these procedures are followed effectively. The Commissioner cannot consider any allegation that infers a criminal act as that is a matter for the Crown Office and Procurator Fiscal Service. Complaints about the way in which the PCCS has handled a review can be referred to the Scottish Public Services Ombudsman (SPSO).

Reviewing the role of the Police Complaints Commissioner

In December 2010, the Cabinet Secretary for Justice, Kenny MacAskill MSP, wrote to stakeholders for their views on a proposal to transfer the functions of the Commissioner to the SPSO. This proposal came from a recommendation in the report of the [Fit for Purpose Complaints Action Group](#) (Sinclair 2008) which was set up following the Review of Complaints Handling of Public Services in Scotland (Crerar 2007) to provide Ministers with proposals for simplifying and streamlining public service complaints handling processes. Among other things, the Action Group recommended:

“Retaining the police complaints framework, which is still being embedded, and allow this to develop further, but the case for merging with the SPSO should be considered during the next Parliamentary session. The PCCS should endeavour to share services with the SPSO where practically possible”. (Sinclair 2008, page 4, paragraph 5)

While many respondents to the Cabinet Secretary’s proposal recognised a potential value in reviewing the role of the PCCS, several expressed the hope that the specialist expertise developed by the PCCS should not be lost in any transfer of function. There was also concern over the capacity of the SPSO to subsume the workload of the PCCS and over the timing of this proposal so close to the [Consultation on the Future of Policing in Scotland](#). Several respondents pointed out that, should the number of forces in Scotland be reduced, there would be a stronger case for retaining an independent Police Complaints Commissioner.

In his most recent Annual Report, the Commissioner argued that there was a case,

“...for an enhanced PCCS with the capability to undertake independent and impartial investigations on behalf of the Crown. Such a capacity would provide the Crown with an investigative capability that is ECHR-compliant and would allow complaints against senior officers or other serious concerns to be examined if, as seems likely, the number of forces in Scotland reduces”. (PCCS, 2010-11)

Police complaints and investigations - provisions in the Bill

As noted above, non-criminal complaints against the police are normally handled within the complaints procedures of individual forces with monitoring and scrutiny by police authorities and joint boards and oversight of the handling of the complaint by the PCCS. More serious incidents may be independently reviewed by another force, and complaints alleging criminal conduct may be referred to the procurator fiscal. The provisions in the Bill will not change the way in which non-criminal complaints are handled within the police service or the way in which such complaints are reviewed.

Chapter 10 of the Bill will place a duty on the SPA and the Chief Constable to maintain suitable arrangements for the handling of complaints and to seek the views of others as to what those arrangements should be (s61ss(1) and (2)). The SPA will have a role in this process and will be required to keep itself informed about how complaints are being dealt with by the Chief Constable and to satisfy itself that these arrangements are suitable (ss(3)). The Chief Constable is obliged to provide the SPA with any information about any relevant complaints made to him or her and about how these have been dealt with (ss(4)).

The Bill provides (ss(6)) that a “relevant complaint” retains the meaning given to it by the 2006 Act under which a relevant complaint is a complaint which is given or sent to the appropriate authority by any of the following persons:

- (a) a member of the public who claims to be the person in relation to whom the act or omission took place

- (b) a member of the public not falling within paragraph (a) who claims to have been adversely affected by the act or omission
- (c) a member of the public who claims to have witnessed the act or omission
- (d) a person acting on behalf of a person falling within any of paragraphs (a) to (c).

The Police Investigations and Review Commissioner

Section 62 of the Bill seeks to amend the 2006 Act to rename the PCCS as the “Police Investigations and Review Commissioner” (PIRC). Compared to the remit of the PCCS, section 63 (amending the 2006 Act), will extend 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”. A “serious criminal offence” for the purposes of this section is where the conduct constituting the offence results in death or serious injury. The Scottish Ministers will have the power to prescribe, by regulation, other offences to which this provision will apply. The PIRC may also be required to investigate the circumstances of any death involving a person serving with the police which the procurator fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. On the same basis, the PIRC may be directed to investigate and report on deaths, serious injuries or firearms incidents where constables and/or police staff are involved. The Scottish Ministers may by regulation prescribe other circumstances which constitute a “serious incident”.

The PIRC may also investigate other matters relating to the Police Service or SPA that it considers are in the public interest. These “other matters” are defined in new ss2 of s41C (inserted into the 2006 Act by s66), as “any matter relating to the Authority, the Police Service or a person serving with the police”. The Scottish Government say that, in practice, the Commissioner could make use of this provision to investigate the activities of a person or persons serving with the police, including off-duty activity, but only where it is in the public interest to do so and where the matter has not already been the subject of a complaint, a Fatal Accident Inquiry or a PIRC investigation⁷.

Finally, the PIRC will perform any functions prescribed by regulations in relation to allegations about and complaints against officers relating to their standard of behaviour or performance.

Section 67 inserts section 41D into the 2006 Act to give the Scottish Ministers powers to make, by regulations, further provisions about PIRC investigations relating to serious incidents involving the police, or other matters relating to the SPA or PSS which the PIRC considers would be in the public interest. The Scottish Ministers will have to consult the PIRC, the SPA, the Chief Constable and any other relevant people before making such regulations, which will be subject to affirmative parliamentary procedure.

Complaints against the PIRC

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.

⁷ Communication with the Scottish Government.

Consultation responses - police complaints and investigations

In the consultation document, the Scottish Government offered four options for the external review of police complaint handling and the investigation or review of serious incidents. One of these options (option 1a) was the creation of an independent body which would include the current complaint handling review powers of the PCCS and also have powers to: investigate complaints and allegations of misconduct by chief officers; review serious incidents and investigations in the public interest, and, where directed by the Lord Advocate, investigate serious criminal allegations against police officers and staff.

