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SPICe Briefing

# Police and Fire Reform (Scotland) Bill: Stage 3

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Denis Oag

This briefing considers the parliamentary scrutiny of the Police and Fire Reform (Scotland) Bill prior to Stage 3 proceedings which are scheduled for 27 June 2012. The briefing outlines the Justice Committee's Stage 1 report and recommendations and the Government's response. It also considers significant amendments proposed during Stage 2 proceedings.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## EXECUTIVE SUMMARY

The Police and Fire Reform (Scotland) Bill (the Bill) was introduced in the Parliament on 16 January 2012 by the Cabinet Secretary for Justice, Kenny MacAskill MSP.

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

In the Stage 1 debate, the Justice Committee supported the general principles of the Bill but included in its Stage 1 report a number of recommendations (and some concerns) on the detail of the Bill. These included that:

- the size of the Scottish Police Authority (SPA) and Scottish Fire and Rescue Service (SFRS) board should not be less than 11 members
- there is a need for greater clarity on the relationship between the national boards and local authorities
- the Scottish Government should consider providing guidance on what constitutes operational independence in respect of the Chief Constable
- local authorities should be provided with the means of assessing future changes to resource allocation within their areas
- the Chief Constable, Chief Fire Officer and the Police Investigation and Review Commissioner (PIRC) should be appointed as soon as possible
- the PIRC should be able to call on forensic services at no cost and should have qualified privilege to protect against defamation proceedings
- clarity is required on the role of the PIRC in relation to serious incidents involving the police and on its powers in relation to public interest investigations
- clarity is also required on when the full business cases will be ready and whether projected budgets would be adjusted accordingly
- there remains an urgent need to resolve the issue over the ability of the new police and fire and rescue services to recover VAT
- the Bill should be more explicit on human rights
- the rescue functions of the fire and rescue service should be clarified, though not necessarily on the face of the Bill

At Stage 2, over 270 amendments were lodged on the Bill around a third of which were opposition amendments.

Among the most significant opposition amendments were those relating to the establishment of a parliamentary Scottish Policing Commission (amendments 242 and 243 in the name of Graeme Pearson MSP). The proposed Commission would have responsibility for keeping the arrangements for policing, established under the Bill, under review. Following debate, the amendments were withdrawn on the basis that further talks would take place between the Government and Parliament to find ways of improving accountability through more pro-active parliamentary scrutiny. The Cabinet Secretary expressed the view that such arrangements should be based around the current committee structure, in either the Justice Committee or a sub-committee of that Committee.

## INTRODUCTION

On 16 January 2012, the Scottish Government introduced the Police and Fire Reform (Scotland) Bill, together with explanatory notes, a policy memorandum, financial memorandum (and other documents) in the Scottish Parliament.

The Bill seeks to abolish the existing eight territorial police forces and eight fire brigades in Scotland, together with their governing bodies, and to replace them with a national police force, a national fire and rescue service and new governing and funding arrangements. The Bill also seeks to abolish the Scottish Police Services Authority and the Scottish Crime and Drugs Enforcement Agency, to place independent custody visiting onto a statutory basis and to reconstitute the Police Complaints Commissioner for Scotland as the Police Investigation and Review Commissioner (PIRC) with new investigatory powers.

SPICe briefings [12/14 Police and Fire Reform \(Scotland\) Bill](#) (Oag 2012) and 12/15 [Police and Fire Reform \(Scotland\) Bill: Financial Memorandum](#) (Burnside 2012) provide further information on the Bill as introduced.

## STAGE 1 PROCEEDINGS

On 25 January 2012, the Justice Committee was appointed as lead Committee on the Bill and the Local Government and Regeneration Committee (LGR Committee) was designated as a secondary Committee. The Parliament agreed a deadline of 11 May 2012 for completion of the Stage 1 process.

Calls for written evidence on the Bill were issued by the Justice Committee on 17 January 2012, by the Finance Committee (on the provisions in the Financial Memorandum) on 18 January 2012 and by the LGR Committee (principally on those parts of the Bill which relate to the arrangements for local authorities and the implementation of local policing and fire service arrangements) on 25 January 2012.

The LGR Committee held two oral evidence sessions on the Bill. Its [first evidence session](#) took place on 8 February 2012 and its [second evidence session](#) on 21 February 2012. The Finance Committee held one [evidence session](#) on 22 February 2012. The Justice Committee took Stage 1 evidence at five meetings between 28 February and 27 March 2012.

The Justice Committee published its [Stage 1 Report](#) (Scottish Parliament Justice Committee 2012b) on 2 May 2012 and the [Stage 1 debate](#) took place on Thursday 10 May 2012. Details of the oral evidence sessions and the written evidence received by the three committees can be accessed from the webpages of the [LGR Committee](#), the [Finance Committee](#) and the [Justice Committee](#).

A summary of parliamentary consideration of the Bill to date is given in table 1, below.

**Table 1: Summary of Parliamentary Consideration**

Bill formally introduced in the Parliament	16 January 2012
Designation of lead and secondary committees Motion S4M-01814 <a href="#">OR 25 January 2012</a>	25 January 2012
Stage 1: Justice Committee <a href="#">call for written evidence</a>	Issued 17 January 2012 Closed 6 March 2012
Stage 1: Local Government and Regeneration Committee evidence sessions	8 and 21 February 2012
Stage 1: Finance Committee evidence session	22 February 2012
Stage 1: Subordinate Legislation Committee consideration	28 February, 20 March, 8 May 2012
Stage 1: Justice Committee evidence sessions	28 February, 6, 13, 20, 27 March 2012
Stage 1: Local Government and Regeneration Committee's <a href="#">Report to the Justice Committee</a>	19 March 2012
Stage 1: Finance Committee <a href="#">Report</a>	20 March 2012
Stage 1: Subordinate Legislation Committee <a href="#">Report</a>	22 March 2012
Stage 1: Justice Committee Stage 1 Report	2 May 2012
Government Response to the Stage 1 Report	9 May 2012
<a href="#">Stage 1 Plenary Debate</a>	10 May 2012
Stage 2: Justice Committee Consideration	29 May and 12 June 2012
Stage 3: Plenary Debate and consideration of amendments	Scheduled for 27 June 2012

## STAGE 1 REPORT AND GOVERNMENT RESPONSE

The Justice Committee supported the general principles of the Bill in its Stage 1 Report (Scottish Parliament Justice Committee, 2012b).

Table 2 highlights the key recommendations in the Stage 1 Report and the subsequent [response](#) of the Scottish Government (Scottish Government, 2012). It also discusses some of the relevant amendments lodged at Stage 2 in relation to these recommendations. It should be noted that this includes amendments which were disagreed to, withdrawn or not moved. All Government amendments were agreed to by the Committee.

