

POLICE AND FIRE REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Police and Fire Reform (Scotland) Bill introduced in the Scottish Parliament on 16 January 2012. It has been prepared by the Scottish Government to satisfy rule 9.3.3(c) of the Parliament's standing orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory notes and other accompanying documents are published separately as SP Bill 8–EN.

POLICY OBJECTIVES OF THE BILL

2. Scotland has an excellent police service and fire and rescue service, with crime at a 35 year low and detection rates improving, helped by the 1,000 additional police officers the Government has put into communities, and fire deaths almost 50% lower than a decade ago. The Scottish Government is determined to protect and improve local police and local fire and rescue services in the face of reductions in public finance, by streamlining and modernising services.

3. The main policy objectives of this Bill are to create a single police service, and a single fire and rescue service, to deliver the policy aims set out below:

- **To protect and improve local services** despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services;
- **To create more equal access to specialist support and national capacity** – like murder investigation teams, firearms teams or flood rescue – where and when they are needed; and,
- **To strengthen the connection between services and communities**, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.

4. The Bill sets out the framework for the new services and modernises the governance of the Scottish police and Scottish fire and rescue services by providing:

- A clear, modern purpose and principles for the police service and an updated oath for constables. For fire and rescue the purpose will be included in the new Fire and Rescue Framework;
- A clear statutory framework for national governance including clear roles and responsibilities for the Scottish Ministers, the proposed Scottish Police Authority, the Scottish Fire and Rescue Service Board, and the Chief Officers of both services;
- Clear powers for local authorities in relation to the provision of fire and rescue services and the policing of their area;

- Appropriate scrutiny and oversight arrangements;
- Clear funding arrangements; and
- Clear arrangements for the transfer of existing officers and staff and the appointment of new officers and staff to both services.

5. In addition the Bill places the arrangements for independent custody visiting in Scotland on a statutory footing, in line with the rest of the UK. It ensures that independent custody visiting complies with the Optional Protocol to the Convention against Torture (OPCAT).

6. The legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, is over 40 years old. This Bill largely repeals that legislation and puts in place a new modernised framework for policing. The Bill also repeals Part 1, Chapter 1 of the Police, Criminal Justice and Public Order (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland (PCCS) to provide for more robust scrutiny of policing. The statutory framework governing the fire and rescue services was modernised in the Fire (Scotland) Act 2005 and the Bill therefore amends that Act to establish a single service.

CONSULTATION

7. The Scottish Government conducted parallel formal consultations on police¹ and on fire and rescue service reform² from 10 February to 5 May 2011. The consultations presented three options for reform: a single service; a regional model of three or four services; and, retaining the existing eight service model with greater collaboration. The fire and rescue consultation made clear the Government's preference for a single service. The police consultation recognised that significant arguments had been made in favour of a single police force, but that questions remained about accountability and centralisation of services.

8. There were 219 responses to the police consultation and 171 to the fire and rescue consultation. Responses³ were published on the Scottish Government website. Over fifty consultation events and meetings were held during the consultation period to complement the process. The majority of respondents recognised that the status quo was untenable but said that more detail was required to allow them to reach an informed decision, that reform should not endanger the provision of local services, partnership working or accountability, and that there was a need for robust arrangements for national governance including clearly defined roles that ensured separation between the Scottish Ministers and the services. There was no consensus on structure; however some stakeholders, particularly those in rural areas, expressed views in opposition to a single service.

¹ Consultation on the future of policing in Scotland - February 2011 – <http://www.scotland.gov.uk/Resource/Doc/341417/0113500.pdf>

² Consultation on the future of fire and rescue service in Scotland – February 2011 – <http://www.scotland.gov.uk/Resource/Doc/341434/0113503.pdf>

³ Consultation responses - <http://www.scotland.gov.uk/News/Releases/2011/06/21135549>

9. Over summer 2011, the Cabinet Secretary for Justice, the Minister for Community Safety and Legal Affairs and their officials carried out extensive discussions with stakeholders to explore these concerns and build a consensual approach to reform.

10. On 8 September 2011 the Cabinet Secretary for Justice announced details of the Government's intention to create a single Police Service of Scotland and a single Scottish Fire and Rescue Service. In parallel, the Scottish Government published:

- A consultation⁴ on the legislative framework for the new services;
- Two outline business cases (OBCs)^{5 6} which provide detail on the costs and benefits of the three options for reform;
- A partial Equality Impact Assessment;⁷ and
- A partial Business Regulatory Impact Assessment.⁸

11. In response to the views expressed in the first consultation paper, this consultation set out in detail the Scottish Government's proposals:

- To protect and enhance local accountability and partnership working by creating new formal relationships between the services and each of Scotland's 32 local authorities, involving many more local councillors and better integration with community planning partnerships. These proposals are outlined at para 42.
- For robust national governance with clear roles and responsibilities and a separation between the Scottish Ministers and the services. These proposals are set out at paras 72 to 94.

12. The second consultation ran from 8 September to 2 November 2011 and was issued to around 250 organisations. One hundred and forty-five responses were received in total, including 30 from individuals and 115 from groups and organisations. This included 26 local authorities, the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives (SOLACE), 6 police forces, 6 police joint boards or unitary police authorities, 4 fire and rescue services, 4 fire and rescue joint boards and unitary fire authorities, 18 police and fire specific organisations and a further 51 from NHS, voluntary sector and other stakeholders.

13. In the main, respondents to the consultation welcomed the opportunity to influence the design of the single services. There was general consensus about the main policy proposals on a modern purpose for policing, workforce arrangements for police and fire and rescue, scrutiny arrangements along with funding and finance. Views on the need to change the police oath were mixed. The main issues cited across the responses to the police and fire and rescue proposals

⁴ Keeping Scotland Safe and Strong: a Consultation on Reforming Police and Fire and Rescue Services in Scotland - September 2011 <http://scotland.gov.uk/publications/2011/09/15110325/0>

⁵ Reform of the Fire and Rescue Service in Scotland - outline business case September 2011 - <http://scotland.gov.uk/publications/2011/09/15153130/0>

⁶ Outline Business Case for Police Reform – September 2011 - <http://scotland.gov.uk/Publications/2011/09/15112608/0>

⁷ Partial Equality Impact Assessment - <http://scotland.gov.uk/Publications/2011/09/15110547/0>

⁸ Draft Business Regulatory Impact Assessment <http://scotland.gov.uk/Publications/2011/09/15110434/0>

were the need for the retention of policing by consent and operational independence and the need for local democratic accountability and core improvements to community outcomes for the new services.

14. The most substantive comments were raised in relation to governance and accountability. There were requests for more clarity on both local and national accountability mechanisms, including local authorities' oversight of the local policing plan, the relationship between local committees and the Scottish Police Authority and the Scottish Fire and Rescue Service Board, and the roles and responsibilities of the local commander/senior officer and their chief officers. The composition of the Scottish Police Authority and the Scottish Fire and Rescue Service Board was also raised as one of the most important factors in ensuring the long term success of the single services.

15. An independent analysis of responses has been carried out and a summary report was published along with consultation responses on 16 December⁹ and a detailed report will be published in early 2012.

BILL CONTENT AND STRUCTURE OF THIS POLICY MEMORANDUM

16. The Bill is structured in the following Parts:

Part 1 - Police Reform, puts in place new arrangements for the structure, governance and management of policing in Scotland, in particular:

- The establishment of the Scottish Police Authority responsible for the governance, oversight and administration of the Police Service of Scotland and the provision of forensic services;
- An updated oath, restating of constables' functions and duties, and provisions for establishing their terms and conditions;
- Responsibilities of the Chief Constable for the policing of Scotland;
- A statement of policing principles to set the strategic direction for the Service and a requirement on the Scottish Police Authority to provide a strategic and annual plan;
- Statutory Best Value duties for the Scottish Police Authority and the Chief Constable;
- Statutory reporting requirements including the production of an annual report and accounts;
- New arrangements for strengthening local engagement and partnership working including the establishment of local commanders, powers for local authorities in relation to the policing of their areas, and development of local policing plans;
- New arrangements for police appeals tribunals for certain disciplinary cases;

⁹Keeping Scotland Safe and Strong: a Consultation on Reforming Police and Fire and Rescue Services in Scotland - Research Findings December 2011 - <http://scotland.gov.uk/Topics/Justice/public-safety/Police/ConsultationFuturePolicin>

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- A new complaints process for the Police Service of Scotland, including an independent investigatory capacity for the most serious cases;
- Inspection powers for Her Majesty's Inspectors of Constabulary in Scotland (HMICS) and a more structured relationship between HMICS and the Scottish Parliament;
- New funding arrangements with the Scottish Ministers agreeing the funding settlement for payment directly to the Scottish Police Authority along with a power for the Scottish Police Authority and Chief Constable to charge for services; and,
- Placing independent custody visiting on a statutory footing.

Part 2 - Fire and Rescue Reform, amends the Fire (Scotland) Act 2005 (the 2005 act) relating to Scottish Fire and Rescue Services, in particular:

- The establishment of the Scottish Fire and Rescue Service responsible for the governance, oversight and administration of fire and rescue services in Scotland;
- Ensuring that the functions and duties of the Scottish Fire and Rescue Service set out in the 2005 Act apply to the new single service including the promotion of fire safety;
- Restating of powers to obtain assistance in carrying out fire and rescue service functions;
- Statutory Best Value duties for the Scottish Fire and Rescue Service;
- Statutory planning and reporting requirements including providing statistics, production of a strategic plan for the approval of the Scottish Ministers, and an annual report and accounts;
- New arrangements for strengthening local engagement and partnership working including the establishment of local senior officers and development of local fire and rescue plans, along with powers for local authorities in relation to the provision of fire and rescue services in their area; and
- Abolishing the post of Chief Inspector of Fire and Rescue Authorities and replacing it with a Chief Inspector, Inspectors and Assistant Inspectors (Inspectors of the SFRS).

Part 3 – makes general and supplementary provisions.