Other options were:

- new independent body(as above) but transfer current PCCS functions to the SPSO (option 1b)
- new independent body(as above) but incorporate the existing investigative and advisory functions of HMICS (option 2a)
- as previous option but transfer current PCCS functions to SPSO (option 2b)

Of the 30 respondents who provided a clear view on any of the 4 options, Option 1a received the most support. There was broad consensus that the body or bodies carrying out the scrutiny of police complaint handling and the investigation of serious incidents should be external to and independent of the police and have the confidence of the public. There was also broad agreement that non-criminal complaints against police officers and police staff in the new PSS should be handled by the Service as at present. However, ACPOS said that they would,

“...welcome early clarification on who within the new single force structure would have responsibility for handling of such complaints. We do not consider it practical for a single Deputy Chief Constable to manage all complaint and misconduct issues across Scotland and suggest a more flexible approach, including sharing the responsibility across other members of the Chief Officer team². (Scottish Government 2011e, ACPOS response)

While a number of respondents said that there was insufficient information to inform a decision, and some suggested other options (such as transferring investigative functions to HMICS), of the options in the consultation document, many stated a preference for the Government's favoured option of an independent body incorporating the current powers of the PCCS enhanced by the inclusion of investigatory powers. That said, there was a criticism that, under this system, local councillors and local committees would have less input into the police complaints handling process,

“Would the local committees have a particular role in raising matters of concern for independent investigation if they see patterns emerging, or are aware of complaints being mishandled? Currently, the Police Authority or Joint Board oversee complaints handling for police officers or police staff and direct responsibility for dealing with complaints about chief officers. This expertise held by elected members should not be lost and local elected members should play a key role under future arrangements”. (Scottish Government 2011e, Central Scotland Joint Police Board response)

Her Majesty's Inspectorate of Constabulary for Scotland

HMICS provides independent, professional advice to the Scottish Ministers on any matter concerning the operation of a police force of police forces generally, which may include the state and efficiency of policing. HMICS, however, has no power to compel forces, the SPSA or its

constituent bodies to comply with its recommendations or to direct recommendations at ACPOS.

HMICS - Provisions in the Bill

The roles and responsibilities of HMICS will not change significantly under the Bill, with the exception of an additional function relating to the inspection of the Best Value arrangements put in place by the SPA and the Chief Constable under section 38 of the Bill.

Section 71 (1) provides for the continued existence of inspectors of constabulary for Scotland; that their numbers will be determined by the Scottish Ministers (ss(2)) and that the Scottish Ministers may also designate one inspector as chief inspector of constabulary. The Chief Inspector of Constabulary will continue to hold the post at Her Majesty's pleasure (ss(4)).

HMICS functions and powers

Section 74 gives the Scottish Ministers the power to direct HMICS to make enquiries relating to the SPA or PSS as they consider appropriate, and to carry out annual (or at other intervals) inspections of the state, efficiency or effectiveness of the SPA and of Best Value arrangements.

Section 75 provides HMICS with powers to do anything they consider necessary or expedient in relation to carrying out these functions.

HMICS reports

Section 77 of the Bill places a duty on HMICS to provide the Scottish Ministers with reports on:

- inquiries they make relating to the SPA or PSS which are directed by the Scottish Ministers
- inspection reports (annual or otherwise) on the state, efficiency or effectiveness of the SPA or PSS (ss(b)(i)) or on Best Value (ss(b)(ii))
- Any other information relating to an enquiry or inspection requested by Ministers

Copies of such reports must also be provided to the SPA and, where they relate to the PSS, the Chief Constable. HMICS also has responsibility for publication of these reports (s77(2)(b)) and (s79(2)(b)).

Sections 77(3) and 79(3) require the Scottish Ministers to lay a copy of such reports before the Parliament.

Consultation responses – HMICS functions and powers

In considering the system for complaints handling and the creation of an independent complaints and investigations body, discussed earlier in this briefing, the second consultation had suggested an option of incorporating the existing inspection and advisory functions of HMICS within such a body. This proposal, however, was not supported by most respondents. Similarly, a proposal to add to the functions of HMICS by including responsibility for reviewing non-criminal complaints and carrying out investigations into more serious complaints, was rejected, with respondents demonstrating, "...a preference for retaining a separation between

the inspection and complaints reviewing and investigation functions”. (Scottish Government 2012c, paragraph 102)

HMICS submission to Finance Committee

In its submission to the Finance Committee’s consultation on the Financial Memorandum, HMICS alerted the Committee to the fact that, in their forthcoming response to the Justice Committee’s consultation, they would be seeking changes to those sections of the Bill relating to HMICS’s status as an organisation. HMICS say that,

“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”.
(Scottish Parliament 2012a, HMICS submission)

Police funding

Current police funding arrangements

The Scottish Police Service is funded jointly by the Scottish Government and by local authorities. For 2011-12 total expenditure on the police in Scotland was in excess of £1.37bn. This includes:

- Funding direct from the Scottish Government to pay for the SPSA (including the SCDEA) as well as providing additional support to police forces for specific initiatives. For 2011-12 this funding totalled over £209m⁸ (Scottish Government 2011n, Justice Schedule 3.6)
- Police pensions – funding for police authorities to meet the pension costs of police officers paid directly by the Scottish Government (transferred from the local government budget in 2010-11). The proposed budget for police pensions for 2011-12 was just over £211m. (Scottish Government 2011n, Justice Schedule 3.9)
- Loan Charges Support⁹ - these totalled £9m for 2011-12
- Police Capital Grant – covering expenditure on fixed assets such as police stations. Support for police capital expenditure is no longer ring-fenced and is included in the general local authority settlement
- Police Grant - this is a ring-fenced grant paid to each police authority or joint board (included within the Local Government portfolio of the annual draft budget document). In practice, the police grant (discussed in more detail below) provides around one-half of the money spent on police services by local authorities. For 2011-12, the ring-fenced police grant totalled £480.3m. (Scottish Government 2011n, Local Government Schedule 3.1)
- Local authority funding – from Revenue Support Grant (RSG), non-domestic rate income and the council tax. For 2011-12, the local government contribution to police funding is estimated to be around £462m

⁸ Made up of £206.8m (Schedule 3.6) plus £2.6m in SPSA/SCDEA budget for depreciation.

⁹ In 2004/05 Joint boards moved to being funded directly by capital grant rather than through a supported borrowing allocation. Loan Charges Support for this debt reflects allocations made to joint boards prior to 2004/05.