**Table 2: Stage 1 Report Recommendations, Subsequent Response of the Scottish Government and relevant amendments at Stage 2**

Committee Recommendation and Reference	Government Response	Relevant amendments lodged at Stage 2 (and other notes)
<b>Scottish Police Authority and Scottish Fire and Rescue Service Board - <i>Role, Size and Composition</i></b>		
We are of the strong view that the primary function of the SPA and of the SFRS Board is to govern the new services and to hold the chief constable and chief fire officer to account.	The Scottish Government welcomes the Committee's recommendations on the role, size and composition of the Board. These Boards will play a crucial role in the success of the new services. We strongly agree that the primary function of the Boards is to govern the new services and hold the chief officers to account - not to provide local representation.	The Government lodged amendments 1 and 120 to separately identify appointment of the chairs of the SPA and SFRS from other members. These amendments were agreed to. However, while amendments were lodged by several committee members to increase the size and composition of the SPA and SFRS, none were supported by the Government and none were agreed to by the Committee. (See opposition amendments 1A to 1D, 178, 179, 181. Also, amendments 180 and 204 by Jenny Marra MSP, sought to ensure a gender balance on the SPA).  Opposition amendments 183 and 184 by Graeme Pearson MSP and David McLetchie MSP respectively, sought to increase the transparency of meetings of the SPA by making statutory provision for holding meetings in public and
We are not convinced that the Bill should specify a set number of either lay or local authority members to sit on the boards, as we believe that flexibility is required to ensure the most suitable individuals are appointed.	We also welcome and share the Committee's view that the composition of the Board should not be prescribed in legislation, particularly as the appropriate size and composition may change over time. It is more important that each Board should have the right combination of members to do their jobs effectively, and that those members should be appointed on the basis of experience, ability and suitability.	

<p>The Committee is reluctant to stipulate the size of the SPA and SFRS Board, as we believe that the quality and experience of their members are far more important than numbers. However, we lean towards the view that a board of fewer than 11 members would not provide the breadth of knowledge and experience required to demonstrate effective governance, nor would it allow for the vacancies and absences that will inevitably arise.</p>	<p>In terms of the size of the Boards, the Scottish Government notes the Committee's views, and will take a final decision following the Stage 1 debate.</p>	<p>publishing papers. The Cabinet Secretary argued against these amendments on the grounds that they provided, "no safeguards for sensitive information" and that they would compel the authority to publish its correspondence with local authorities. (OR Col 1353)</p> <p>A similar amendment was lodged in relation to the SFRS (Amendment 262 Graeme Pearson MSP)</p> <p>Amendments 183, 184 and 262 were disagreed to.</p>
<p>The Committee recommends that part of the Boards' initial work should include suitable training for all members to ensure they are equipped to contribute effectively to the work of the boards.</p>	<p>Arrangements are being made to provide a comprehensive induction for the Chair and members of the Boards on appointment to ensure that the Boards operate to the highest standards.</p>	<p>However, the Cabinet Secretary for Justice said that he has written to David McLetchie MSP indicating his intention to lodge an amendment at stage 3 to ensure that the SPA meets in public, but with appropriate protections for sensitive information, and that it publishes its agendas and papers, but with the necessary safeguards in place for sensitive information. The Government has also undertaken to lodge a similar amendment for the SFRS. (OR Col 1478)</p>
<p>The Committee agrees with witnesses that the SPA must be transparent in delivery of its functions, including holding its meetings in public and publishing its papers, to demonstrate accountability and gain trust, particularly with the public.</p>	<p>The Scottish Government also strongly agrees that the Boards should take steps to be open and transparent and to engage stakeholders and communities in their work. We fully expect the SPA and SFRS to meet in public and publish their papers, but we want that transparency to go further, and for both organisations to consider innovate ways of opening up their decision making and allowing others to contribute.</p>	
<p>We believe that the same principles of transparency should apply to the SFRS Board.</p>		
<p><b>Relationship between the SPA and SFRS Board and local government</b></p>		
<p>We are not convinced that there is a need for a formal mechanism to be included on the face of the Bill to help resolve disputes between the national police or fire and rescue boards and local authorities.</p>	<p>The Scottish Government welcomes and shares the Committee's views about the value of a statutory dispute resolution mechanism. Such a mechanism would risk becoming the first port of call as soon as issues arise, and could detract from the important relationship between the local authority and local senior commander/officer.</p>	<p>The Committee did not agree to amendments 205 (Lewis Macdonald MSP) and 207 (David McLetchie MSP) which sought to introduce a degree of dispute resolution.</p>
<p>The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and</p>	<p>The "Pathfinder" pilots are currently considering the relationship between the national boards and local authorities. The findings from those pilots, which we</p>	

<p>local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms.</p>	<p>plan to make publicly available, will help inform any guidance on this issue. A Learning Network has been established to enable the Pathfinders to share good practice as they develop their new local scrutiny and engagement arrangements and this group, which came together for its first national network event on 19 April, is currently sharing information through an online Knowledge Hub which is freely available to all interested parties at:  <a href="https://knowledgehub.local.gov.uk/group/localscrutinyandengagementnetwork">https://knowledgehub.local.gov.uk/group/localscrutinyandengagementnetwork</a></p>	
<p><b>Power to specify the type of goods and services the SPA may provide</b></p>		
<p>The Committee notes the Subordinate Legislation Committee's concerns that the power to specify the type of goods and services the SPA may provide appears to be "very general". On balance, however, we accept the Scottish Government's reassurances that the power will only be exercised in certain circumstances and that the Scottish Parliament will have an opportunity to examine the related subordinate legislation.</p>	<p>The Scottish Government welcomes the Committee's views on this issue. As we made clear in our response to the Subordinate Legislation Committee on 30 April, the Bill already effectively provides that this power would only be exercisable in connection with functions of the SPA and Police Service.</p> <p>While the power to specify the types of goods and services which might be provided is not subject to specific constraints, the SPA's power to provide goods and services (and make arrangements for their provision by the Police Service) is itself constrained. In particular, section 84(2) makes clear that the SPA can only provide such goods and services as may be specified under subsection (1)(b) if it considers the provision of those goods and services to be "appropriate and consistent with the proper carrying out of its functions".</p> <p>Section 84(4) makes clear that arrangements may be made for the provision of goods and services specified under subsection (3)(b) where this is consistent with the proper carrying out of police functions. It is by this mechanism that the Bill seeks to ensure that goods or services are provided only where there is a connection</p>	<p>Government amendments 97 and 98 make it clear that an order may specify the types of persons to whom goods and services may be provided rather than listing those persons by name. The purpose is to ensure that parliamentary scrutiny is maintained without excessive bureaucracy.</p> <p>Amendment 99 clarifies that those organisations to whom forensic services must be provided (namely, the Police Service, the PIRC, the Lord Advocate and procurators fiscal) will not be charged for those services and also removes the provision that any charging for the provision of goods and services must be limited to recovering the cost of providing those goods and services.</p>