17. This Policy Memorandum identifies the main policy issues throughout the Bill, covering police and fire and rescue services together. It starts with the measures in the Bill designed to meet the three main policy aims of reform, followed by other legislative measures required to facilitate the establishment of single services with robust national governance. It identifies where alternative policy approaches were considered and highlights some of the key issues raised in response to the second consultation paper. The Scottish Government's approach has generally been to take the same approach for police and fire and rescue on the key issues and structuring the document in this way allows us to highlight and explain any departures from this approach.

BILL PROVISIONS TO MEET THE THREE MAIN POLICY AIMS OF REFORM

18. This part of the Policy Memorandum addresses:

- Establishing single services; and,
- Strengthening the connection between services and communities.

Establishing single services

19. The Scottish Government believes that the best way to address 2 of the 3 main aims of reform - to protect and improve local services and to create more equal access to specialist support and national capacity - is to create a single police service and a single fire and rescue service for Scotland.

20. The Bill therefore sets out proposals to establish a Scottish Police Authority to maintain the Police Service of Scotland. The Police Service of Scotland will comprise of police officers and police staff under the direction and control of the Chief Constable. The services currently provided by the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA) will be brought within the single service although special arrangements will apply to forensic services (see para 82 below).

21. The Bill also sets out proposals to establish a Scottish Fire and Rescue Service to provide fire and rescue services across Scotland. This will include capacity currently provided by the Scottish Government including the Scottish Fire College, the Firelink communications system and specialist capacity to respond to chemical, biological, radiological or nuclear incidents. The Bill will also consolidate the fire safety responsibilities currently divided between Scottish Government and the eight fire and rescue services into the new single service.

22. Scotland's existing eight police forces and eight fire and rescue services, along with the joint boards and unitary authorities that maintain them will be abolished as will the SPSA and SCDEA.

23. Scottish police forces and Scottish fire and rescue services are performing well. Crime levels are at their lowest for thirty five years and detection rates are improving, helped by the 1,000 additional police officers the Government has put into communities. Fire deaths are almost fifty per cent lower than they were a decade ago. Both services are key players in the delivery of a wide ranging set of outcomes, for example working with partners to improve the life chances of children and young people, and supporting economic growth.

24. However, it will prove increasingly difficult to maintain these positive outcomes in the face of budget reductions by the UK Government. Work done by the Association of Chief Police Officers Scotland (ACPOS) under the auspices of the Scottish Policing Board¹⁰ indicated that planned efficiencies would not be enough to fill the funding gap for policing. Audit Scotland¹¹, the Scottish Fire and Rescue Advisory Unit (SFRAU)¹², the Health and Safety

¹⁰Scottish Policing Board - Papers from Fifth Meeting - ACPOS - Update on Efficiencies <http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/ScotPolBoard/ACPOSUpdateOnEfficiencies>

¹¹<http://www.audit-scotland.gov.uk/media/article.php?id=86>

Executive (HSE)¹³ and the Scotland Together report¹⁴ all concluded that the fire and rescue services faced considerable challenges if they were to continue to maintain their high levels of performance in the face of decreasing budgets.

25. The outline business cases published on 8 September 2011 looked at three reform options and clearly demonstrated that single services were the strongest option for both police and fire and rescue, as they would deliver the highest level of benefits and the greatest savings compared with either regional or eight service options.

26. Based on these findings, the Scottish Government believes that the establishment of single services is the best way to protect and improve local services in the face of significant reductions in public finance, by stopping duplication of support services eight times over and not cutting frontline services. It also considers that single services are the best way to create more equal access to specialist support and national capacity, where and when they are needed. For both police and fire and rescue this includes capacity to respond to adverse weather conditions or terrorist threats. In policing, specialist support includes murder investigation teams, firearms teams and tackling e-crime. For fire and rescue this includes flood rescue or specialist resources to respond to a chemical, biological, radiological or nuclear incident.

27. In addition, single services will facilitate more streamlined partnership working at a national level between police and fire and rescue with other emergency services and partners such as the Crown Office and Procurator Fiscal Service, the Scottish Prison Service and the Scottish Courts Service. Both police and fire and rescue services play a major role in the work of Strategic Coordinating Groups (SCGs) which bring together partners to plan for, and respond to emergencies, in accordance with the provisions of the Civil Contingencies Act 2004. The Scottish Government will work with the new services in order to ensure that future arrangements allow all responder organisations in SCGs to work together as effectively as possible, recognising the key role often played by the police and fire and rescue ahead of, and during emergency situations.

28. A single police service and a single fire and rescue service will facilitate flexible, responsive local delivery that is embedded within and tailored to the needs of communities, but, crucially, is also part of a Scotland-wide service not hampered by internal boundaries. This structure is enabling, but not operationally prescriptive. The operational design of the new services and deployment of resources will be the responsibility of the new services.

Consultation

29. Twenty-two respondents to the first police reform consultation and twenty-nine respondents to the fire and rescue consultation supported the single service option. Seventy-seven of the responses to the police consultation said they did not know, or did not select one of the three reform options. Several of these respondents noted that this was because of a lack of information on which to base their decision.

¹² SFRAU (2011), Review of the implementation and Impact of Integrated Risk Management Plans in Scottish Fire and Rescue Services.

¹³ <http://www.hse.gov.uk/services/fire/>

¹⁴ http://www.strathclydefire.org/media/42937/Scotland_Together_07_09_09.pdf

30. Key stakeholders in favour of the single service option were the Association of Scottish Police Superintendents (ASPS), and the SCDEA. ASPS argued that *“A single Police Service will allow us to maintain existing levels of high performance and public confidence. There will be opportunities to retain and enhance local accountability and governance. Importantly it will also increase capacity for counter terrorism and serious organised crime, whilst maintaining a focus on local, accountable community policing. The proposal to introduce a single Police Service is financially and operationally the way forward”*. SCDEA argued that a single service would offer the best service compared to other options, providing greater flexibility to respond to changing needs such as international crime; consistency across Scotland; the integration of specialist functions; and improved partnership working and resource sharing.

31. The need to centralise or rationalise support functions, management, procurement and training functions was raised in fire and rescue responses that supported the single service option. Some respondents said that a single service would provide a better, more efficient, effective and sustainable option than the alternatives. *“We believe that both arrangements could deliver safe communities and fire service employment protection; provided there are clear and distinct responsibilities invested in regional structures to deliver risk based emergency cover within each regional structure to an agreed and consistent National Standard. But of the two, we consider the single structure would be easier to deliver”* (Fire Brigades Union).

32. Respondents to the second consultation acknowledged that the decision to legislate for single services had been taken and in the main did not contest this but welcomed the opportunity to comment and to assist with the design of the new services. They also emphasised that there will be a need for the Scottish Government, current forces, fire and rescue services, boards and local authorities to work together to ensure successful transition to the new services.

Alternative approaches - other structural options considered

33. The outline business cases for police and fire and rescue both considered in detail a regional delivery model and also the possibility of a more collaborative approach within the current eight service model.

34. The outline business cases found that a move to a regional structure with a smaller number of boards would offer some opportunities to protect budgets, deliver better outcomes and reduce the variation in delivery approaches to some extent. However, it would deliver less efficiency than single services (around £20 million per year less for police, and £12 million per year less for fire and rescue) and would not remove unnecessary duplication or create operational consistency across Scotland. A regional structure would restrict the ability to move resources and expertise to areas of greatest need and to create and maintain effective national capability. In addition, it would not provide a direct relationship with local authorities and local communities or strengthen local accountability, but would in effect create an extra tier of governance because it would need to be accompanied by additional national and local accountability mechanisms. For these reasons, this model was rejected.

35. While an 8 service structure was considered the least challenging to deliver in transition terms, the outline business cases concluded it would present a significant risk to the delivery of a cohesive programme of change. While national police and fire and rescue functions could be

delivered through collaborative arrangements, they would have required significant effort to set up and maintain capability, as well as formal frameworks to enable effective resourcing, investment, decision making, management and deployment. Collaborative arrangements were therefore considered to be less effective, efficient, robust and sustainable than national arrangements over the longer-term. It was noted that additional national provision, such as an enhanced version of SPSA, would also be required to deliver the consolidated and rationalised back office support needed for these regional and national arrangements. With this in mind, an enhanced 8 service structure was considered to be least likely to deliver the optimum range of efficiencies required, and to be financially sustainable in the medium term.

36. The evidence and arguments clearly point to single services in both police and fire and rescue as presenting the best option for reform. The arguments set out in the first consultations have been strengthened since by specific responses to the consultations, the independent Phase 2 Report of the Sustainable Policing Project produced by subject specialists from Scotland's police forces, the responses to the second consultation, and the outline business cases for police and fire and rescue.

37. A single service model will drive out duplication, ensure consistency, and rationalise existing systems and structures. Efficiencies will be realised through economies of scale; expertise, capability and budgets will be pooled at a national level then targeted to meet local need; existing weaknesses in national accountability will be addressed; and local accountability will be enhanced through greater engagement at local authority level.

38. The outline business case for policing highlighted that a single service model is the strongest option for reform as it presents the:

- Least complex and most efficient option;
- Best opportunity to reinvest to improve local policing outcomes;
- Highest potential for long-term financial sustainability; and
- Best opportunity to co-ordinate change, optimise benefit and minimise risk.

39. In the case of fire and rescue, the outline business case highlighted that a single service model is the strongest option for reform as this presents the:

- Greatest potential to generate the required savings; and
- Potential to deliver the highest level of qualitative benefits, including improved outcomes, necessary to secure equitable and sustainable delivery of fire and rescue services to communities across Scotland.

40. The Financial Memorandum provides further detail on the cost and savings implications of the Bill and reform.

Strengthening the connection between services and communities

41. The third aim of reform is to strengthen the connection between services and communities. The Scottish Ministers intend to achieve this in the Bill by establishing a new

formal statutory relationship between the police and fire and rescue services and each of Scotland's 32 local authorities which will involve many more elected members and better integrate police and fire and rescue services with Community Planning Partnerships.