Police funding - provisions in the Bill

The Bill seeks to consolidate the various funding streams discussed above into a single funding stream provided directly by the Scottish Government to the SPA. This funding will be subject to the approval of the Scottish Parliament through the normal budget process.

Chapter 14 of the Bill (s85) seeks to give effect to this intention by giving the Scottish Ministers powers to make grants to the SPA (ss(1)) subject to any conditions they may specify (ss(2)).

Consultation responses – police funding

In the responses to the second police consultation there was broad agreement on the need to simplify both the funding and financial accountability arrangements for the police. However, as noted earlier, many local authorities expressed concern that they would no longer play a direct role in funding the police service and that this could have an adverse impact on local accountability budget and the proportion of the policing budget allocated to community policing.

A concern expressed in the second consultation was whether the current practice whereby local authorities can allocate additional funding to support local priorities would continue. ASPS, for example, while supporting the simplification of current funding arrangements, pointed out that,

“... many of these arrangements exist to secure funding for partnership activities at a local level and that these arrangements greatly enhance local service delivery. Any new arrangement should not stifle this creativity and should ensure that any additional funding secured in this manner in the future is seen as a supplement, rather than a replacement for centrally allocated funds. Indeed, in recent times additional funds for policing have been drawn by successful bids to community funding streams etc. with local authorities working as partners in the preparation and administration of bids”. (Scottish Government 2011e, ASPS response)

The Financial Memorandum (Scottish Government 2012b, paragraph 161), however, states that individual local authorities will retain the ability to provide additional funding to supplement policing in their area.

Rural councils were concerned that centralised funding would be to their disadvantage. Borders Council said,

“This could mean that rural areas such as the Scottish Borders are unable to influence the allocation of resources and get a low priority for resource allocation leading to finance being moved to the Central Belt or elsewhere in Scotland. Rurality and sparsity of population are significant priority factors in the allocation of funding to local authorities and police services and these need to continue in the new funding arrangements”. (Scottish Government 2011e, Borders Council response)

Value Added Tax

Another relevant issue which emerged in the second consultation is the current uncertainty surrounding whether the SPA will be able to reclaim its VAT payments. At present, the police forces and fire services are able, under [section 33 of the Value Added Tax Act 1994](#), to recover any VAT costs incurred. A move to single police and fire services may result in the new bodies losing their section 33 exemptions status. In their response to the second police consultation, COSLA point out that the inability to recover VAT would represent a loss to the police service

and the Scottish economy of around £22m per year, "...the equivalent of over 800 Police Staff that could be retained or an additional 550 police Officers".

Her Majesty's Revenue and Customs (HMRC) [Notice 749](#) (April 2002) provides guidance to local authorities and other public bodies on the recovery of VAT.

For the purpose of this notice, a 'public body' is:

- a local authority
- a police authority and the Receiver for the Metropolitan Police District etc.

For VAT purposes, joint boards or committees set up by bodies other than local authorities are not public bodies. The notice also provides that it is unlikely that a board or committee where members (other than local authority members) have voting rights, would be considered a public body.

The notice goes on to say that the Treasury has powers to add bodies to the list by means of an 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

At the time of writing, this issue has not yet been resolved. The Scottish Government say that discussions with HMRC are on-going and that, "Other options for reducing any VAT liability will continue to be explored in the planning for the new service". (Scottish Government 2012b, paragraph 178) The Scottish Parliament's Finance Committee is also awaiting a response on this issue from HMRC/HM Treasury.

It may be of interest to note, however, that the Police Service of Northern Ireland (PSNI), a UK single police service, has VAT exemption status under [s99 of the Value Added Tax Act 1994](#).

Holding of financial reserves

The [Police and Fire Services \(Finance\) \(Scotland\) Act 2001](#) (the "2001 Act"), 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 will be repealed by Schedule 7 of the Bill and, as a consequence, the SPA (and SFRS) will be unable to accrue financial reserves.

Transition arrangements

To ensure a smooth transition to the new SPA and PSS, several prominent organisations, including CIPFA, COSLA, ASPS and the SPF have called for the publication of a transition timetable and the early appointment of a chief constable designate and shadow board. CIPFA, for example, say that,

"A shadow period of operation (such as the one year shadow period prior to local government reorganisation in 1996) 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". (Scottish Government 2011e, CIPFA response)

The President of ASPS, David O'Connor argued,

“There is a significant risk to the whole reform programme, both now and in the future, if we fail to take early steps to appoint a chief constable designate. Such a move could be confidently managed to maintain public confidence and avoid any inference of political independence”. (Herald online)

In the Financial Memorandum the Scottish Government estimate that the cost of “shadow leadership” of the new PSS 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” (Scottish Government 2012b, paragraphs 187 and 251). This suggests that a six month transition period is anticipated.

Independent Custody Visiting

Independent custody visiting (ICV) is currently carried out by volunteers who are members of the local community. The role of independent custody visitors is to visit police stations unannounced to check on the welfare of people in police custody ([ICVA website](#)). To be an independent custody visitor, you must be over 18 and have no direct involvement in the criminal justice system. Independent custody visiting is currently the only fully independent check on the extent to which the rights of those individuals detained at police stations are being respected.

ICV was introduced in 1999. There is presently no statutory provision for custody visiting, but all police authorities and joint boards provide and support a scheme for their area. Independent custody visiting is statutory in England & Wales and Northern Ireland.

Independent Custody Visiting - provisions in the Bill

Chapter 16 of the Bill seeks to place arrangements for police ICV in Scotland onto a statutory footing. The Scottish Government say that this is necessary to ensure that independent custody visiting 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). OPCAT is an international human rights treaty which sets out the measures which should be in place to monitor the treatment and conditions of detainees. There is, however, no suggestion that current arrangements in this regard are not compliant with OPCAT, except insofar as they do not meet one of the criteria set out by the Sub-Committee for the Prevention of Torture (SPT), established under OPCAT, that the mandate and powers of the body responsible for ICV be set out in statute¹⁰. OPCAT also applies to prisoners detained in mainstream prisons, including young offenders institutions and legalised police cells, but responsibility for inspections of these institutions (and compliance with OPCAT) rests with HM Inspectorate of Prisons for Scotland.