	with the functions of the SPA and police service.	
<b>Reserves</b>		
<p>The Committee is unclear as to why the Bill does not give the SPA and SFRS the ability to accrue reserves. We therefore ask the Scottish Government to provide an explanation as to why this power, which was available to the police and fire and rescue authorities and joint boards, is being removed.</p>	<p>Public bodies operate to different financial rules to local government. All public bodies are required to operate within a financial regime set by HM Treasury which does not allow the holding of reserves locally.</p> <p>Large sections of the public sector in Scotland operate effectively and efficiently in this way. These range from relatively small organisations such as the Police Complaints Commissioner for Scotland with a budget of around £1 million; to bodies such as Greater Glasgow and Clyde Health Board with a budget of £1.9 billion, to the Scottish Government with a budget in 2012-13 of about £28 billion.</p> <p>The Scottish Government is confident that, with large single budgets, the SPA (with a budget of around £1.4 billion) and SFRS (with a budget of around £350 million) will be able to operate efficiently and effectively in the same way as all these other bodies do.</p>	<p>Amendment 188, in the name of Lewis Macdonald, sought to give the SPA the power to hold reserves.</p> <p>However, the Cabinet Secretary said that, as a nationally governed organisation, the SPA will be required to operate within a financial regime that is set by HM Treasury and which does not allow the holding of reserves locally (OR Col 1377)</p> <p>The amendment was disagreed to.</p>
<b>Role of the Scottish Ministers</b>		
<p>The Committee believes there must be a balance between operational independence and democratic accountability of the police and therefore accepts the Scottish Government's position that use of the power of direction may be necessary in very limited circumstances and in relation to non-operational matters only. Furthermore, we are not convinced that including a definition of operational independence on the face of the Bill would be helpful.</p>	<p>The Scottish Government welcomes the Committee's recognition of the balance the Bill seeks to strike between operational independence and democratic accountability.</p> <p>The Scottish Government also shares the Committee's view that a definition of operational independence on the face of the Bill would not be helpful, and believes that it would risk putting some aspects of policing beyond scrutiny and accountability.</p>	<p>Amendments 192 (David McLetchie MSP) and 166 (Alison McInnes MSP) sought to place restrictions on the use of Scottish Ministers' powers of direction.</p> <p>The amendments were disagreed to by the Committee.</p>

<p>We do however acknowledge the genuine concerns of witnesses on this matter and would urge the Scottish Government to work with stakeholders to try to allay these fears, perhaps by developing guidance or a protocol and making use of suggested definitions of operational independence, such as that provided by the Scottish Police Federation, as a starting point.</p>	<p>The Bill very clearly defines the respective roles and responsibilities of the Chief Constable, the SPA and the Scottish Ministers. It is also absolutely clear that the only person who can direct and control constables is the Chief Constable, and that the only person who can direct the Chief Constable in the investigation of crime is the Lord Advocate or appropriate procurator fiscal. Scottish Ministers are not persuaded that guidance or a protocol would add to that clarity. The Government will, of course, continue to work with all stakeholders to make sure that the clarity in the Bill is translated into policy and practice.</p>	
<p><b>Role of the Scottish Parliament</b></p>		
<p>The Committee accepts that the move to national services and the abolition of local government authorities and boards places an onus on the Scottish Parliament to enhance and formalise its scrutiny of the police and fire and rescue services. Accordingly, we welcome provisions in the Bill requiring strategies and plans to be laid before the Parliament.</p>	<p>The Scottish Government welcomes the Committee's findings. Effective Parliamentary scrutiny is essential to democratic policing, and the Bill provides many opportunities for such scrutiny.</p>	<p>Graeme Pearson MSP lodged amendments 242 and 243 which would have introduced a new chapter and schedule to the Bill. The effect of these amendments would be to establish a Scottish Policing Commission with membership drawn from MSPs. The Commission would have responsibility for keeping arrangements for policing under review.</p>
<p>The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police.</p>	<p>See above</p>	<p>Following the offer of further discussion on this topic with the Cabinet Secretary amendment 242 was withdrawn and amendment 243 not moved.</p>
<p>The Committee agrees with the Finance Committee that effective post-legislative scrutiny of the move to single services will be crucial and would welcome a commitment by the Scottish Government to provide sufficient information to assist this process.</p>	<p>In the Scottish Government's view, the Justice Committee would be best placed to take the lead in relation to such scrutiny, given the breadth of its activities. However, Scottish Ministers recognise that is a decision for the Parliament itself to make. The Scottish Government will provide whatever assistance is required.</p>	
<p><b>Priorities, strategic and local plans, and annual reports, including local scrutiny</b></p>		
<p>The Committee notes that the chief constable</p>	<p>The SPA and the Chief Constable are separate</p>	<p>Government amendments 40 to 47 give</p>

<p>is to be involved in preparation of the strategic and annual plans, but we are unclear as to exactly what “involve” means in practice. We therefore seek clarification on this and on why there is no similar requirement to involve the chief constable in the preparation of the strategic police priorities.</p>	<p>entities. The Bill is clear that the SPA is responsible for the preparation of strategic and annual police plans, but that it must involve the Chief Constable. This will ensure that the Chief Constable has an active and meaningful role in the development of the Plans. It also enables a flexible approach to such involvement, rather than prescriptive processes and procedures.</p> <p>The Bill enables the Scottish Ministers to determine strategic police priorities relating to the policing of Scotland or the carrying out of the SPA's functions. It requires Ministers to consult the SPA and a range of other persons, which we expect would include the Chief Constable.</p>	<p>responsibility for preparing and publishing the annual police plan to the Chief Constable (rather than the SPA). The annual police plan will not now cover the functions and objectives of the SPA but will be focussed on service delivery and will contain any other information connected to policing which the Chief Constable considers appropriate.</p> <p>Government amendment 37 specifically adds the Chief Constable to the list of persons who must be consulted by Scottish Ministers before determining the strategic police priorities.</p>
<p><b>Local accountability and scrutiny - Local budgets</b></p>		
<p>The Committee believes that, in the interests of transparency and accountability, a “snapshot” of resource allocation within local authority areas as of 1 April 2013 should be given to local authorities so that they can measure any future changes, such as the transfer of funds, assets, and human resources.</p>	<p>The Bill already provides local authorities with very broad powers to request information and reports on the carrying out of fire and rescue functions and the policing of the local area. Providing that such requests are "reasonable", local commanders and local senior officers will be required to provide that information, which could include resourcing, insofar as it relates to the provision of services in that area. We see no need to make further provision for this.</p>	<p>Various amendments were lodged at Stage 2 to require the provision to local authorities of information on resource allocation, including budget allocation, at the local level.</p> <p>Amendment 203 (Graeme Pearson MSP) would have required the Chief Constable to provide each local authority annually with details of resources allocated to its area.</p>
<p>The Committee would welcome clarification as to whether, in practice, local authorities will have a degree of influence over local police resources.</p>	<p>The Bill provides that local authorities must be involved in setting priorities and objectives for police and fire and rescue services in the local area. It also provides that local plans be subject to local authority approval. Local authorities will also have powers to monitor performance, provide views and make recommendations on local services, and will be able to continue to provide additional funding for local services. Taken together, these provisions provide a suite of broad powers, enabling local authorities to help shape the design and delivery of police and fire services in their area. The extent to which this focuses</p>	<p>Amendment 206 (Lewis Macdonald MSP) would require local police plans to include costings and an explanation of budgeted provision for each section of the plan.</p> <p>Both amendments were disagreed to.</p>