42. Section 45 and Section 113 of the Bill provide for a local commander (police) and a local senior officer (fire and rescue) to be designated for each local authority area. He or she will be the first point of senior contact for the local authority and other partners locally and the lead officer for the services in community planning. Local authorities will have a new formal role in shaping services delivered in their area and in scrutinising and monitoring delivery and performance. This will replace their current role as a police authority and as a fire and rescue authority.

43. This new relationship will be built around the joint development of a local plan setting out the shared priorities and outcomes to which police and fire and rescue services are to be directed. The local commander or senior officer will have a duty to involve the local authority in setting priorities and objectives and to provide information and reports to the local authority, to enable it to effectively scrutinise and monitor performance and local service delivery. Each local authority will have powers to agree the local police and fire and rescue plan; to scrutinise and monitor performance; to seek reports and information from the local commander and local senior officer; and to provide advice and recommendations on local policing and fire and rescue services.

44. The Bill does not set out how this relationship should operate locally. It will be for the local authorities to determine the most appropriate local mechanism for exercising their role outlined in the Bill, and formalising their relationship with the local commander and local senior officer and other partners to help shape and deliver local outcomes. Responses to the second consultation were supportive of the proposals for local policing and local fire and rescue services to be based around local commanders or senior officers as this approach already exists informally in many areas across Scotland.

45. This new role for local authorities will support the Government's aim of seeing many more councillors playing a direct and formal role in police and fire and rescue services in their area so that they can better shape local priorities in order to meet local needs and challenges and scrutinise service delivery and performance in achieving local outcomes. At present only around 1 in 8 (146 out of 1,222) local councillors are involved in police committees, or regional joint police boards. Similar numbers are involved in fire and rescue committees or regional joint fire boards. This compares with over 500 local councillors involved in education services through local education committees or similar mechanisms. Furthermore, at present, many local authorities have only a few members on a regional joint board. For example, Argyll and Bute council has 2 members on Strathclyde Police Authority which has 34 members from 12 local authorities. The Bill enables each local authority to establish local arrangements, including as few or as many councillors as they see fit to work with the local commander and senior officer.

46. The new arrangements will also facilitate better integration with Community Planning Partnerships and other partnerships. Most partnerships which involve police and fire and rescue services are based around local authority areas, including Community Safety Partnerships, Alcohol and Drug Partnerships and Adult Protection Committees. Currently, police and fire and

rescue structures do not always align with these boundaries, making local partnership less straightforward. There is a significant opportunity to better align police and fire and rescue structures with other community planning partners through reform, and to strengthen local scrutiny and engagement in community planning.

47. The Scottish Police Authority, the Chief Constable and the Scottish Fire and Rescue Service will be required to ensure effective local delivery of services. The local commander and the local senior officer will be required to participate in community planning.

Consultation

48. Responses to the consultation paper highlighted the importance of safeguarding local engagement and accountability in national services and the need to ensure that police and fire and rescue services remain able to deliver outcomes for local communities. The Scottish Government recognises that most policing and fire and rescue services are delivered locally and considers that the provisions in the Bill provide the necessary checks and balances to maintain and improve local services and to ensure effective local engagement within a national framework.

49. In their responses to the second consultation, the key concern of COSLA and SOLACE was maintaining meaningful local government interest in the new structure and the protection of multi-agency working. Many of the responses from local authorities, police and fire and rescue joint boards and unitary authorities also supported this position. The Association of Chief Police Officers in Scotland (ACPOS) supported many of the main policy proposals in principle, particularly the intention to strengthen and embed local policing in local communities, but raised a number of concerns regarding local accountability and the need for further clarity on proposed national and local governance structures. Similarly, the Chief Fire Officers Association (Scotland) (CFOA(S)) was supportive of the main policy proposals in principle but raised some concerns about how the relationship between the new Board and local authorities would operate.

Alternative approaches – local service delivery responsibilities

50. The provisions in the Bill ensure that local service delivery responsibilities for policing and fire and rescue services are set within a statutory framework that provides a new distinct leadership role at a local level, placing duties on the local commander and local senior officer. Within existing local structures, senior officers in some areas already perform similar functions without discrete statutory responsibilities, and this could continue within single services if the Bill were to remain silent on such functions. However, by placing local delivery and engagement responsibilities in legislation, the intention is to ensure that local service delivery remains among the foremost priorities of the Police Service of Scotland and the Scottish Fire and Rescue Service and embeds best practice in local service delivery across Scotland. The responsibilities placed on the local commander and local senior officer are complemented by a broader duty on the Chief Constable and on the Scottish Fire and Rescue Service to ensure adequate local service provision. By holding the Chief Constable and the Scottish Fire and Rescue Service ultimately responsible for the delivery of local services, the Bill requires the services to balance national and local priorities.

51. The Scottish Government considered the alternative of placing all statutory duties for local policing on the local commanders, and local fire and rescue services on local senior officers, but this might have raised concerns about the potential for conflict within the service between local and national policing and fire and rescue and created less flexibility for the deployment of resources across areas when required. By placing statutory responsibilities for local services on the Chief Constable and Scottish Fire and Rescue Service as well as the local commander or senior officer, the policy intention is that the leader of the service will be ultimately responsible for ensuring a balance between local and national performance. In the case of police, the Bill ensures that all constables, including local commanders, remain under the direction and control of the Chief Constable in the discharge of their functions. Local senior officers, as employees of the Scottish Fire and Rescue Services are under the direction and control of that service.

Alternative approaches – community resilience hubs

52. The Scottish Government considered the option of legislating to establish community resilience hubs; where fire stations are grouped together, working with local communities beyond the traditional community fire safety role of the fire and rescue services and supporting community safety across a wider range of emergencies.

53. A number of fire and rescue services already provide community resilience functions; these vary from area to area across Scotland, depending upon local circumstance and need. As such, the Scottish Government does not propose to introduce a legislative requirement, as this could potentially restrict positive activity or create duplication of effort. As with other functions, it is expected that integrated risk management planning will be used to identify priorities for community work and to identify need in the future. This would support flexible use of resources and align services with local community planning to promote local service integration and partnership working.

OTHER KEY PROVISIONS IN THE BILL

54. The Bill includes a number of other provisions designed to support the main policy aims of reform. The next section of this Policy Memorandum describes the policy in these areas:

- Clear, modern purpose and principles for each service;
- Robust statutory framework for national governance;
- Appropriate scrutiny arrangements;
- Streamlined arrangements for funding;
- Arrangements for appointing officers and staff and for transferring officers and staff from the current services to the new services; and
- Placing Independent Custody Visiting on a statutory footing.

A CLEAR MODERN PURPOSE AND PRINCIPLES FOR EACH SERVICE

55. The Bill sets out and modernises the functions of a police officer and for the first time provides statutory principles including a core purpose to inform the strategic plans and priorities

for policing in Scotland. For the Scottish Fire and Rescue Service this will be set out in a new Fire and Rescue Framework under the Fire (Scotland) Act 2005.

Purpose and principles

56. As outlined above, the Scottish Government intends to set a clear modern purpose and principles for both the Police Service of Scotland and Scottish Fire and Rescue Service. This will reflect the reality of their broad roles and the excellent work the services now carry out supporting and promoting community safety and well-being; through, for example, community safety initiatives and collaboration with health, education, and local authorities focused on prevention and early intervention in order to improve outcomes.

57. Section 32 of the Bill sets out the policing principles which provide that the main purpose of policing is to improve safety and well-being in Scotland by working in collaboration with others in ways which are accessible to and engaged with communities, promoting measures to prevent crime, harm and disorder. The Scottish Ministers and the Scottish Police Authority will be required to have regard to the policing principles when developing the strategic priorities and plans for the service, as will the Chief Constable when directing constables. In this way the policing principles will underpin the core of the work of the new police service.

58. For fire and rescue, the Fire (Scotland) 2005 Act already allows priorities and objectives to be set through the Fire and Rescue Framework. A new Fire and Rescue Framework will be produced which will set out a modern purpose for the Scottish Fire and Rescue Service and underpin delivery of its functions; for example by an outcomes based approach and through the promotion of community engagement.

Functions

59. The Bill does not make any fundamental changes to the statutory duties of a police constable or the functions of the fire and rescue services.

Police functions

60. The statutory duties of a police constable, as set out in the 1967 Act, capture the broad range of policing activities directed toward improved safety and well-being and the Scottish Government proposes to preserve these in an updated form. These duties are set out in section 20 of the Bill and relate to crime prevention and detection, the maintenance of order, the protection of life and property, as well as duties relating to the apprehension of offenders, the execution of warrants and attendance at court. Constables remain subject to a range of other functions (powers and duties) under legislation and common law.

61. Section 10 of the Bill places the police oath in primary legislation for the first time and updates the wording of the oath. This oath has remained unchanged since 1892. The current wording has served its purpose well:

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

62. The Bill sets out a new form of words for the oath:

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

63. This is intended to recognise the changing role of the police service and to emphasise the nature of the role and the relationship between the police and all individuals in society.

Fire and rescue functions

64. Sections 99 – 108 of the Bill provide for the functions of the Fire and Rescue Authorities/ Joint Boards set out in the Fire (Scotland) Act 2005 (the 2005 Act) to be transferred to the new Scottish Fire and Rescue Service. The Bill therefore proposes no changes to the functions set out below:

- Promoting fire safety;
- Fire fighting;
- Responding to road traffic accidents;
- Enforcing fire safety legislation in relevant premises; and
- Responding to any other eventualities likely to cause death, injury or illness, or harm to the environment (including buildings).

65. Some fire and rescue functions are in the Fire (Additional Function) Scotland Order 2005, made under section 11 of the 2005 Act. The Scottish Government intends to amend the Order by secondary legislation, so that these functions are transferred to the new Scottish Fire and Rescue Service. The functions are:

- Responding to chemical, biological, radiological or nuclear incidents;
- Providing urban search and rescue capability;
- Responding to serious flooding; and
- Responding to serious transport incidents.