The Bill seeks to place a duty on the SPA to:

- ensure that independent custody visiting schemes are in place and that they comply with Scottish Government guidance
- ensure that independent custody visiting schemes are compliant with OPCAT, thus fulfilling the obligations of Scottish Ministers
- arrange publication of statistics and findings from custody visiting schemes; and,

¹⁰ Communication with the Scottish Government.

- review the arrangements for independent custody visiting as and when necessary and acting to address any issues

The Bill also makes clear that the SPA is required to ensure that arrangements are in place for any visits to custody facilities or scrutiny of custody records by the SPT in carrying out its international duties under the convention.

Consultation responses – independent custody visiting

In the police consultations, these proposals for independent custody visiting received wide support. The Scottish Government expect the new arrangements to be cost neutral. However, the Scottish Police Authorities Custody Visiting Scheme Administrators (SPACVSA) point out that most of the estimated annual cost of custody visiting (which they estimate at £250,000¹¹) relates to management costs. They say that, as most custody visiting scheme administrators (6 out of 8) are local authority employees and have other responsibilities outside of their police function, there is an assumption that the proportion of funding relating to administering the Scheme, will be lost. In this case, SPACVSA emphasise the importance of ensuring that,

“...an effective management structure [is] established to ensure the continuation of service delivery post transition”. (Scottish Government 2011e, SPACVSA response)

SPACVSA go on to say that a recent review of Custody Visiting by the Scottish Institute for Policing Research (SIPR) highlighted a shortage of management resources and a lack of visitors in some areas. The SIPR review also supported a proposal to establish the post of National Support Officer. SPACVSA say that the establishment of the SPA and single police service demonstrates a clear need for such a post.

Transfer of constables to the PSS

Schedule 4 of the Bill provides for the transfer of constables serving in police forces or in the SPSA or SCDEA (or temporarily in other police forces), to the new PSS on the “appointed day”¹². Constables will transfer at the same rank and on the same contractual conditions as applied immediately before the appointed day (Paragraph 3(4)). Officers of the rank of Chief Constable, who are not appointed to the post of Chief Constable of the new PSS, are appointed to the office of Deputy Chief Constable in the PSS but retain the rank and conditions of service of a Chief Constable (Paragraph 4(2)). Officers of the rank of Deputy Chief Constable and Assistant Chief Constable, who are not appointed to the post of Chief Constable or Deputy Chief Constable of the new PSS are appointed to the office of Deputy Chief Constable or Assistant Chief Constable in the PSS respectively, but retain the rank and conditions of service of their previous post. (Paragraph 4(4) and 4(5))

Transfer of Staff

Schedule 4 (paragraph 10) also provides for the transfer of staff employed by police joint boards (as well as the SPSA and SCDEA) to the SPA on the appointed date. Paragraph 141 of the Policy Memorandum states that, “Joint board staff will transfer by virtue of the Bill provisions and other staff will transfer by transfer schemes.” Staff employed by the Scottish Police Services

¹¹ The Financial Memorandum estimates annual costs for ICV to be £196k plus £30k annual Government grant (para 174)

¹² The “appointed day” is defined as “the day on which the Police Service is established...or such other day as the Scottish Ministers may by order appoint”. (Schedule 4, paragraph 2)

Authority and the Scottish Crime and Drug Enforcement Agency will transfer by virtue of the Bill provisions.

An employee's contract will have 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. Staff will remain eligible to continue in the local government pension schemes after the transfer.

The Policy Memorandum states that,

“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 SPA 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.” (Scottish Government 2012c, paragraph 199)

Consultation responses – transfer of staff

Most local authorities welcomed the Government's proposals to retain current terms and conditions of service under the [2004 regulations](#) and in particular regulation 21 safeguarding officers, with similar protection for police staff on transfer. Other workforce issues which were identified as a priority included detail around consolidating police officer and staff terms and conditions, national recruitment and promotion processes.

Potential scale of police staff job losses

In their response to the Finance Committee's consultation of the Financial Memorandum, ACPOS warn that, because police officers numbers are protected and police staff terms and conditions will be maintained on transfer to the SPA, the scale of savings required can only be achieved through the loss of more than 2,000 police staff by 2015, a third of the current police staff complement. ACPOS go on to say that this will be difficult to achieve through voluntary redundancy based on their recent experience with voluntary redundancy schemes in SPSA and elsewhere. ACPOS also consider that 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”. (Scottish Parliament 2012, ACPOS submission)

THE FIRE AND RESCUE SERVICES

Current structure and functions

Scotland currently has eight fire and rescue services (FRS). Each local authority is the fire and rescue authority for its own local government area. Two local authorities (Dumfries and Galloway and Fife) are unitary fire and rescue authorities with the other 30 local authorities represented by one of six joint fire and rescue boards¹³. Each fire and rescue authority or joint board is made up of councillors; in the case of joint boards, councillors from the local authorities within the region. The fire board provides governance and prescribes how their FRS carries out its primary functions as defined in the [Fire \(Scotland\) Act 2005](#). The boards are responsible for:

- establishing the FRS's local strategic direction and aims, in conjunction with the Service's senior management team
- ensuring accountability to the public for the Service's performance
- ensuring that the service is managed effectively, with probity and integrity

Table 4, below provides recent statistics (2010-11) showing the size of each brigade in terms of total staff and information on attendance at fire and other incidents.

Table 4: Fire and rescue services – All staff; Fires by location; Special services 2010-11

Fire and rescue service	All staff as at 31 March 2011	All Fires	Special services (1)
Central	440	1,828	567
Dumfries & Galloway	356	665	205
Fife	531	1,827	585
Grampian	872	2,423	1,121
Highland and Islands	1,395	1,788	509
Lothian & Borders	1,214	6,317	1,329
Strathclyde	3,467	21,555	5,861
Tayside	749	2,524	1,120
Scotland	9,024	38,927	11,297

Source: Fire and Rescue Services Statistics, Scotland 2010-11

- (1) Special services includes attending: Road Traffic Accidents; Flooding; Other rescue; spills and leaks and lift release

The current statutory functions of each Fire and Rescue Authority or Joint Board are set out in the 2005 Act and the [Fire \(Additional Function\) \(Scotland\) Order 2005](#). Those functions are as follows:

- promoting fire safety
- fire fighting
- responding to road traffic accidents
- enforcing fire safety legislation in relevant premises (mainly non-domestic premises and HMOs)
- responding to chemical, biological, radiological or nuclear incidents

¹³ Joint boards are constituted by amalgamation schemes under s2 of the 2005 Act

- providing urban search and rescue capability
- responding to serious flooding; and,
- responding to serious transport incidents.