	on resources will undoubtedly vary, but the vision set out in the Bill is one of joint working and partnership to improve shared outcomes for local communities.	
The Committee notes that funding for additional police officers is currently provided by local authorities. The Scottish Government has indicated that there appears to be no reason why this cannot continue under the Bill. The Committee seeks clarification on how this would work in practice.	As already referred to, following reform, local authorities will still be able to fund additional officers to help make their local communities safer and stronger. The funding which councils currently provide from their budgets for those additional officers will be retained by them and will not transfer to the Scottish Government.	In relation to the recovery of VAT, the Cabinet Secretary told the Committee (OR Col 1468) that the Government's clear view is that the ability to obtain local funding provides a direct link with local taxation, which would satisfy the Treasury's policy on this criterion.
<b>Local accountability and scrutiny - Rank of local commander and local senior officer</b>		
The Committee agrees with the Local Government and Regeneration Committee that the rank of local commander and local senior officer is not significant, and endorses the view that the knowledge and relationships that they build will be a more significant factor in negotiations on resources.	The Scottish Government welcomes and agrees with the Committee's view.	
<b>Local accountability and scrutiny - Local scrutiny</b>		
The Committee does not believe that the manner in which local authorities are to scrutinise the local plans should be included on the face of the Bill, as we believe this would be too prescriptive and would not allow any flexibility for local authorities to develop scrutiny mechanisms best suited to their own local areas.	The Scottish Government welcomes the Committee's agreement that the Bill should not be prescriptive about how local arrangements are delivered locally.	Several amendments on local police plans were lodged at Stage 2.  Amendments 207 and 208, in the name of David McLetchie MSP, sought to clarify what happens if the local authority does not approve the local police plan (207) and to compel the local commander to notify the local authority when a major priority or objective of the plan might not be achieved.
However, the Committee agrees that guidance for local authorities on this matter would be helpful and therefore supports the Scottish Government's plan to develop such guidance, informed by the outcomes of the	The guidance emerging from the Pathfinder pilots will be developed and shared throughout the next 12 months.	Both amendments were disagreed to.

<p>Pathfinder projects, which are currently underway. We urge the Scottish Government to ensure that this guidance is available for local authorities in time for them to put in place any scrutiny mechanisms before the single services become operational.</p>		
<p><b>Local accountability and scrutiny - <i>Community planning</i></b></p>		
<p>The Committee is not convinced by the argument put forward by some witnesses that the statutory duty to participate in local community planning should be extended to the chief constable and chief fire officer and is satisfied that this is a role more suited to local commanders and local senior officers.</p>	<p>The Scottish Government welcomes the Committee's views. We have been engaging with stakeholders on this issue and will consider it further in the wider context of the Scottish Government / COSLA review of community planning.</p>	<p>Amendment 55 places the duty to participate in community planning on the Chief Constable rather than the local commander. It also adds a new provision to require the Chief Constable to delegate the carrying out of this function in each local authority area to the local commander for the area.</p>
<p>The Local Government and Regeneration Committee considered in more detail witnesses' views on how the new services could engage with the public and recommended that local commanders and local fire officers should develop strategies for engaging with the public on policing and fire services. The Committee seeks the views of the Scottish Government on this matter.</p>	<p>The Bill provides for local commanders and local fire officers to consult widely on local plans. In addition, the policing principles require the police service to pursue its purpose in a way that is accessible to, and engaged with, local communities. The Scottish Government does not therefore consider there is a need for any further provision in this area.</p>	<p>Amendment 183, in the name of Graeme Pearson MSP, sought to increase the transparency of meetings of the SPA by making statutory provision for holding meetings in public and publishing papers. This amendment also sought to require the SPA to publish a strategy setting out what steps it intends to take to ensure public engagement.</p> <p>The Cabinet Secretary responded that there was already a requirement in the Bill for the SPA to operate in an "accountable and transparent way and in line with good governance practice" which would include engaging stakeholders and the public. (OR Col 1394)</p> <p>The amendment was disagreed to.</p>
<p><b>Local accountability and scrutiny - <i>Assets and liabilities</i></b></p>		
<p>The Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint</p>	<p>With the involvement of key stakeholders, including ACPOS, CFOAS and COSLA, the Scottish Government is leading on both the identification and</p>	<p>Government amendments 112 and 113 (police) and 139 and 140 (fire and rescue service) seek to ensure that Scottish Ministers can obtain the</p>

boards will be redistributed.	transfer of assets and liabilities projects. The proposal is that all assets and liabilities on the joint Police and Fire Board balance sheets, and all assets used by police and fire services within the unitary authorities as at 31 March 2013 should transfer to the SPA and SFRS. The assets and liabilities of the SPSA will also transfer to the SPA. How these assets and liabilities are redistributed will be a matter for the two services themselves to determine.	necessary information and assistance to meet property transfer schemes under the Bill.
<b>Implementation - <i>Appointment of the chief constable and chief fire officer</i></b>		
The Committee agrees with the overwhelming evidence that the chief constable and chief fire officer should be appointed as early as possible, and certainly before the proposed date of December 2012.	The Scottish Government strongly agrees that the Chief Constable and Chief Fire Officer should be appointed as soon as possible, and is working to achieve this.	To facilitate the early appointment of the Chief Constable and Chief Fire Officer, the Government introduced the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2012 [draft]. Section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 provides that, where a public body is to be established and will, when established, be specified as one that falls within the Commissioner's remit, the Scottish Ministers may provide that it is to be treated until its establishment as if it already falls within that remit. This order, therefore, will allow the process for the key public appointments to the bodies to formally commence in time to allow for those posts to be filled by autumn 2012.  The draft order was approved by the Justice Committee (OR Col 1413).  The Government also lodged amendments 1 and 120 to the Bill to enable Scottish Ministers to appoint the Chairs of the SPA and SFRS separately from other members. This will also support earlier appointment of the Chairs and, in
We note that the first chief fire officer may be appointed by the Scottish Ministers and would urge that this is undertaken as soon as possible.	Subject to Parliamentary approval of the Bill at Stage 1 and approval of a Scottish Statutory Instrument listing the SPA and SFRS as coming within the remit of the Public Appointments Commissioner, the process for recruiting the Chairs of the Boards and the Chief Officers will start as soon as possible.	
The Committee urges the Scottish Government to consider the options suggested by witnesses and others, with a view to a chief constable being in place at the earliest opportunity, while ensuring that the independence and robustness of the process is not undermined.	The Scottish Government expects the Chairs of the Boards and Chief Officers to be in place in Autumn 2012.	