66. A new Fire and Rescue Framework will be prepared and brought into effect through secondary legislation, to reflect these existing statutory functions, and give them a renewed focus by placing them within a context of promoting community engagement, prevention and partnership working to improve outcomes. Sections 100 and 101 of the Bill will also consolidate the fire safety responsibilities currently divided between the Scottish Government and the eight fire and rescue services into the new single service. Currently fire and rescue services provide advice, information, publicity and encouragement to prevent fires and death or injury from fires and to reduce losses. The Scottish Government works with fire and rescue services to promote fire safety including running regular national Fire Safety Campaigns. The Bill enables responsibility for promoting fire safety to be placed on the new service at local and national level.

Consultation responses

67. A number of responses to the second consultation broadly supported the proposed purpose for both policing and fire and rescue services, recognising the value of making clear the role of both services working in partnership with other services. A number of police and local authority respondents called for the purpose to include explicit references to core policing and partnership activity and to be supported by national guidance and, for police, assurances that the unique nature of the Office of the Constable is retained. The ACPOS response noted that the purpose in the Police (Scotland) Act 1967 based on “guard, patrol and watch” no longer fully reflects modern policing.

68. For fire and rescue a number of responses supported the use of the Fire and Rescue Framework to further define the purpose of the Scottish Fire and Rescue Service and there was support for including Fire Safety within the remit of the new service.

69. Responses to the second consultation had mixed views on the need to change the oath. The Scottish Government acknowledges respondents’ views that the oath has remained unchanged since 1892 and has served its purpose well, but other respondents highlighted that the police oath should be modernised to better reflect policing in the 21st century.

Police and fire and rescue functions, purpose and principles - alternative approaches

70. The Scottish Government considered setting out in statute a number of new, detailed functions for the police in recognition of the broad scope of activity in which the police are currently engaged. However the Scottish Government concluded that adapting the existing broad functions, particularly to emphasise prevention, would capture these wider activities, without the need for discrete statutory duties.

71. No alternative approaches were considered for fire and rescue.

ROBUST STATUTORY FRAMEWORK FOR NATIONAL GOVERNANCE

72. The Bill sets out a clear legislative framework to ensure effective national governance for policing and fire and rescue services across Scotland. It makes clear statutory provision for the:

- Role of the Scottish Police Authority and the Scottish Fire and Rescue Service Board;
- Composition of the Scottish Police Authority and Scottish Fire and Rescue Service Board;
- Role of the Chief Constable and Chief Officer;
- Role of the Scottish Ministers; and
- Role of the Scottish Parliament.

73. The new governance arrangements respond to the weaknesses in police governance and accountability highlighted by the HMICS discussion paper of June 2011.¹⁵ In particular, HMICS was critical of the inconsistent way in which national policing functions are exercised - a mix of lead Force, collaborative agreements, SCDEA, and other less formal arrangements - and that decisions made by ACPOS which affect local, regional and national policing do not fall within the standard public sector governance arrangements.

The Role of the Scottish Police Authority and the Scottish Fire and Rescue Service Board

74. Section 1 of the Bill establishes a new statutory body, the Scottish Police Authority, to maintain the Police Service of Scotland and hold the Chief Constable to account.

75. Section 99 of the Bill establishes a new statutory body, the Scottish Fire and Rescue Service. It will provide fire and rescue services throughout Scotland and be governed by a Board. The Chief Officer, as an employee of the Scottish Fire and Rescue Service will be held to account by the Scottish Fire and Rescue Service Board.

76. The establishment of the Scottish Police Authority and the Scottish Fire and Rescue Service provides a clear separation between the Scottish Ministers and the services. In particular, it ensures that the Chief Constable is free from undue political influence in making decisions about the investigation of crime.

77. The Scottish Police Authority and the Scottish Fire and Rescue Service Board are intended to provide strong governance arrangements and clear accountability for both services and, in the case of police, to respond to the weaknesses in governance and accountability highlighted by HMICS.

78. The Scottish Police Authority and the Scottish Fire and Rescue Service will be required to undertake strategic planning and reporting and to consult stakeholders on the use of this new power. The Scottish Police Authority, the Chief Constable and the Scottish Fire and Rescue Service will also be subject to a statutory duty of Best Value and subject to examination and inspection by the Auditor General, HMICS and the Inspectors of the Scottish Fire and Rescue Service (the Inspectors of SFRS). This is essentially a continuation of the existing duty of Best Value on local authorities and joint boards, although the Bill has extended the duty to include the Chief Constable.

79. In the case of police, the provisions maintain the existing office of the Chief Constable, distinct from the Scottish Police Authority. The Bill further provides that all constables in the Police Service of Scotland (who are also office holders) are under the direction and control of the Chief Constable.

¹⁵ Governance and accountability of policing in Scotland: A discussion paper by HM Inspectorate of Constabulary for Scotland – June 2011 – <http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/local/15403/publications/Governancepaper>

Consultation

80. The Scottish Government recognises the concerns raised in the first consultation about ensuring appropriate separation between the Scottish Ministers and services, the need for clear roles and responsibilities and for the national boards to be given robust powers to hold the chief officers to account. In particular, there was concern to ensure that the Chief Constable is free from undue political influence in making decisions about the investigation of crime. The Scottish Government considers that the proposals in the Bill address those concerns.

Alternative approaches – national governance

81. The Scottish Government considered whether both services should be established as agencies under the direct control of the Scottish Ministers. It examined a range of governance structures for both fire and rescue and policing in other countries and hosted an international summit on policing to explore this further in August 2011. It considered structures, common in countries such as Finland and Denmark, which would place the services more directly under the control of the Scottish Ministers. However, the Scottish Government was keen to establish a more transparent, arms length relationship with the Scottish Ministers which, especially in the case of policing, ensured a clear separation.

Independence of the forensic service from the Chief Constable

82. In order to maintain public confidence in the criminal justice system, the new structure will reflect the need to maintain a “sterile corridor” between police investigations and forensic investigations. In Scotland there is currently a ‘crime scene to court’ forensic service which has, since 2007, been part of the SPSA and independent from police forces. In order to maintain this arrangement, section 31 of the Bill requires the Scottish Police Authority to make arrangements for the provision of a forensic service which is accountable directly to the Scottish Police Authority: not to the Chief Constable.

Forensic service – consultation and alternative approach

83. The Scottish Government consulted with stakeholders on the approach to forensic services. This included ACPOS, the SPSA (which currently provides the forensic service), the Crown Office and Procurator Fiscal Service, the Information Commissioner’s office and academics with expertise in forensic science and ethics. Alternative approaches suggested were to house the forensic service within the Police Service of Scotland, reporting to the Chief Constable, or to establish a stand alone body to deliver forensic services. In order to maintain public confidence in the criminal justice system and forensic evidence presented in court, it is important that the process for gathering and analysing forensic evidence is visibly independent from the police investigation. On this basis, the option of placing forensic services under the control of the Chief Constable was discounted. The option of establishing a stand alone forensic service as an NDPB was also discounted on the basis that this would not have been in line with the Scottish Government’s aim of simplifying the public bodies landscape; and that the required degree of separation between the police and the forensic investigation could be achieved by establishing the forensic service within the Scottish Police Authority. This option is also more cost-effective and enables the forensic service to secure corporate services, such as Information

Technology and Human Resources, from the Police Service of Scotland rather than having its own corporate services or buying them in from another body.

Composition of the Scottish Police Authority and the Scottish Fire and Rescue Service Board

84. The Bill provides that members of the Scottish Police Authority and Scottish Fire and Rescue Service Board will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the services and hold the Chief Constable and Chief Officer to account. The Scottish Government recognises that local councillors, especially those with experience of police and fire and rescue services, will have much to offer the governance of the new services, and the appointments process will allow the Scottish Ministers to appoint a number of members to both on the basis of skills and expertise relating to local government. All appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Bill will provide for the Scottish Police Authority and Scottish Fire and Rescue Service Board to have between 7 and 11 members although the Scottish Ministers will have a power to alter that number.

Alternative approaches - membership of the Scottish Police Authority and Scottish Fire and Rescue Service Board

85. The consultation paper invited views on the proposition that the Scottish Ministers should appoint a number of serving councillors, nominated by COSLA, in order to represent the collective voice of local government on the Scottish Police Authority and Scottish Fire and Rescue Service Board. The role of the Scottish Police Authority and Scottish Fire and Rescue Service Board is to ensure the effective delivery of policing and fire and rescue services across Scotland. As such, members are not attending meetings as representatives but to act in the best interests of the Scottish Police Authority and the Scottish Fire and Rescue Service. There is, therefore a potential conflict that arises from representative membership and the Scottish Government has concluded the Bill should not include any statutory requirement for representative members. Board members will be sought with a range of skills and expertise, including current or recent expertise of local government.

Consultation

86. The composition of the Scottish Police Authority and Scottish Fire and Rescue Service Board was seen as a critical issue by respondents to the second consultation. There was wide acceptance that members of the national boards should have a range of skills including knowledge of the public sector, business, ethical or human rights issues, audit and finance plus specific skills in policing, local government and justice. There were diverse views on the number of national board members required for the depth and breadth of roles needed or to represent the diversity and regional spread of communities. Local authorities and police and fire and rescue joint boards were of the view that all or at least the majority should be elected members and police forces, fire and rescue services and other organisations were of the view that it should be balanced.

Role of the Scottish Ministers

87. The Scottish Ministers will continue to be accountable to the Scottish Parliament for policing and fire and rescue services. However, the provisions in the Bill provide a clear separation between the Scottish Ministers and the services by ensuring their role is primarily a strategic one focussed on the appointment of members of the Scottish Police Authority and Scottish Fire and Rescue Service Board; approving the appointment of the Chief Constable and the Chief Officer; and setting national budgets and strategic priorities.

88. The Bill provides the Scottish Ministers with a power of direction in relation to the Scottish Police Authority and the Scottish Fire and Rescue Service. This power is a normal feature of public bodies created by the Scottish Ministers and is used very rarely. The power to direct the Scottish Fire and Rescue Service will encompass the Scottish Ministers' existing powers to direct fire and rescue services for public safety purposes, in relation to use of equipment and services, and to issue emergency directions. The new power of direction will not impact on the Scottish Ministers' existing power of direction where there is a failure to act in accordance with the fire and rescue framework; this is retained as a distinct mechanism for enforcing adherence to the framework.