The 2005 Act (s13) also gives Fire and Rescue Authorities and Joint Boards a “catch-all” power to respond to any other eventualities likely to cause death, injury or illness, or harm to the environment (including buildings).

Background to the Bill

Reform of the fire and rescue services has been taking place over the last decade. In 2002, an independent review of the Fire Service criticised the lack of strategic direction of the Service and, in turn, prompted the then Scottish Executive to issue a consultation paper “The Scottish Fire Service of the Future” (Scottish Executive 2002). The main outcome of this paper was the introduction of the Fire (Scotland) Act 2005 which replaced the [Fire Services Act 1947](#) as the legislative basis for the fire and rescue services in Scotland. The 2005 Act (s40) also requires the Scottish Ministers to prepare a Fire and Rescue Framework for Scotland, setting out priorities, objectives and guidance to Fire and Rescue Authorities and Joint Boards in the carrying out of their duties and functions. The Framework was published in 2005.

In 2008, the Scottish Government instigated a wide-ranging review of roles and responsibilities in relation to the Scottish Fire and Rescue Service. This was followed by a public consultation on the second (draft) Fire and Rescue Framework for Scotland (Scottish Government 2009b). However, the 2005 Framework remains extant.

In September 2010, the Fire and Rescue Services Ministerial Advisory Group (MAG) agreed to set up a sub-group to take forward cost saving options for the spending review period. The sub-group had a remit to,

“Identify options for releasing the necessary further cost-savings in the short and longer-term, to protect frontline fire services for our communities, and taking into account wider public sector reform”. (2010)

In its paper, [“Initial Options Appraisal Report”](#), the sub-group concluded that,

“There is a consensus that ‘no change’ will not be tenable by 2014-15, and that structural change would take around 2 years to implement from a standing start.” (2010)

The MAG sub-group also helped to identify three broad options for the future SFRS and proposed that further work be undertaken on the vision for the SFRS and expectations of it. As noted earlier in this briefing, the Scottish Government, as a consequence, issued the Consultation on the Future of the Scottish Fire and Rescue Service, seeking views on the vision and on the key principles of the SFRS. The consultation also sought comments on proposals to decentralise resources and support functions; current service performance and suggestions for improvements; accountability mechanisms and the balance between national and local mechanisms; and the future structure of the SFRS.

In the second consultation on the fire and rescue services, the Scottish Government stated that it does not seek to change the functions of the fire and rescue service but rather to create a new purpose in line with the key criteria for public services set out in the report of the Christie Commission (Christie 2011, paragraph 7.7). This new purpose would be embedded within a revised Fire and Rescue Framework under s40 of the 2005 Act.

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Part 2 of the Bill is concerned with fire reform. Section 99 seeks to amend the 2005 Act and to insert new Schedule 1A into that Act, to create a new body corporate – “the Scottish Fire and Rescue Service” (SFRS). Like the new Scottish Police Authority, established under Part 1 of the Bill, the SFRS will be classified as an “Other Significant National Body”, rather than an NDPB. This body will replace the existing unitary authorities and joint fire and rescue boards and all the functions currently carried out by fire and rescue authorities and joint boards will be transferred to the new body.

Membership of the SFRS

The Bill proposes that the new SFRS will consist of between 7 and 11 members, each of whom will be appointed by the Scottish Ministers (Paragraph 2(1) of Schedule 1A¹⁴) for maximum (renewable) 4 year periods (ss4(1)). Each member must be a person considered by the Scottish Ministers to have skills and expertise relevant to the SFRS (Paragraph 2(3)). The minimum or maximum number of members may, however, be modified by the Scottish Ministers through secondary legislation (negative parliamentary procedure) (Paragraph 2(4)). The Scottish Ministers will also appoint the chair of the SFRS, again for a maximum 4 year period (Paragraph 5). The members of the SFRS are required to appoint a deputy chair from among the SFRS membership.

Consultation responses – membership of the SFRS

In response to the second fire and rescue consultation there was strong support for ensuring that individuals with direct experience of fire and rescue services were represented on the SFRS Board. The Fire Officers’ Association (FOA) and the Fire Brigades Union (FBU) both supported the need for Board members to have knowledge of the service, and to have fire and rescue experience. However, both organisations cautioned against creating a Board comprised entirely of retired senior FRS officers. In this context, the FOA felt that such appointments would not help the service move forward, while the FBU said,

“...we would not want to see a board appointment being regarded as a rite of passage for former senior managers as the roles and duties should be different”. (Scottish Government 2011e, FBU response)

Suggestions for Board membership included: former principal officers, representatives of the private sector, trade unions, local partnerships, academia and the judicial system. The majority of respondents also supported the proposal that a number of places (some felt the majority of places) on the SFRS Board should be reserved for local councillors nominated by COSLA. The Scottish Fire Conveners’ Forum (SFCF) said,

“With the emphasis on improving links to each of the 32 local authorities, it is important that locally elected members nominated by COSLA comprise the majority membership on the Board”. (Scottish Government 2011e, SFCF response)

Many respondents felt that the SFRS Board should comprise more than 11 members. Lothian and Borders Fire and Rescue Board, for example, said,

“...the Board should have up to a maximum of 20 members, the majority to be democratically elected councillors. The Chair of the Board should be an elected member”. (Scottish Government 2011e, L&B FRB response)

¹⁴ Section 99 of the Bill seeks to insert new Schedule 1A into the 2005 Act

Appointment of the Chief Officer

The Scottish Ministers will appoint the first chief officer (Paragraph 8(3)) and the SFRS will appoint subsequent chief officers, subject to approval by the Scottish Ministers. The Chief Officer will not be a member of the SFRS (Paragraph 8(2)). As an employee of the SFRS, the Chief Officer will be held to account by the SFRS Board.