		<p>turn, the Chief Constable and Chief Officer.</p> <p>Amendments 212 and 213 (and 216) will allow the SPA to be established and senior officers to be appointed in the transitional period before the police service is established.</p>
<b>Implementation - <i>Outline business cases</i></b>		
<p>The Committee seeks clarification from the Scottish Government as to (a) when the full business cases for the police and fire and rescue services will be completed, and (b) whether, in principle, the annual budgets for the services will be adjusted on the basis of the full business cases.</p>	<p>The full business cases will influence and determine the detailed design of the new police and fire and rescue services. Their production is therefore a matter for the services themselves, rather than the Scottish Government. We expect them to be completed at the earliest opportunity available to the new services. The budgets for the SPA and SFRS for 2013-14 and 2014-15 were determined in last year's Spending Review, which we believe provides sufficient funding for the services to fully undertake their respective functions.</p>	<p>During stage 2 proceedings, the Cabinet Secretary for Justice undertook to provide a written response, possibly before stage 3, on the state of preparation of the full business case. (OR Col 1409).</p>
<p>The Committee notes witnesses' concerns regarding the ability to achieve the projected savings contained in the outline business cases within the expected timescales. Therefore, we seek clarification as to the impact of the projected redundancies of civilian posts on the front line.</p>	<p>We agree with the Committee that this is an important issue. From 2016-17, we anticipate annual recurring cash savings in excess of £130 million across police and fire and rescue services. Removing duplication will, of course, mean fewer staff are required. Administrative support services – including HR, Finance, Procurement and Communications - are currently duplicated across eight police forces and eight fire and rescue services, and that duplication will be eliminated by reform. Similarly, there will no longer be the need for eight Chief Constables, eight Deputy Chief Constables, and thirteen Assistant Chief Constables in the single police service, and eight Chief Officers, four Deputy Chief Officers, and eleven Assistant Chief Officers in the single fire and rescue service.</p> <p>We are entirely confident that these projected savings - the calculation of which has erred on the side of caution - are deliverable and we will look to the new</p>	<p>David McLetchie MSP lodged two amendments on this topic. Amendment 202 sought to compel the Auditor General to review the savings made by the creation of a single police force as soon as practicable after the creation of the single force and for the report to be laid before the Scottish Parliament (OR Col 1408). Amendment 211 sought to force the Scottish Government to publish a full business case before the implementation of the Bill (OR Col 1499).</p> <p>Both amendments were disagreed to.</p>

	<p>Chief Constable and Scottish Police Authority to identify the right balance between protecting police officer numbers and the level of support staff required for an effective, efficient service. Similarly it will be for SFRS to determine the level of fire fighters and other staff to deliver an effective, efficient service.</p> <p>A projected level of voluntary redundancy which would deliver the appropriate efficiencies and removal of unnecessary duplication was factored into both business cases. We expect this reduction to be managed through not replacing people leaving the service and voluntary redundancies, rather than through compulsory redundancies.</p>	
<b>Implementation - Value Added Tax</b>		
<p>Regardless of whether the cost of VAT is to be met by the police and fire and rescue services or whether alternative arrangements are in place, the Committee is concerned at the possibility of a significant annual recurrent loss from the Scottish budget. The Committee urges the Scottish Government to pursue with HM Treasury all possibilities to resolve this issue, for example, (a) by treating the Police Service of Scotland in a similar way to the Police Service of Northern Ireland, and/or (b) by giving local authorities the capacity to contribute to police and fire budgets, so as to help clarify that the new bodies can “draw upon local taxation”.</p>	<p>The Scottish Government shares the Committee's concerns. The purpose of these reforms is to protect frontline services in the face of budget cuts from Westminster. It would therefore be extremely unfortunate if some of the potential benefits of those reforms were to be lost in this way.</p> <p>We are therefore actively exploring with HM Treasury the VAT status of the new bodies with a view to minimising any impact VAT may have. Both the Scottish Government and HM Treasury are exploring options whereby VAT may be recovered. In particular, we are aware that the Police Service in Northern Ireland is able to recover the VAT it is charged on the supply of goods or services, and are pursuing with HM Treasury a similar recovery mechanism for the new Scottish police and fire and rescue services.</p>	<p>Lewis Macdonald MSP lodged two amendments (177 and 255) the effect of which would have been for the SPA and the SFRS to be treated as local authorities.</p> <p>The Cabinet Secretary stated that the amendments would not achieve their purpose, “Simply stating that a body is a local authority does not automatically exempt it from VAT” (OR Col 1467). Furthermore, the amendments as drafted would place all the duties and functions of a local authority - such as those to do with schools and housing - on the SPA and SFRS.</p> <p>The Cabinet Secretary said that the Government’s view is that the ability to obtain local funding provides a direct link with local taxation, which would satisfy the Treasury’s policy in this respect. He went on to say that “We have made every effort to co-operate with the Treasury to satisfy that policy and achieve a policy outcome for Scotland’s police and fire services. We are ready and willing to lodge amendments to the Bill to</p>