89. The Scottish Ministers will have no power of direction in relation to the Chief Constable or Chief Officer.

Consultation

90. A number of responses to the second consultation sought more information on the circumstances in which the power of direction might be used and sought safeguards on the face of the legislation to ensure the power could not be misused.

Alternative approaches – role of the Scottish Ministers

91. The Scottish Government considered whether a Ministerial power of direction was necessary. It concluded that such a power, which is a feature of virtually every significant public body, was a necessary link in the chain of accountability to the Scottish Parliament. It is required to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary. Like all such powers, it would be used sparingly if at all. The Scottish Government also considered specifying the circumstances in which the power might be used but concluded that this was undesirable.

Role of the Lord Advocate and Procurators Fiscal

92. The Bill proposes no changes to the powers and responsibilities of the Lord Advocate and Procurators Fiscal. The Lord Advocate and Procurators Fiscal will continue to have responsibility for the direction of criminal investigations, including criminal allegations against police officers. The Chief Constable will continue to be under the direction of the Procurators Fiscal and be accountable to the Lord Advocate in these matters.

Alternative approaches

93. No alternative approach was considered for the role of the Lord Advocate in relation to the Police Service.

Role of the Scottish Parliament

94. The Bill provides the Scottish Parliament, for the first time, the opportunity to have a formal role in scrutinising the police and fire and rescue services. The current structural framework for policing in Scotland pre-dates the establishment of the Scottish Parliament and, with the exception of the SPSA and the SCDEA, the Scottish Parliament currently has a limited role in the scrutiny of policing. The Scottish Parliament passed new legislation for fire and rescue in 2005 and has a role in approving the strategic priorities set by the Scottish Ministers in the Fire and Rescue Framework. This will be augmented in the Bill. The Scottish Parliament will approve the budget for the Scottish Police Authority and Scottish Fire and Rescue Service through the budget process. The Bill requires the key strategic and planning documents as well as the annual report and accounts for each service to be laid before the Scottish Parliament. The Bill also requires the Police Investigations and Review Commissioner, HMICS and the Inspectors of SFRS (which replaces CIFRA as described below) to publish their reports and to lay them before the Scottish Parliament.

SCRUTINY ARRANGEMENTS

95. The Scottish Police Authority and the Scottish Fire and Rescue Service Board will play a critical role in scrutinising the services and holding the Chief Constable and Chief Officer to account. Effective external scrutiny will also be an important part of the accountability framework for the new services. Scrutiny mechanisms are proposed for both police and fire and rescue which will provide professional and independent inspection.

Police audit and inspection

96. Part 1, Chapter 11 of the Bill provides that the Scottish Police Authority and the Police Service of Scotland will be inspected by HMICS, which will retain its existing powers and take on an additional power to examine the delivery of Best Value. The Bill puts the relationship between HMICS and the Scottish Parliament on a more structured footing than at present by requiring HMICS to publish its reports and make them available to the Scottish Parliament. HMICS is also required to present its reports to the Scottish Police Authority. This will be done simultaneously, in line with the recommendations of Professor Crerar's review of external scrutiny¹⁶ in 2007. Section 42 of the Bill gives responsibility for audit of the Scottish Police Authority to the Auditor General who will also have powers under Section 43 of the Bill to examine the delivery of Best Value and the economy, efficiency and effectiveness of the service.

¹⁶ Crerar Review -

<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/latest-news/TheCrerarReview>

Fire and rescue: audit and inspection

97. At present the Chief Inspector of Fire and Rescue Authorities (CIFRA), who is appointed by virtue of section 43 of the Fire (Scotland) Act 2005, may undertake inquiries into the services when directed to do so by the Scottish Ministers.

98. The Bill abolishes CIFRA and replaces it with a Chief Inspector, Inspectors and Assistant Inspectors (Inspectors of the SFRS). The Scottish Government intends that, as with CIFRA, these post holders should be non-Ministerial office holders within the Scottish Administration. Existing inspectors will be retained.

99. The Chief Inspector and Inspectors are to be appointed by Her Majesty by Order in Council (the present incumbent also carries a Royal Warrant), while Assistant Inspectors are appointed by the Scottish Ministers. The Inspectors of the SFRS will take over and strengthen the inspection role carried out by CIFRA.

100. Section 117 of the Bill provides that the Scottish Fire and Rescue Service will be inspected by the Inspectors of the SFRS who may independently initiate inquiries as well as inspecting on direction by the Scottish Ministers. The Bill puts the relationship between the Inspectors of the SFRS and the Scottish Parliament on a clear footing by requiring the Inspectors of the SFRS to publish its reports and make reports relating to the state and efficiency of the Scottish Fire and Rescue Service available to the Scottish Parliament. The Inspectors of the SFRS are also required to present its reports to the Scottish Fire and Rescue Service. This will be done simultaneously, in line with the recommendations of Professor Crerar's review of external scrutiny in 2007. Section 99 of the Bill inserts new Schedule 1A into the 2005 Act which requires the Scottish Fire and Rescue Service to send statements of accounts to the Auditor General for audit. The Auditor General will also have powers under Section 111 of the Bill to examine the delivery of Best Value in addition to his powers to examine the economy, efficiency and effectiveness of the service under Section 23 of the Public Finance and Accountability (Scotland) Act 2000.

Consultation responses

101. The proposals for the retention of independent audit and inspection arrangements for police and fire and rescue were supported across the majority of respondents to the second consultation. The Auditor General and HMICS' response to the second consultation welcomed the arrangements for audit and inspection and indicated they would continue to develop their working relationship via Audit Scotland to ensure inspection and audit remained risk based, proportionate and complementary.

Alternative approaches

102. The Scottish Government considered adding to the existing functions of HMICS so that they also had responsibility for reviewing non criminal complaints and carrying out investigations into the more serious complaints. However the consultation responses suggested a preference for retaining a separation between the inspection and complaints reviewing and investigation functions.

103. Retaining the status quo for fire inspection was considered and rejected on the basis that a more robust arrangement was required.

104. The Scottish Government considered not placing the new services under a statutory duty of Best Value which applies to local authorities but to follow the more usual precedent for nationally funded bodies, by relying on the provisions of the Scottish Public Finance Manual to secure Best Value. However, given the current statutory duty placed on the current joint boards and unitary police and fire and rescue authorities in relation to Best Value, the Scottish Government has concluded that the Best Value duty should be continued in the new arrangements.

Police and fire and rescue complaints

105. The policy intention is to ensure robust and transparent procedures for handling complaints made in relation to the new services.

Fire and rescue complaints

106. For fire and rescue the intention is to follow the approach of other public bodies by making the Scottish Fire and Rescue Service a listed authority for the purposes of the Scottish Public Services Ombudsman Act 2002.

Police complaints and serious cases and incidents

107. In the case of police, there is a need to provide public reassurance by ensuring that the most serious criminal allegations against police officers are investigated independently where appropriate.

108. Currently, complaints against the police and police staff range from complaints about quality of service to complaints about their conduct, behaviour and actions. The vast majority of complaints are currently handled through the complaints handling and line management functions within each force, with oversight from the relevant police authority or joint board. The police authority or joint board also has a direct responsibility for dealing with complaints about senior officers.

109. The Bill creates an independent investigatory capacity outside the Police Service of Scotland to investigate the most serious cases, including complaints and allegations of misconduct about senior officers and other incidents, particularly those involving death or serious injury, where it is in the public interest to have an independent investigation. In the current structure such cases are referred to another force.

110. The Bill provisions mean that the new Scottish Police Authority will have an important role in holding the Police Service to account. This includes monitoring and scrutinising complaints, dealing with complaints or allegations of misconduct about constables and ensuring that the service learns from, and acts on them, to improve performance and maintain public confidence.

111. There are a range of incidents, such as deaths in custody, serious and fatal road accidents involving police vehicles and serious crimes where the police may be at fault, where it is useful and necessary for the actions of the police to be reviewed or investigated independently. This also applies where there is significant doubt about the robustness or conduct of an investigation and it is deemed to be in the public interest to review an investigation. At present, this is normally carried out by a different force at the request of the force concerned.

112. The Bill gives additional powers to the Police Complaints Commissioner Scotland (PCCS), which will be renamed the Police Investigations and Review Commissioner (PIRC). PIRC will undertake the investigation and review of the range of complaints and incidents described above. As at present, less serious criminal allegations will continue to be handled within the Police Service of Scotland under the independent direction and control of Crown Office and Procurator Fiscal Service (COPFS). Non-criminal complaints will be handled within the service as happens at present and complainants will be able to seek a review of their complaint by the PIRC.

113. In addition the PIRC will retain all the existing functions of the PCCS. COPFS will continue to control and direct all investigations into criminal allegations against officers and police staff and will also retain the power to instigate a criminal investigation without prior referral from the police.

Alternative approaches and consultation – police complaints and serious incidents

114. The second consultation set out a number of options for how complaints and scrutiny could be handled in relation to the new independent investigatory capacity required in a single police service. Other options considered included transferring the complaints review handling functions to the Scottish Public Service Ombudsman (SPSO) which would have brought police complaints review into line with other public sector complaints.

115. In addition the Scottish Government considered bringing together the investigatory capacity and complaints handling reviews with the inspectorate functions of HMICS.

116. Responses to the second consultation provided a range of different views on these issues and in particular whether complaints against the police could be adequately handled by the SPSO and whether a single body, incorporating HMICS, should undertake all these functions. Responses were in the main supportive of the option of creating an independent body whose functions would include PCCS with additional investigative functions. Responses were supportive of the need for HMICS to retain its separation and independence from other bodies and that it should be separate from the investigation of serious incidents and criminal allegations in order to maintain public trust and confidence.

117. The Scottish Government concluded that there was merit in retaining the distinct role of HMICS and that both complaints and criminal allegations, serious incidents and reviews of investigations should be handled by a single independent Commissioner – the Police Investigations and Review Commissioner.

118. No alternatives were considered for complaints handling reviews for Scottish Fire and Rescue Service.

ARRANGEMENTS FOR FUNDING

119. The Bill establishes a new simplified funding model under which the Scottish Ministers will agree a funding settlement which will be paid directly to the Scottish Police Authority and Scottish Fire and Rescue Service following the Parliamentary budget process. This means that the services will be subject to a single system of financial control the same as that which applies to other public services established and funded by central government.