Powers of the SFRS

The SFRS will have powers to appoint its own staff and to determine terms and conditions of employment (Paragraph 9(1) of new Schedule 1A). The SFRS will also have powers to borrow money, subject to the approval of the Scottish Ministers (Paragraph 12), and powers to enter into contracts, form companies, acquire property, including, with the consent of Scottish Ministers, compulsory purchase powers.

Transfer of current functions

The Bill (sections 100 to 108) seeks to transfer the current functions of fire and rescue authorities and joint boards, as set out in the 2005 Act, to the SFRS.

The Policy Memorandum (paragraph 64) advises that, aside from the transfer of responsibility to SFRS, the Bill will not change any of the following fire and rescue functions:

- 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)

The Policy Memorandum (paragraph 65) goes on to state the Government's intention to transfer, by secondary legislation, the following functions (made under section 11 of the 2005 Act and contained in the [Fire \(Additional Function\) Scotland Order 2005](#)) to the SFRS. These 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

The Policy Memorandum states that,

“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”. (Scottish Government 2012c, paragraph 66)

Best Value

Current statutory requirements

Local authorities in Scotland, including fire and rescue, have a statutory duty to deliver Best Value in their services. This requires them to establish management arrangements aimed at securing continuous improvements in their performance while maintaining an appropriate balance between quality and cost.

The responsibilities of fire and rescue services have changed significantly over the past decade. In 2003, all Scottish services were required to produce Integrated Risk Management Plans (IRMP), identifying the level of local risks and determining the appropriate allocation of resources. The 2005 Act introduced further changes, placing a strong emphasis on prevention rather than simply emergency response.

Some aspects of Best Value in fire and rescue have been covered in earlier Accounts Commission reports, particularly the Scottish Fire Service: verification of the progress of modernisation, published in 2004, and Review of Service Reform in Scottish Fire and Rescue Authorities, published in 2007. Following a formal consultation with stakeholders in late 2010, the Accounts Commission decided that the audit of Best Value should be extended to fire and rescue. With the Scottish Government signalling a potential restructuring of the services, however, it was recognised that the audit needed to be proportionate, seeking to identify the key strengths which should be retained in a future structure and any significant weaknesses which needed to be resolved. Two Best Value fire and rescue service reports (Central and Tayside) have been published by the Controller of Audit to the Accounts Commission so far. The remaining six will be considered by the Accounts Commission by the end of March 2013 and a national overview report on the fire and rescues services' Best Value audits will be prepared after May 2013.

Best Value – provisions in the Bill

Section 111 of the Bill provides for new sections (s39A to 39C) on “Best Value” to be inserted into the 2005 Act. Section 39A places a statutory duty on the SFRS (s39A(1)) (but not the Chief Officer) to make arrangements which secure best value for the Authority. In so doing, the SFRS will be required to have regard to relevant guidance issued by the Scottish Ministers¹⁵ (s39B(1)(a)) and to any other relevant published code (ss(1)(b)). Where these conflict, the guidance issued by Ministers will take precedence. The SFRS will also be required to maintain a balance between quality and cost, including the cost of rechargeable services. In maintaining this balance, ss(4) obliges the SFRS to have regard to efficiency, effectiveness, economy and equal opportunity requirements (ss(4)) and to carry out these duties in a way which contributes to the achievement of sustainable development (ss(5)).

Joint fire and rescue boards and unitary fire authorities currently have a statutory duty to achieve Best Value and that duty is continued under the Bill.

The remit of the Inspectors of SFRS will include examination of the delivery of best value (new section s43B(3)(b) inserted into the 2005 Act).

¹⁵ The Scottish Ministers are required under (ss3) to consult with the SFRS and other such persons as they consider appropriate before issuing relevant guidance under this section.

Strategic plan

Section 112 of the Bill provides for new sections (41A to 41C) to be inserted into the 2005 Act. New section 41A requires the SFRS to prepare a strategic plan setting out how the SFRS will carry out its functions during a 3 year period following a day to be appointed by the Scottish Ministers. In preparing the strategic plan, the SFRS must have regard to the framework document and to have consulted with each local authority (ss(4)(a)). The SFRS must also consult with: persons it considers represent local authorities, persons it considers represent employees of SFRS and others as it considers appropriate.

The strategic plan must then be submitted to the Scottish Ministers (ss5) for approval. Once approved by the Scottish Ministers, the plan must be published and laid before the Scottish Parliament (ss(7)).

The strategic plan must be reviewed by the SFRS at least every three years or where the Scottish Ministers make an order under section 40(4) of the 2005 Act (The requirement to have regard to the framework document and the consultation process described above applies equally to any revised strategic plan (ss(8))

Local accountability

The provisions in this part of the Bill are intended to establish a new relationship between fire and rescue services and local authorities, effectively replacing councils' current role as fire and rescue authorities (Policy Memorandum, paragraph 42). Section 113 of the Bill seeks to make new arrangements to strengthen local engagement and partnership working by making statutory provision for the involvement of local authorities in the development of local fire and rescue plans and by establishing senior fire officers for each local authority area. As with the proposals for local policing, the Government believes that these new arrangements will engage more local authority councillors in the running of the fire and rescue service in their area than are currently involved through existing fire and rescue committees or regional joint boards (Policy Memorandum, paragraph 45)

Local fire and rescue plans

The SFRS will have a statutory duty under new section 41D (inserted into the 2005 Act by section 113 of the Bill) to ensure that "adequate" arrangements are in place for the delivery of local services. The SFRS will also have a statutory requirement placed on it to involve each local authority in agreeing local priorities and objectives for its area (s41D(2)).

Following approval of the national strategic plan, the SFRS will be required to prepare local plans for each local authority area (41D(1)). Responsibility for preparing the local fire and rescue plan will be delegated to a local senior officer to be designated by the SFRS for each local authority area (see below). The local plan must have regard to both the framework document and the strategic plan (s41E(3)(a)) and the SFRS must consult with such persons as it sees fit, in developing the plan (s41E(3)(b)). The local plan (s41E(2)) will set out the SFRS's priorities and objectives for how it intends to carry out its functions in the local authority area, the reasons for selecting these priorities and objectives and how they will be delivered, what outcomes the priorities and objectives can be measured against, and how these priorities and objectives will contribute to other relevant local community planning outcomes.