		<p>provide reassurance to the Treasury by expressly including the funding link in the bill and we have shared illustrative draft amendments with it”.</p> <p>The Cabinet Secretary agreed to share these illustrative draft amendments with the Committee.</p> <p>After debate, both amendments were withdrawn</p>
<b>Implementation - Cross-border arrangements</b>		
The Committee asks the Scottish Government to provide an update on the outcome of discussions with the UK Government regarding negotiations on cross-border arrangements.	Discussions with the UK Government are still on-going. However, the Scottish Government is very confident that the current collaborative arrangements will continue.	
<b>Policing - Failure to perform duty</b>		
The Committee seeks clarification as to why the Scottish Government feels that it is necessary for the offence of neglect or violation of duty on the part of a constable to be prosecuted under solemn procedure, when witnesses have argued that this matter can be adequately dealt with under common law.	Neglect or violation of duty are extremely serious matters. Failure to have appropriate penalties risks tarnishing the reputation of the vast majority of constables who are honest and conscientious. The Scottish Government therefore believes that firm action should be taken against the very small number of constables who act unlawfully, and that they should face a statutory offence with a significant penalty. However, we are prepared to consider a reduction in the maximum penalty available.	<p>Amendment 170, in the name of John Finnie, reduces the penalty for the offence of neglect or violation of duty from the proposed maximum penalty of five years’ imprisonment to a maximum of two years.</p> <p>The amendment was agreed to.</p>
<b>Policing - Police appeals tribunal</b>		
On balance we are persuaded by the argument that police appeals tribunals should have membership composing solicitors and advocates, in the interests of ensuring that proceedings are impartial and determined by	The Scottish Government welcomes the Committee's view.	Amendment 65 in the name of the Justice Secretary, will prevent the chairing member from requiring a person to disclose information or answer a question that that person could refuse to answer or disclose on any grounds, whether to do with confidentiality or otherwise, in civil

an appropriately qualified body.		proceedings in the Court of Session.
<b>Policing - Retirement of senior officers</b>		
<p>The Committee notes the concerns of witnesses on the provision in the Bill to require a chief constable, a deputy chief constable or an assistant chief constable to retire in the “interests of efficiency or effectiveness”, and asks the Scottish Government to consider and respond to these concerns.</p>	<p>The Scottish Government notes that this is not a new power. It has always been available to police authorities and joint boards, by virtue of the Police (Scotland) Act 1967. The Scottish Police Authority will simply inherit this power, which will allow it to require a senior officer to retire where their retirement can clearly be shown to be in the interests of efficiency or effectiveness of the service.</p>	<p>The Government lodged amendments 9 to 20 which, it says, clarify that the power of the SPA to call on a senior officer to resign or retire on the grounds of efficiency or effectiveness relates to the efficiency or effectiveness of the Police Service. They also strengthen the rights of such senior officers in that the SPA must provide a written explanation of its reasons and an opportunity to make written representations to the SPA, which it must consider.</p> <p>Amendment 185, by Lewis Macdonald MSP, sought to ensure that a decision to call for the resignation or retirement of a senior police officer could not be delegated.</p> <p>Amendment 185 was disagreed to.</p>
<b>Policing - Forensic services</b>		
<p>The Committee accepts the Scottish Government’s rationale behind giving the Scottish Police Authority the responsibility to provide forensic services so as to create a “sterile corridor” between police investigations and forensic investigations.</p>	<p>The Scottish Government welcomes the Committee's support for giving the SPA the responsibility to provide forensic services.</p>	
<p>We do, however, seek clarity on how this will work in practice, and in particular whether forensic services will still be required to attend a crime scene where requested to do so by the police service.</p>	<p>The details of the new governance arrangements have still to be developed, in consultation with stakeholders and the SPA, but we expect the day-to-day operational model to remain as now. Scotland will continue to have a crime scene to court forensic service. Scene of crime officers will attend crime scenes, as requested by the police, and will co-operate fully with police crime scene managers; however, the forensic service will be accountable to</p>	

	the SPA, not the Chief Constable.	
The Committee recommends that the Bill should include a provision specifying that forensic services should be supplied to the Police Investigations and Review Commissioner at no cost.	The Scottish Government recognises the importance of ensuring that the PIRC has the necessary skills and capacity to carry out its job properly. We will therefore be bringing forward an amendment at Stage 2 to ensure that forensic services will be supplied to the Police Investigations and Review Commissioner at no cost.	Amendment 35, in the name of the Cabinet Secretary for Justice, provides that the SPA is required to supply forensic services to the PIRC and amendment 99 ensures that the PIRC will not be charged for forensic services
<b>Policing - Complaints and investigations</b>		
The Committee seeks clarity on how the relationship between the Lord Advocate and the Police Investigations and Review Commissioner would work regarding criminal investigations, and in particular as to the role of the PIRC in relation to serious incidents involving the police. We further seek the Scottish Government's views on comments by some witnesses that the power of the PIRC in relation to public interest investigations is too wide.	<p>The relationship between the Lord Advocate / prosecutors and the PIRC is similar to the current relationship that exists between the Lord Advocate/prosecutors and the police when investigating criminal complaints against the police. The only difference is that the PIRC's role only relates to investigating any circumstances in which there is an indication that a person serving with the police may have committed a serious criminal offence. Currently such investigations may be dealt with by asking a different police force to investigate. As with the police, prosecutors will direct the PIRC and the PIRC must comply with any lawful instructions issued by that prosecutor.</p> <p>Serious incidents will be investigated by the PIRC in line with the regulations provided for at section 67 of the Bill and subject to affirmative procedure. This approach allows for greater consultation and flexibility than placing the detail on the face of the Bill and also allows for the regulations to be updated to reflect changing circumstances.</p> <p>In terms of the PIRC's powers in relation to public interest investigations, the Scottish Government has listened to the views expressed by some witnesses</p>	<p>The Government lodged a number of amendments relating to the PIRC (66 to 86, 145,146,148 and 149). Changes include:</p> <ul style="list-style-type: none"> <li>• offences other than those that lead to death or serious injury may be referred to the PIRC for investigation</li> <li>• serious incidents will be referred to the PIRC by the SPA or the Chief Constable</li> <li>• a matter that has been the subject of a relevant complaint can be investigated by the PIRC as a serious incident or a matter in the public interest</li> <li>• a matter that is being investigated by the PIRC under the direction of the prosecutor, or one that has been so investigated and as a result of which criminal proceedings have been brought, cannot be investigated as a serious incident or a matter in the public interest</li> <li>• relevant police matters will be limited to incidents that have occurred or are alleged to have occurred and which involve the SPA, the</li> </ul>

	and is considering them carefully. We need to balance these views against the PIRC's important role in maintaining public confidence in the police.	<p>police service or a person serving with the police.</p> <ul style="list-style-type: none"> <li>• the statutory duty on the PIRC to publish reports of serious incident and public interest investigations is replaced by a discretionary power.</li> <li>• the PIRC is given power to publish complaint-handling review reports if he or she considers this appropriate and to refuse to undertake a complaint-handling review in certain circumstances.</li> </ul>
As with the chief constable and chief fire officer, we consider that the PIRC should be appointed as early as possible to enable their investigating team to be in place before 1 April 2013, but that the appointments process must be both independent and perceived to be independent.	The Scottish Government fully acknowledges the importance of the PIRC being fully operational from 1 April 2013. Work has therefore begun on the processes needed to appoint a new Commissioner. This will be done through an open and fair competition and an independent appointment process.	
The Committee also seeks clarification as to whether the Scottish Government intends the PIRC to be a self-contained body or whether its staff will be seconded from the police.	The PIRC will have powers to appoint additional investigative staff with the right skills and expertise from anywhere, including through secondments from the Police Service of Scotland. The Scottish Government is already working with ACPOS and PCCS to define the required capacity and capability to be fully operational by 1 April 2013.	<p>Amendment 210, in the name of David McLetchie MSP, proposed that constables and police staff should be excluded from appointment to the commissioner's staff.</p> <p>The amendment was disagreed to.</p> <p>Note: Schedule 6, paragraph 13 of the Bill inserts new paragraph 7A in schedule 4 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 to enable the commissioner to appoint constables of the police service and other policing bodies to serve as members of the commissioner's staff under his direction and control. (OR Col 1442)</p>
The Committee agrees that the PIRC should have qualified privilege to protect him or her	The Scottish Government is aware of the PCCS's	Government amendment 86 inserts a new section into the 2006 Act setting out that statements made