Police funding

120. Total police revenue funding in 2011-12 is £1,370m. About two thirds of this funding is provided directly by the Scottish Government. As well as police grant to joint boards and unitary authorities, this includes funding for police pensions and for the SPSA and the SCDEA; the Scottish Crime Campus at Gartcosh, the PCCS; the Scottish Safety Camera Programme; the 1,000 additional officers; police information and communication technology (ICT); counter-terrorism; the police radio system (Airwave) and police national databases.

121. The remaining third is contributed by local authorities, who provide funding to their joint police boards and unitary authorities alongside the Scottish Government police grant.

122. The Bill will put in place simplified arrangements for funding the police service with 100% funding provided to the Scottish Police Authority by the Scottish Government. The Scottish Police Authority will hold the Chief Constable to account for the bulk of the expenditure but will be able to retain a proportion of the money to fund its own governance functions and the forensic service. The Scottish Police Authority will be responsible for preparing accounts to be audited by the Auditor General and for those accounts to be placed before the Scottish Parliament.

Fire and rescue funding

123. Expenditure on the fire and rescue service amounted to £372 million in 2010-11. This comprised £273 million in local government expenditure, and £39 million in central government support, including for the Firelink communications system, national learning and development and fire capital grant. A further £60 million supports the firefighter and new firefighter pension scheme costs.

124. The Bill will put in place simplified arrangements for funding the Scottish Fire and Rescue Service with 100% funding provided to the Scottish Fire and Rescue Service by the Scottish Government. The Scottish Fire and Rescue Service Board will hold the Chief Officer to account through the internal delegation of responsibilities for expenditure on fire and rescue services, and will be responsible for preparing accounts to be audited by the Auditor General and for those accounts to be placed before the Scottish Parliament.

Charging for services

125. The Bill gives the Scottish Police Authority and the Chief Constable powers to charge for providing police services in certain circumstances. This power is primarily intended to permit the continuation of charging for the policing of major sporting events and music festivals. The Bill also gives the Scottish Police Authority powers to provide other goods and services, including forensic services, ICT and training to other public bodies, as well as in specified circumstances to private organisations and individuals, and to charge for the provision of those goods and services in order to recover its costs. These are not new powers but instead update and clarify the powers currently contained in the 1967 Act, the 2006 Act and the Local Authorities (Goods and Services) Act 1970 as amended by the Local Government in Scotland Act 2003. Other more specific charging powers such as the power to charge for firearms licences are being continued through consequential amendments. The Scottish Ministers will expect the Scottish Police Authority to develop, publish and then regularly update guidance on charging for services, including a scale of charges, in consultation with relevant stakeholders, in order to ensure consistency in this area.

126. The Scottish Fire and Rescue Service will retain powers conferred on fire and rescue services by the 2005 Act to charge for various activities, which appear to be working effectively.

Consultation

127. There was general support for the proposal in the second consultation paper to simplify the funding arrangements for police and fire and rescue. Concerns were, however, expressed about the need for a transparent model for allocation of resources to local areas that took account of local demand factors and to prevent the transfer of resources to the central belt.

128. The need to ensure a fair transfer of assets and liabilities was highlighted.

129. There were mixed views on the delegation of budgets. ACPOS did not support fully delegated budgets to local commanders. Other responses range from calls for a limited budget to allow local commanders to contribute to local partnerships, to support for the COSLA view that control by local authorities of local budgets to deliver the local policing plan was necessary for effective local accountability.

Police funding – alternative approaches

130. The Scottish Government considered whether local authorities should retain some control over funding for the new service. This would mean funding for the new national service being assembled from 33 different sources. It would not best support the new national service which is designed to provide more efficient and equitable access to resources and capability across Scotland, based on need and linked to local and national outcomes. Neither would leaving funding decisions at a local level provide the best way of removing inefficiencies and providing clarity or consistency at a national and a local level.

131. Funding for national initiatives, priorities and organisations (SPSA and SCDEA) currently provided by the Scottish Government through Police Central Government funding will

also be consolidated and provided to the new Scottish Police Authority. The Scottish Government considered that retaining these funding streams at Government level, while transferring responsibility for providing the capabilities to the new service, would make for unnecessarily complex arrangements and would not provide a clear and transparent link between provision and financial accountability.

132. Overall, the Scottish Government considers that allocation of funding should be based on consistent assessment of national and community risk, and that this is best achieved by consolidating funding streams and aligning them with the new national governance and delivery structures.

Fire and rescue funding – alternative approaches

133. Local authorities currently provide revenue funding for the eight fire and rescue services. They have considerable discretion over these amounts, and there are differences in the levels of funding provided by the joint boards and the unitary authorities. The Scottish Government considered whether local authorities should retain some, or all, control over funding for the new service. However this would not best support the new national service which is designed to provide more efficient and equitable access to resources and capability across Scotland, based on need and integrated risk management planning and linked to local and national outcomes. Neither did the Scottish Government believe that leaving funding decisions at a local level would provide the best way of removing inefficiencies and providing clarity and consistency at a national and a local level.

134. The option of leaving the fire capital grant within local government, without the board structure, would not enable it to be allocated in a consistent way or make use of integrated risk management planning. The Scottish Government considers that the new Scottish Fire and Rescue Service is best placed to identify local and national need and allocate resources accordingly, with the Scottish Ministers retaining the power to make grant conditions.

135. Funding for national capability currently provided by the Scottish Government will also be consolidated and granted to the new Scottish Fire and Rescue Service, specifically for the National Fire College at Gullane and for Firelink, the national communications system. The Scottish Government considers that retaining these funding streams at Government level, while transferring responsibility for providing the capabilities to the new service would make for unnecessarily complex arrangements and would not provide a clear and transparent link between provision and financial accountability.

136. Overall, the Scottish Government considers that allocation of funding should be based on consistent assessment of national and community risk, and that this is best achieved by consolidating funding streams and aligning them with the new national governance and delivery structure.

Borrowing – police and fire and rescue –alternative approaches

137. No other alternative approaches to borrowing were considered. The Scottish Government expects the new bodies to be able to deliver their objectives within their allocated budgets and

concluded that, like other government funded services, they should not routinely require to resort to borrowing. However in order to provide an element of flexibility for the future the Scottish Government has included a provision to borrow with Ministerial consent.

Assets – police and fire and rescue

138. Schedules 4 and 5 of the Bill make provision for the transfer of the assets and liabilities currently owned by police and fire and rescue boards and unitary authorities and used for police and fire and rescue purposes when the functions transfer, by means of a transfer scheme.

139. The Bill also allows for assets currently owned by the Scottish Government used for police and fire and rescue purposes to transfer to the new Scottish Police Authority and Scottish Fire and Rescue Service.

Alternative approaches – assets

140. No alternatives were considered for the transfer of assets.

WORKFORCE

141. The Bill sets out arrangements for the appointment of police officers, firefighters and other staff to the new services. The Scottish Government's policy is that staff transferring within the public sector should do so as far as possible without any detriment to the individual in accordance with the Cabinet Office's Statement of Practice on Staff Transfers in the Public Sector. The Bill sets out arrangements for the transfer of police officers, firefighters and all other staff in post on the day the services are established to the new services retaining their terms and conditions on that date. Joint board staff will transfer by virtue of the Bill provisions; other staff will transfer by transfer schemes.

142. Under current arrangements, the Chief Constable or Chief Officer can require an officer to serve anywhere within the police or fire and rescue service area or, if agreed locally, a specific part of that area. In a single service model, the equivalent of the area would be the entire country. The creation of a single police and a single fire and rescue service creates more professional and career opportunities for officers and staff in both services to serve in a variety of roles across Scotland. One of the advantages of the single service is the greater flexibility that it will provide to deploy officers and assets wherever they are needed. However, the Scottish Government does not intend that reform should bring hardship to individual officers or staff at the time the new Police Service, Scottish Police Authority and Scottish Fire and Rescue Service are established. Any existing mobility arrangements will transfer with them to the new service restricted to their current force area. It will be for the leadership of the new service to negotiate any changes should it consider them necessary.

Police workforce

143. Police officers are office holders, not employees. This means their terms and conditions of service are primarily governed by legislation not employment law. Chapter 2 and Chapter 8 of the Bill set out the arrangements for the appointment of officers and for the making of

regulations in relation to their detailed terms and conditions of service. Chapter 9 sets out arrangements for the continuation of the Police Appeal Tribunal to hear appeals where an officer has been dismissed or demoted in rank following disciplinary proceedings.

144. The Bill provides that responsibility for appointing the Chief Constable will be for the Scottish Police Authority, subject to the agreement of the Scottish Ministers. The Scottish Government considers that this provides the right degree of separation between this key appointment and the Scottish Ministers.

145. Appointments to the offices of Deputy Chief Constable (DCC) and Assistant Chief Constable (ACC) will be made by the Scottish Police Authority following consultation with the Chief Constable. The Scottish Ministers anticipate that all appointments should be made following a fair and open competition. Appointments and promotions below the rank of Assistant Chief Constable will be for the new Chief Constable to determine in line with the regulations.

146. The Bill allows the Scottish Police Authority to employ staff who are under the direction and control of the Chief Constable to act in support of constables. These staff are to be known as police staff. It also allows the Scottish Police Authority to appoint staff to support it in its scrutiny role and to make arrangements for the provision of forensic services.

147. Section 95 and Schedule 4 of the Bill make arrangements for the transfer of police officers and staff to the new service. The following will apply:

- Police officers working in the eight police forces and SCDEA will transfer to the new Police Service of Scotland on the date the new service is established, to be under the direction and control of the Chief Constable, continuing to be governed by police regulations;
- Officers on secondment to SPSA will also transfer to the new service but any officer who is deployed to work on forensic services will be on secondment to the Scottish Police Authority;
- Officers on temporary service will remain on secondment and will have a right to return to the new service at the end of that temporary service;
- Any officer on secondment to any of the existing forces or SCDEA from a non-Scottish police force will remain on secondment but that secondment will be transferred to the new service; and
- Police staff in forces and SPSA will transfer to the Scottish Police Authority. The majority of these staff will be police staff transferred to work under the direction and control of the Chief Constable. Staff who work in forensic services or on the Scottish Police Authority's scrutiny role will be Authority staff under the direction of the Scottish Police Authority.