The Bill will place a statutory duty on the SFRS to submit the local fire and rescue plan to the local authority to which the plan relates, for approval (s(41E(4)) and, if approved, to publish it (s41E(5)). Sections 41F and 41G are concerned with powers to review local fire and rescue plans and mandatory review of such plans in certain circumstances.

Designation of senior officer

New Section 41J of the 2005 Act will require the SFRS to designate an employee of SFRS as a local senior officer (of unspecified rank or grade) for each local authority area but that officer may cover more than one such area (ss(4)). The duty to appoint a local senior officer will be delegated to the Chief Officer (s41J(3)). The local senior officer will have delegated functions relating to the preparation of local plans including responsibility for involving the local authority in determining priorities and objectives for fire and rescue services in the local area (see above) (s41J(2)(a)). The local senior officer will also have a statutory duty to participate in community planning (s41J(2)(b)). The SFRS may also delegate other functions to the local senior officer (41J(2)(c)).

Consultation responses – senior officer

Questions were raised in the consultation responses on the potential for local senior officers to be divided between their duties towards local authorities to implement local plans and their responsibilities to the Chief Officer on policy and strategic direction,

“Would he/she be responsible to the local authority in terms of being held to account for the performance of the Fire and Rescue Service in line with their locally agreed plan, or would he/she be accountable to the Chief of the new Fire and Rescue Authority where policy and strategic direction are agreed”. (Scottish Government 2011e, Strathclyde Fire and Rescue response)

The issue of seniority was seen to have the potential to impact on the ability of local senior officers to acquire the necessary resources, including budget, to support local plans,

“The (local senior) officer may well be the local liaison with councils but dependent on the seniority of that officer, their ability to significantly adapt provision to suit local needs and have autonomy over resource and finance is questionable, then real accountability appears to be internal and upwards in the organisation”. (Scottish Government 2011e, CFOAS response)

Monitoring by local authority

New section 41K seeks to provide local authorities with the power to monitor the SFRS’s compliance with the local fire and rescue plan for its area and delivery of local fire and rescue services in the area. It also allows local authorities to make representations or observations to the SFRS and offer advice and recommendations for improvement.

Consultation responses – local accountability

A theme which emerged in the consultation responses to the second fire and rescue consultation was that local accountability proposals were unclear and that there was no transparency in how local plans would be funded. In this regard, many respondents called for greater clarity over lines of responsibility between the local senior officer, the local authority, community planning partners, local committees and the Chief Officer. For example, the Auditor General for Scotland emphasised the “importance of ensuring there are clear lines of accountability.”

However, as for local policing services, the Bill is silent on how local authorities should arrange the planning, delivery and scrutiny of fire and rescue services. Local authorities will be able to decide their own arrangements which could include retaining an existing committee or creating a new committee to perform these functions. They could choose to create a joint police and fire

committee or to collaborate with other councils and decide whether to invite people other than councillors to serve on these committees.

Similarly, many respondents felt that there is a need to link local decision-making with budgetary responsibility. SFCF, for example, said,

“It is crucial that clear communication mechanisms are established between the national board and local committees, the local senior officer and local committees. Local committees must be able to have the power to shape the local plan according to local need, properly scrutinise delivery and have some responsibility for the allocation and management of local budgets”. (Scottish Government 2011e, SFCF response)

Lothian and Borders Fire and Rescue Board also called for the retention of some degree of budgetary responsibility for local authorities,

“To be fully effective it is considered important that there remains some responsibility for the setting of local budgets at a local level. This would significantly strengthen accountability and make community engagement more meaningful”. (Scottish Government 2011e, L&B response)

Another concern was how local and national priorities would be decided and what would happen when they conflict or if a local authority does not approve a local fire and rescue plan. SOLACE, for example, emphasised that,

“Consideration needs to be given to how any refusal by a local authority to approve the plan is to be resolved.”

On governance arrangements, Central Fire and Rescue said,

“We remain convinced that governing structures within Fire & Rescue and Police Services should mirror one another to ensure that established links to Community Planning Partnerships and wider partner contributions to Single Outcome Agreements are addressed in a consistent manner”. (Scottish Government 2011e, Central Fire and Rescue response)

Ministerial directions

Section 116 of the Bill will amend the 2005 Act to give the Scottish Ministers power to issue, in writing, general or specific directions to the SFRS, and the SFRS will be required to follow these directions. The directions will have to be published and laid before the Scottish Parliament (new section 42A). The Scottish Ministers, however, will not be able to issue directions which relate to adherence to the fire and rescue framework.

Inspectors of SFRS

Currently, the Chief Inspector of Fire and Rescue Authorities (CIFRA) carries out inquiries into fire and rescue services, if and when directed by the Scottish Ministers. The Chief Inspector also holds the post of head of the Scottish Fire and Rescue Advisory Unit (SFRAU) which was set up in February 2008 following the Crerar review of all scrutiny bodies in Scotland, to replace the Fire Service Inspectorate. SFRAU provides, “...independant advice to Ministers and Scottish Government officials on fire and rescue related matters and on the operational preparedness of the Fire and Rescue Service within Scotland”. ([SFRAU web page](#))

The Bill proposes to abolish CIFRA and to create an Inspectorate of the Scottish Fire and Rescue Service which retains the office holders of Chief Inspector, Inspector and Assistant Inspectors of the SFRS.

Provisions in the Bill - Inspectors of SFRS

Section 177 of the Bill inserts new Chapter 8B into the 2005 Act to enable Her Majesty to appoint a chief inspector and inspectors of the SFRS (s43A(1)). The number of such inspectors will be determined by the Scottish Ministers who may also appoint assistant inspectors (s43A(2)). Section 43A(5) provides that the Chief Inspector, Inspectors and Assistant Inspectors of Fire and Rescue Authorities in post, immediately before section 117 comes into force, will be considered to have been appointed to the equivalent posts as inspectors of the SFRS. These provisions replace similar provisions in the 2005 Act for the appointment of a chief inspector, inspectors and assistant inspectors of the Fire and Rescue Authorities.