<p>from defamation proceedings, as suggested by the Police Complaints Commissioner for Scotland.</p>	<p>position and will consider this recommendation.</p>	<p>by the Commissioner or his staff in connection with complaint handling reviews, criminal and fatal accident inquiry investigations, investigations of serious incidents and public interest investigations will have absolute privilege. This includes statements made in communications for the purposes of such reviews and investigations, reports on such reviews and investigations. Reports to Scottish Ministers will also have absolute privilege.</p>
<p>The Committee notes that the Bill specifies that complaints against the PIRC may ultimately be referred to the Scottish Public Services Ombudsman (SPSO), but that there appears to be a number of areas which the SPSO cannot investigate.</p> <p>The Committee invites the Scottish Government to clarify whether it considers there to be sufficient independent oversight of the PIRC's complaints handling procedures.</p>	<p>The Scottish Government is aware that the SPSO is unable to investigate action taken for the purposes of, or in connection with, the investigation of crime. We are considering this issue carefully and note that whilst PIRC will investigate and report on serious offences, any decision on criminal proceedings rests with the appropriate prosecutor and, if there are such proceedings, an investigation would be tested in a court of law. Similarly, any decision on police conduct proceedings arising from an investigation or report by PIRC rests with the Scottish Police Authority or Chief Constable and such proceedings would be subject to the regulations made under section 53 of the Bill.</p>	<p>See table 3 for main amendments to powers of the PIRC.</p>
<p><b>Independent custody visiting</b></p>		
<p>The Committee is broadly content with provisions on independent custody visiting. However, we note some witnesses' concerns about the potential for access to be denied and invite the Scottish Government to clarify whether it is satisfied that this is consistent with international obligations.</p>	<p>The Scottish Government is satisfied that the Bill's provisions in respect of independent custody visiting are in line with its obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). OPCAT recognises that, in exceptional circumstances, it may be necessary for a visit to be denied. The Bill defines the circumstances under which that would happen. Those circumstances are exceptional, and generally require the authority of a senior officer.</p>	<p>Amendments 248 to 252, in the name of Lewis Macdonald MSP, sought to remove most provisions on independent custody visiting from the Bill and to amend those in section 91 relating to grounds for refusal of access to detainees. After debate, amendment 248 was withdrawn and amendments 249 to 252 were not moved.</p>

<b>Human Rights</b>		
<p>The Committee notes the good practice from Northern Ireland in relation to embedding human rights within all aspects of policing and recommends that the Scottish Government gives consideration to the Bill being more explicit on human rights.</p>	<p>The Scottish Government is committed to creating a modern, inclusive Scotland which respects, protects and realises human rights.</p> <p>The police play a pivotal role in ensuring people's human rights are not infringed by others and it is, of course, crucial that the governance of the police supports and protects human rights. We expect the Scottish Police Authority to actively consider human rights as part of its governance role and for the Police Service to ensure that all officers and staff have appropriate human rights training and advice.</p> <p>The Scottish Government will however consider any legislative amendments that genuinely add something to the existing human rights obligations that are already placed on all public bodies under the Human Rights Act.</p>	<p>John Finnie lodged amendment 168 which provides that the oath taken by constables (section 10) should be amended to contain a specific reference to upholding fundamental human rights and according equal respect to all people.</p> <p>This amendment was agreed to without division.</p>
<b>Fire and rescue - <i>Fire and rescue functions</i></b>		
<p>The Committee accepts that it would be helpful for the rescue aspect of the fire and rescue service's functions to be clarified to a greater degree, but does not believe that this should necessarily be included in the Bill. We therefore ask the Scottish Government to discuss with fire bodies where best to clarify or codify their rescue functions, such as in the Fire and Rescue Framework or the next Fire (Additional Function) (Scotland) Order.</p>	<p>The Scottish Government welcomes and agrees with the Committee's view, and will consider how best to take this forward.</p>	<p>Amendment 265 (Jenny Marra MSP) sought to put in place a non-exhaustive list of general functions of the SFRS by amending the Fire (Scotland) Act 2005 to acknowledge the variety of services that the fire service provides.</p> <p>The Cabinet Secretary said that the amendment would impose duties on SFRS to save lives, protect property and render humanitarian services across Scotland in all circumstances and without limit or constraint. He went on to say that the legislative framework already provides sufficient flexibility to adjust or expand existing functions in the future without the need for primary legislation (OR Col 1483) and that this will be further strengthened by the inclusion of a new purpose for SFRS that will have a clear focus on prevention</p>

		and community safety. The amendment was disagreed to.
<b>Fire and rescue - <i>Fire officer and staff issues</i></b>		
The Committee notes the comments of the Fire Brigades Union and the Chief Fire Officers Association Scotland regarding the provision in the Bill which removes section 49 (on negotiation arrangements in relation to conditions of service) from the Fire (Scotland) Act 2005. We therefore invite the Scottish Government to explain the rationale for removing this provision.	At present, negotiations for fire-fighter conditions of service are conducted at a UK level through the National Joint Negotiating Council. Section 49 of the Fire (Scotland) Act 2005 gave the Scottish Ministers the power to set up specifically Scottish arrangements for negotiating pay and conditions for the eight Services. These powers have not been used. It will be for the SFRS to determine how to review future arrangements. Should it wish to proceed on a Scottish basis, it can negotiate directly with the relevant trades unions.	

## STAGE 2 PROCEEDINGS

Stage 2 proceedings took place on [29 May](#) 2012 (Scottish Parliament Justice Committee (2012)) and [12 June](#) 2012 (Scottish Parliament Justice Committee (2012a)). The Marshalled Lists of Amendments for Stage 2 (Scottish Parliament (2012g and 2012h)) and Groupings of Amendments for Stage 2 (Scottish Parliament (2012e and 2012f)) and the Official Reports of the Justice Committee are available [online](#).

Table 3 outlines some of the key amendments agreed to by the Committee at Stage 2.