148. Officers transferring to the new service will continue to be governed by police regulations and the Bill provides safeguards relating to mobility beyond current force areas. Any changes to police officer terms and conditions will continue to be subject to UK wide negotiation, provided by the Police Negotiating Board (PNB) at present.

149. It will be for the leadership of the new service to decide their approach for pay and the terms and conditions of service for new and existing police and Scottish Police Authority staff following negotiations through the trade unions; including whether to harmonise terms and conditions for staff previously employed by each of the eight existing authorities and joint boards and SPSA.

150. The Scottish Government will ensure that reform does not result in any detriment for members in respect of their pension scheme entitlements and will ensure police officers remain eligible for the Police Pension Scheme and police staff remain eligible to be members of the Local Government Pension Scheme (Scotland). There may be other changes as a result of wider public sector pension reform, but negotiations on this will be separate from the reform of the services.

Offences

151. The Bill re-enacts from the 1967 Act three offences committed by constables: absence from duty without reasonable excuse; neglect or violation of duty; and failure to return equipment. The first and last of these will carry the same penalties as in the 1967 Act. The specific offence of neglect or violation of duty will be subject to an increased maximum sentence of 5 years imprisonment, or to a fine, or both, if tried on indictment. This offence was only subject to summary proceedings under the 1967 Act, and any proceedings have therefore usually been taken on common law grounds to allow for a higher sentence. The policy intention is therefore to make prosecutions in relation to this offence easier by having a clear statutory offence with an appropriate penalty.

Consultation

152. Respondents to the second consultation including key stakeholders such as the Scottish Police Federation and the Association of Scottish Police Superintendents supported proposals on the retention of police officer and staff terms and condition and that officers and staff will retain their right to remain within their existing force area. The HMICS response notes that the proposals can be seen as recognising the concerns of existing staff and officers. There were however consistent calls across many responses on the need to harmonise police staff terms and conditions. This will be a matter for the Scottish Police Authority to determine in consultation with the trade unions.

Alternative approaches – police senior appointments

153. A number of respondents highlighted the need to make an early appointment of the first Chief Constable to allow him/her to play an active part in the transition to the new service. The Scottish Government considered whether the Scottish Ministers should make the first Chief Constable appointment to provide more planning time, but concluded that this would not provide the right degree of separation between the Scottish Ministers and the leader of the new service. The Scottish Government also considered that the relationship between the Chief and the Chair of the Scottish Police Authority would be crucial to the successful governance of the new service and that this would be assisted by the Chair leading the recruitment process.

Alternative approaches – Police Negotiating Board

154. The Scottish Government considered putting in place separate police negotiating arrangements for Scotland to replace the current UK wide arrangements in the Police Negotiating Board, but recognising that the current consensus within Scottish policing is that Scotland should remain within the UK wide negotiating structure, the Scottish Government is not proposing any changes to existing arrangements. The Scottish Government will however want to work with the Independent Chair of the PNB to ensure it continues to operate effectively in Scotland and meets the needs of Scottish policing. The Scottish Government will also need to take account of the implications for Scotland of any recommendations arising from Part 2 of the Winsor Review into the future of PNB.

Fire and rescue workforce

155. The Bill allows the Scottish Fire and Rescue Service to appoint staff to ensure that it remains sufficiently resourced and able to carry out its duties. The Scottish Fire and Rescue Service will, after negotiation with the trade unions, establish the terms and conditions which will apply for new officers and staff. The Scottish Ministers will be responsible for appointment of the first Chief Officer of the new service. Subsequent Chief Officers will be appointed by the Scottish Fire and Rescue Service Board, subject to the approval of the Scottish Ministers. The Scottish Ministers anticipate that all appointments should be made following a fair and open competition.

156. Reform will not change the status, or terms and conditions of service, of existing firefighters or support staff. The Bill sets out that all firefighters, officers, control room and support staff (including those on secondment to other bodies) employed by the Joint Boards, relevant staff employed by unitary authorities and the Scottish Government who are in post immediately before the new body is established should transfer to the new body on the day of establishment and should retain their terms and conditions of service on transfer. Once the new fire and rescue service is operational, any changes to terms and conditions, including harmonising the terms and conditions of service for support staff previously employed by each of the eight existing Fire and Rescue Authorities and Joint Boards, will be an issue to be negotiated between the Scottish Fire and Rescue Service and the trade unions.

157. National pay and conditions for firefighters and support staff up to area manager level are set by the National Joint Council (NJC) Scheme of Conditions of Service. The 11 roles covered range from firefighter to area manager (and their control room equivalents). Additional elements of pay and allowances rest with the employer and are determined locally. Similar arrangements are in place for brigade managers (“Principal Officers”). There are no plans to change these negotiation arrangements during transition to a single service. Any changes to existing pay scales, for example to align with existing public sector pay frameworks, will require discussions between the new body and the trade unions.

158. The Scottish Government will ensure that fire and rescue reform does not result in any detriment for members in respect of their pension scheme entitlements and that firefighters retain their right to be members of the New Firefighters Pension Scheme and control room staff and support staff remain eligible to continue to be in the Local Government Pension Scheme (Scotland). There may, of course, be other changes as a result of wider public sector pension

reform but negotiations on this will be separate from discussions around the reform of the fire and rescue services. Any Scottish Government staff who transfer to Scottish Fire and Rescue Service will no longer be eligible for membership of the Civil Service pension scheme. Arrangements will be put in place for a bulk transfer of these staff to the Local Government pension scheme.

Consultation

159. Respondents to the second consultation included key stakeholders such as the Fire Brigades Union and Unison. They supported proposals for the transfer of officers and staff to the new service although Unison expressed concerns in relation to workforce planning for control room staff and sought clarification around pensions and terms and conditions for support staff. There were however consistent calls across many responses on the need to harmonise staff terms and conditions. This will be a matter for the Scottish Fire and Rescue Service to determine in consultation with the trade unions.

Alternative approaches – fire and rescue workforce - National Joint Council (NJC)

160. The Fire (Scotland) Act 2005 gives the Scottish Ministers the power to set up Scottish arrangements for negotiating pay and conditions. The Scottish Government considered using these powers to set up separate arrangements to replace the existing UK wide arrangements in the National Joint Council (NJC). However the Scottish Government considers that decisions on how best to review future arrangements are best made by the Scottish Fire and Rescue Service Board in due course. The Bill is repealing these powers (section 49 and 50 of 2005 Act).

PLACING INDEPENDENT CUSTODY VISITING ON A STATUTORY FOOTING

161. Independent custody visiting was introduced into Scotland in 1999. Under this scheme volunteers attend police stations to check on the treatment of people held in custody and the conditions in which they are held. Currently police authorities and joint boards have responsibility for organising and overseeing the delivery of independent custody visiting, in consultation with Chief Constables. The Bill places the arrangements for independent custody visiting on a statutory footing, as is currently the case in the rest of the UK.

162. The UK ratified OPCAT¹⁷ in March 2009. It is an international human rights treaty which sets out the measures which should be in place to monitor the treatment of and conditions of detainees. It created a Sub-Committee for the Prevention of Torture (SPT) which has issued guidance on implementation of OPCAT. While OPCAT does not dictate the structure of provision, the SPT has set out key criteria that should be met, most importantly that the scheme should be independent and impartial, with its mandate and powers set out in statute. Independent custody visiting schemes are statutory in England & Wales and Northern Ireland.

163. The Bill places the arrangements for independent custody visiting in Scotland on a statutory footing, in line with the rest of the UK. It ensures that independent custody visiting in Scotland is OPCAT compliant, building as much as possible on the existing skills and expertise

¹⁷ OPCAT: <http://www2.ohchr.org/english/law/cat-one.htm>

across the custody visiting network. Duties which will be placed on the new Scottish Police Authority include:

- Ensuring that independent custody visiting schemes are in place and comply with Scottish Government guidance;
- Arranging publication of statistics and findings from custody visiting schemes; and
- Reviewing the arrangements for independent custody visiting as and when necessary and acting to address any issues.

Consultation

164. Proposals to put independent custody visiting on a statutory footing were broadly supported across all the respondents to the police reform proposals with wide acceptance that this will ensure this important service will continue to be delivered across Scotland.

Alternative approaches - independent custody visiting

165. No alternatives were considered as a statutory scheme of this nature is required to implement the Scottish Ministers' obligations under OPCAT.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

166. The provisions reforming the Police Service of Scotland and the Scottish Fire and Rescue Service are not discriminatory on the basis of gender, race, age, disability, sexual orientation, transgender status, marital status or religion. An Equality Impact Assessment (EQIA) has been developed to better understand the issues that affect people in these groups, and any effects that the reforms may have. As part of this process, the first formal consultation sought views on potential impacts on equality. Officials also met with equality stakeholders, and equality and diversity leads and staff associations in the police and fire and rescue services, to obtain their insights and input into developing the EQIA.

167. Initial findings included the fact that both services' workforces are predominantly male, with most female, disabled and ethnic minority staff being employed in support staff roles. As such, decisions affecting staff need to consider any impacts on these groups of people and implications on the diversity of the workforce. There are also a number of equality issues affecting communities, however reform will aim to help provide greater consistency in service delivery for equality groups throughout Scotland, and bring benefits in terms of economies of scale, best practice, shared budgets and resources. Key findings in relation to this include the need to retain and enhance the knowledge, relationships and current good work which has been taking place to address these issues; and to ensure that equality issues affecting communities are addressed going forward. Building relationships and effective local engagement, to understand the specific needs of individual communities, and the local impact of decisions affecting service delivery will be important going forward.