Conduct of inquiries

New section 43B of the 2005 Act will enable the Inspectors to conduct inquiries into the state and efficiency of the SFRS; whether the SFRS is complying with its Best Value duty, and the manner in which it is carrying out its functions (ss(3)). The Scottish Ministers will have the power, under ss(2), to compel the inspectors to carry out such inquiries. In the course of its inquiries, the SFRS will be required to provide the Inspectors with any relevant information or documents they may request (ss(4)) and to assist and co-operate with the Inspectors in connection with an inquiry (ss(7)).

Provision of reports

New section 43C will require the Chief Inspector to provide reports of inquiries, conducted at its own initiative, to the SFRS and, where the inquiry relates to the state of efficiency of the SFRS or Best Value arrangements, also to the Scottish Ministers (ss(3)(a)) and to the Scottish Parliament (ss(5)). The Chief Inspector will have discretion on whether to provide reports on other matters to the Scottish Ministers (ss(4)).

Where Ministers direct the Inspectors to conduct an inquiry, the Chief Inspector will have a duty to provide a copy of the report to the Ministers (ss(2)) and, as soon as possible afterwards, to the SFRS (ss(3)). Where the inquiry relates to the state of efficiency of the SFRS or Best Value arrangements, the Scottish Ministers will be required to lay a copy of the report before the Scottish Parliament (ss(4)).

The SFRS will be required to have regard to any reports which relate to the state of efficiency of the SFRS or Best Value arrangements and to take such measures as it thinks fit (s43E).

Co-operation with the Auditor General

New section 43G of the 2005 Act will require the Inspectors and the Auditor General to co-operate to improve how each carries out its functions in respect of the SFRS. Section 99 of the Bill inserts new Schedule 1A into the 2005 Act to require the SFRS to send statements of accounts to the Auditor General for audit.

Consultation responses – inspectors of SFRS

In their response to the second consultation, CFOAS questioned whether the proposed inspectorate could truly be considered independent. CFOAS considered that there is the potential for a conflict of interest where inspectors, appointed and paid by Ministers, audits an

organisation whose members are also appointed by and accountable to, the same Ministers. CFOAS suggest instead that,

“Audit Scotland should be the body used for independent scrutiny, using peer assessors for operational matters as they have for the BV2 process. This would cut out a further layer of external audit and scrutiny in line with Crerar Review recommendations”. (Scottish Government 2011e, CFOAS response)

Funding of the SFRS

Currently, funding for fire and rescue services in Scotland comes mainly from local government through General Revenue Grant paid by the Scottish Government. This amounted to £264.4m in 2011-12 (Scottish Government, 2011s, Table 16.04). In addition, the Scottish Government provides support for the following services:

- Firelink Communications System (£4.5m in 2011-12, Table 10.6)
- Scottish Fire Services College (£6.5m in 2011-12, Table 10.6)
- Fire Capital Grant (£20.2m in 2011-12, Table 10.15)
- Fire Pensions (£56.2m in 2011-12, Table 16.03)

Future funding arrangement for the SFRS

The Financial Memorandum explains that,

“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”. (Scottish Government 2012b, paragraph, 229)

Consultation responses – funding of the SFRS

Overall, there was broad acceptance of the need to simplify the funding arrangements for the fire and rescue services. That said, there remained concern over a number of issues.

As was the case with police funding, there was concern, particularly from smaller local authorities, that Local Senior Officers in such areas would command less influence on resources and budgets than larger areas,

“Once the Local Senior Officer has prepared a local fire and rescue plan and identified local risks we have concerns regarding how strong a voice an Officer in charge of, say Clackmannanshire, will have in comparison to South Lanarkshire for example when finance is requested and again this could be to the detriment of smaller towns and rural communities. There is a strong argument for the Local Senior Officers to have a devolved budget to enable them to deal with local issues and fulfil the requirements of the elected members for their area”. (Scottish Government 2011e, Central Fire & Rescue response)

Again, like responses to the police consultation, respondents identified the need for a local budget to ensure effective accountability,

“The allocation of an appropriate local budget is considered to be a critical element to ensure effective engagement and accountability. Without any element of budget control locally, it is difficult to see what the relationship would be between the local senior officer and the local committee”. (Scottish Government 2011e, Highlands & Islands Fire Board, response)

Value Added Tax

Like their police counterparts, fire service respondents were concerned over the issue of whether VAT could continue to be recovered under the new arrangements. CFOAS in its submission to the Finance Committee (Scottish Parliament, 2012), claimed that the cost of VAT payments for the Fire and Rescue Service was a significant concern and could equate to a loss of £10m per annum, more than double the £4m claimed in the Financial Memorandum (paragraph 242).

Holding of financial reserves

As noted earlier in this briefing in relation to the police, the 2001 Act 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 will be repealed by Schedule 7 of the Bill and, as a consequence, this level of flexibility in financial management will not be available to the SFRS.

Other issues over which there remained some concern included:

- Whether there will be sufficient budget flexibility to enable existing initiatives to continue or be completed
- How transitional costs will be assessed

Transfer of staff

Arrangements are set out in the Bill for the transfer of staff – including fire-fighters - to the new services. All staff employed by fire and rescue joint boards will transfer to the Scottish Fire and Rescue Service on a date to be 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.

Schedule 5 provides for the transfer of staff employed by fire and rescue joint boards to the SFRS on the appointed date.

Schedules 4 and 5 also state that Scottish Ministers may make a staff transfer scheme to transfer to the new services staff employed by individual local authorities on police or fire and rescue functions.

An employee’s contract will have effect on and after the day of transfer as if it was originally made between the employee and their new employer – i.e. SFRS. Staff will remain eligible to continue in the local government pension schemes after the transfer.

The Policy Memorandum states that:

“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 trades unions.” (Scottish Government 2012c, paragraph156)

CIPFA emphasised in their response that,

“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).”(Scottish Government 2011e, CIPFA response)

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