EQIA - Consultation

168. A draft of the EQIA was also included in the second consultation. Respondents welcomed the intention to allow those police and fire and rescue services which currently display good practice in service response and workforce issues across all the equality strands to lead the way in setting the equality agenda across the services. Responses will feed into further development of the EQIA and the findings will be considered as part of the transition process and operational delivery of the new services.

Human rights - police

169. The Scottish Government is committed to creating a modern, inclusive Scotland which respects, protects and realises human rights. The police have obligations across all their duties and powers under the Human Rights Act 1998. This will be continued under the new Police Service.

170. The police have a pivotal role in ensuring that people's human rights are not infringed by others. They uphold the laws that, for example, protect people's right to life (Article 2 ECHR), the right to respect for private and family life (Article 8), the prohibition of discrimination (Article 14) and the protection of property (Article 1 of Protocol 1). However, in performing this role the police are sometimes required to use force and/ or to limit the right to liberty and security of individuals. Article 5 of the ECHR sets out the circumstances in which this can take place.

171. Given the above, the Scottish Government has carefully considered the effect of the Bill on human rights and considers that its provisions are compatible with the European Convention on Human Rights (ECHR).

172. The Bill makes no changes to the existing legal powers of the police to use force or to arrest or detain individuals and, in that respect, has no human rights implications. Nonetheless, provisions on the governance and accountability of policing; on independent complaints and investigations; on the provision of forensic services; and on Independent Custody Visiting will serve to enhance and protect human rights.

173. In terms of governance and accountability, the Scottish Police Authority will hold the Chief Constable to account for the performance and actions of the Police Service of Scotland, across the full range of policing. The Bill also provides more routine opportunities for the Scottish Parliament to consider and scrutinise policing by, for example, ensuring that the Scottish Policing Plan and Annual Reports of the Authority, HMICS and PIRC are laid before the Scottish Parliament. In its response to the second consultation, Amnesty International welcomed this.

174. The provisions of the Bill ensure that individuals continue to have recourse to an independent body, the PIRC, if they are not satisfied with the police's handling of a complaint. This is consistent with the public's right to an effective remedy as required under Article 13.

175. Articles 2 and 3 of ECHR protect the right to life and prohibit inhuman or degrading treatment. Taken together these Articles place a positive requirement on the state to investigate effectively incidents such as death or mistreatment where there is police involvement and to ensure both hierarchical and institutional independence in such investigations. The provisions of the Bill achieve this by establishing PIRC and giving it powers to investigate such incidents. It also supports Articles 2 and 3 by placing the arrangements for independent custody visiting, whereby volunteers attend police stations to check on the treatment of people held in custody and the conditions in which they are held, on a statutory footing.

176. The Bill establishes a forensic service which will be directly accountable to the Scottish Police Authority, rather than the Chief Constable, for its operation and performance. This provides an important separation between forensic and police investigations and in doing so, supports an individual's right to a fair trial under Article 6.

Human rights - fire and rescue

177. There are no human rights issues raised through the Bill for fire and rescue services.

Human rights – consultation

178. In response to the consultation, organisations such as Amnesty International, the Scottish Human Rights Commission and the Human Rights Consortium Scotland, focused on the human rights implications of the proposals for a single Police Service of Scotland. They emphasised that reform provides an opportunity to embed human rights standards into the structure, policy and practice of policing in Scotland through, for example, explicit reference to human rights in the police purpose and oath. They also indicated that reform could enhance transparency and accountability; that there were useful lessons from the establishment of the Police Service for Northern Ireland; and that it was important that existing good practice on human rights was not lost in the process of reorganisation. Other responses highlighted the need for the composition of the Authority to include individuals who have the skills, experience and expertise to constructively challenge the Chief Constable (or agreed delegated chief officer) over the exercise of his or her powers across all types of policing.

179. Consultation responses showed wide support for the establishment of the Police Investigations and Review Commissioner (PIRC).

Rural and island communities

180. The Bill will have a positive impact on island communities, strengthening the connection between services and local communities by creating a formal relationship between each service and the 32 local authorities. The new roles of local commander and local senior officer will afford the three island local authorities a much greater role in the shaping of service priorities and delivery of local outcomes than would have been the case with joint boards on the mainland. The Bill will also ensure more equal access to specialist support and national capacity where it is needed.

181. The objective of police and fire and rescue reform is to protect and improve local services. Under new services, the majority of policing and fire and rescue services will continue to be delivered locally. The Bill provisions on local plans will help to ensure that the design and delivery of local services are tailored to the areas they serve, reflecting the particular needs of rural communities where appropriate and directed towards the distinct priorities of those areas.

Local government

182. As outlined, the Bill will create a new formal relationship between the services and local authorities, involving many more local councillors and better integrating with community planning partnerships.

183. Local government currently has a range of statutory functions including duties to:

- Appoint senior officers and set the terms of such appointments;
- Oversee the work of the Chief Constable / Officer and hold them to account;
- Control the budget for the force / service and provide the Chief Constable / Officer with necessary resources;
- Make arrangements to secure best value and report publicly on performance, in accordance with statutory guidance;
- Be informed of policing / fire and rescue provision in their area and call for reports from the Chief Constable / Officer in relation to particular policies; and
- Keep themselves informed of the manner in which the Chief Constable / Officer deals with complaints made by a member of the public.

184. Police and fire and rescue authorities also carry out a number of administrative functions, in particular handling finances, procurement and contractual issues (and in some cases clerking joint boards) but the discharge of these functions may be delegated to officials or to the Chief Constable and Chief Officer who may in turn arrange for the discharge of such functions by their staff.

185. For 30 of the 32 local authorities, these statutory functions are currently exercised by 6 regional joint boards, which cover between 3 and 12 local authority areas and are made up of representatives from those constituent areas. With the repeal of the Police (Scotland) Act 1967 and the creation of the Scottish Police Authority, local authorities will cease to be police authorities, whilst changes to the Fire (Scotland) Act 2005 mean that local authorities will cease to be fire and rescue authorities. In their place, the Bill creates a new, direct and formal relationship between the national services and each of Scotland's 32 local authorities, involving many more local councillors in monitoring and challenging the services locally and better integrating service provision with community planning partnerships.

186. Responsibility for appointing senior officers, estates, assets and staff of joint boards and unitary police and fire and rescue authorities will transfer to the Scottish Police Authority and Scottish Fire and Rescue Service respectively. As covered in paragraph 119, funding for both services will no longer fall to local government. Although the management of these assets and

resources will transfer, the role of local authorities in working with the services to shape service design and delivery will be strengthened. The provisions will bring engagement and influence closer to communities than is the case for those 30 local authority areas currently covered by regional joint boards. This shift from regional to local engagement and monitoring will better align with arrangements for community planning and the development of Single Outcome Agreements. The benefits of co-terminous boundaries enjoyed by the two unitary police and fire and rescue authorities - Fife and Dumfries and Galloway - in helping facilitate effective and efficient partnership working will be adopted across Scotland.

Sustainable development

187. As with other public bodies in Scotland the new services will be subject to the requirements of the Climate Change (Scotland) Act 2009 and as such will be required to contribute to and report on the achievement of ambitious carbon reduction targets to reduce Scotland's emissions of greenhouse gases by 80 per cent by 2050, with an interim target for 2020 of at least 42 per cent reductions in emissions.

188. The creation of single services will provide the opportunity to take a strategic approach to reducing energy-use, minimising waste and reducing transport.

Conclusion – fit with the wider public sector

189. The Scottish Government established the Commission on the Future Delivery of Public Services, led by Dr Campbell Christie, in November 2010. The Commission was asked to undertake a strategic review of public service delivery in Scotland and to provide a road-map to guide the future reform of public services. The Commission was tasked specifically to make recommendations that would improve the quality of public services in Scotland and ensure the lasting financial sustainability of public service provision given the significant challenges ahead.

190. In June 2011, the Commission published its conclusions stating that the four key objectives of a reform programme must be to ensure that:

- Public services are built around people and communities, their needs, aspirations, capacities and skills, and work to build up their autonomy and resilience;
- Public service organisations work together effectively to achieve outcomes;
- Public service organisations prioritise prevention, reducing inequalities and promoting equality; and,
- All public services constantly seek to improve performance and reduce costs, and are open, transparent and accountable.

191. The Scottish Government's response to the Christie Commission report was published on 21 September 2011¹⁸. The Scottish Government committed itself to a public service reform programme which, over the term of this five-year Parliament, will intensify the focus on improving service outcomes for the people of Scotland. It will be built on four pillars:

¹⁸ Scottish Government's response to the Christie Commission report – <http://www.scotland.gov.uk/Publications/2011/09/21104740/0>

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- A decisive shift towards prevention;
- Greater integration of public services at a local level, driven by better partnership, collaboration and effective local delivery;
- Greater investment in the people who deliver services through enhanced workforce development and effective leadership; and
- A sharp focus on improving performance, through greater transparency, innovation and use of digital technology.

192. Police and fire and rescue reform is one important element of that public sector reform programme, which is being developed following the principles of all four pillars of public sector reform.

193. There is a clear case for structural reform of police and fire and rescue. The performance of our vital frontline services depends on it, as there is strong evidence that creation of a single police and a single fire and rescue service is the best way to safeguard the vital frontline services communities depend on. The planned reforms will improve performance by retaining local services for local communities while giving all parts of Scotland access to national expertise and assets whenever and wherever they are needed. The new services will enhance partnership working at a local level by establishing strong, formal relationships between each service and each of Scotland's 32 local authorities. Local officers will be designated for each local authority area to work with them, and other partners, to meet local priorities. In this new arrangement more local councillors will have a say in shaping services in their area. At a national level too, the Scottish Parliament will have more opportunities to scrutinise the performance of services and hold them to account.

194. The Scottish Government's response to the Christie Commission also stressed the importance of public money being spent wisely to achieve better outcomes and improve value for money. In police and fire and rescue reform, estimated savings of £130 million per year can be achieved by making sure money is spent on the frontline and not on unnecessary duplication across eight services. Single services for Scotland are the best way to protect communities from cuts by freeing up resources for frontline policing and fire and rescue services.

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POLICE AND FIRE REFORM (SCOTLAND) BILL

POLICY MEMORANDUM

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