**Table 3: Summary of Key Amendments Agreed to at Stage 2.**

Issue and Bill section	Amendment and Effect
<b>Membership of the SPA and SFRS</b> (Schedule 4 and section 99)	Government amendments 1 and 120 enable Scottish Ministers to appoint the Chairs of the SPA and SFRS separately from other members. This will support earlier appointment of the Chairs and, in turn, the Chief Constable and Chief Officer. See also the <a href="#">Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) Order 2012</a> which, by treating the SPA and SFRS as specified authorities, will allow the process for the key public appointments to the bodies to formally commence to allow these posts to be filled by autumn 2012.
<b>General Powers of the SPA and SFRS</b> (Section 4 and section 99)	Amendments 6 and 127, lodged in the name of the Justice Secretary, seek to ensure that the SPA and SFRS cannot establish a company unless the Government considers that there is good reason to do so and that the purposes and activities of any such company are consistent with those of the SPA and SFRS respectively and do not detract from core service provision. The effect of these amendments is to prevent the SPA and SFRS from exercising their power to form or promote companies without the consent of the Scottish Ministers.
<b>Ranks</b> (Section 11)	Amendment 7, in the name of the Justice Secretary, amends section 11(5) to provide that Ministers' power to add or remove ranks by regulations may do so in respect of any rank below that of chief constable, rather than below assistant chief constable only. The effect is to enable the creation of new ranks or removal of ranks at senior officer level also, while ensuring the preservation of the 'chief constable' rank. See: the <a href="#">Police and Fire Reform (Scotland) Bill Supplementary Delegated Powers Memorandum</a> for further explanation of this change.
<b>Senior Officers retirement on the grounds of efficiency and effectiveness</b> (Section 14)	Section 14 of the Bill gives the SPA power to call on a senior officer to retire from office if their retirement would be in the interests of efficiency or effectiveness of the Police Service. Amendment 10, in the name of the Justice Secretary, clarifies that this power relates to the efficiency and effectiveness of the Police Service, rather than to the individual.  Government amendments 9 to 20 are concerned with extending the power of the SPA to call on any senior officer to either retire, if they are eligible to receive a pension, or resign on the grounds of efficiency or effectiveness of the Police Service. They also provide that, before calling on a senior officer to resign or retire, SPA must provide an

Issue and Bill section	Amendment and Effect
(Continued)	<p>explanation of the reasons and an opportunity to make representations, which it must consider.</p> <p>Amendment 12 requires the SPA to give the senior officer a written explanation of its reasons for proposing to call on the senior officer to resign or retire.</p> <p>Amendment 14 gives the senior officer an opportunity to make written representations to the SPA and amendment 15 requires the SPA to consider any such representations outlined in amendment 14. Amendment 17 requires that, if written representations are made, the SPA must provide the officer with written reasons for its final decision.</p>
<b>Failure to perform duty</b> (Section 22)	The Bill provides a maximum penalty of five years' imprisonment for the offence of neglect or violation of duty. The current maximum penalty for this offence is 60 days. Amendment 170, in the name of John Finnie, reduces this penalty to a maximum of two years.
<b>Police staff</b> (Section 26)	Amendments 194, 195, 197 and 198, in the name of Lewis Macdonald MSP, amend section 26 to emphasise that police staff and police custody and security officers have specific roles in policing rather than just assisting constables.
<b>Forensic Services</b> (Section 31)	The Bill requires the SPA to provide forensic services to the police service, the Lord Advocate and procurators fiscal. Amendment 35, in the name of the Cabinet Secretary for Justice, seeks to make it explicit that the SPA is also required to provide forensic services to the new police investigations and review commissioner (PIRC). Amendment 36 removes the SPA's general discretion to provide forensic services to such persons as it sees fit and places the SPA's provision of, and charging for, forensic services on a similar footing to all other goods and services which the SPA may provide and charge for. Amendment 99 ensures that the new PIRC will not be charged for forensic services.
<b>Strategic Police Priorities</b> (Section 33)	Government amendment 37 amends section 33 by adding the Chief Constable to the list of persons who must be consulted by Scottish Ministers before they determine the strategic police priorities.
<b>Annual Police Plan</b> (Section 35)	Amendments 40 to 47, in the name of the Cabinet Secretary for Justice, change section 35 to give responsibility for preparing the annual police plan to the Chief Constable (rather than the SPA). The annual police plan will not now cover the functions and objectives of the SPA but will be focussed on service delivery and will contain any other information connected to policing which the Chief Constable considers appropriate. Responsibility for publication of the annual police plan will also rest with the Chief Constable.
<b>The SPA's annual report</b> (Section 40)	Government amendment 51 inserts new provisions into section 40 to place an obligation on the Chief Constable to provide the SPA with a report setting out an assessment of the Police Service's performance in terms of the main objectives for policing set out in the strategic police plan, and in implementing the arrangements set out in the annual police plan. Amendment 51 also obliges the Chief Constable to provide the SPA with assistance in preparing its own

Issue and Bill section	Amendment and Effect
	annual report.
<b>Local authority role in policing</b> (Section 46)	Government amendment 53 inserts a new subsection into section 46 to clarify that local authority feedback can be provided with specific reference to the local plan. Amendment 54 allows the local commander to refer to the Chief Constable a requirement from the local authority to provide information or reports if the local commander considers that complying with it could prejudice a policing operation or a prosecution. The Chief Constable can confirm or reject the requirement.
<b>Duty to participate in community planning</b> (Section 47)	Amendment 55 places the duty to participate in community planning on the Chief Constable rather than the local commander. It also adds a new provision requiring the Chief Constable to delegate the carrying out of this function in each local authority area to the local commander for the area.
<b>Local police plans</b> (Section 48)	Amendment 57 seeks to ensure that the local commander must consult representatives of police constables, senior officers, superintendents and police staff when preparing a local police plan.
<b>Disciplinary procedures: conduct and performance</b> (Section 53)	<p>Police staff associations were of the view that unsatisfactory performance is an employee matter and is for the Police Service and SPA to deal with rather than the PIRC.</p> <p>Government amendment 62 removes investigations into unsatisfactory performance of constables from the functions that may be conferred on the PIRC.</p>
<b>General functions of the PIRC</b> (Section 63)	Government amendments 66 and 69 enable a prosecutor to refer offences, other than those that lead to death or serious injury, to the PIRC for investigation. In evidence to the Justice Committee various stakeholders expressed concerns about who would refer serious incidents involving the police to the PIRC. Amendment 67 clarifies that this is to be the SPA and the Chief Constable. When there is an indication of criminality by the police or police staff, the prosecutor may direct the commissioner to carry out an investigation.
<b>Serious incidents involving the police</b> (Section 65)  <b>Investigations of other matters in the public interest</b>	<p>Amendments 70 and 74, in the name of the Cabinet Secretary, are intended to ensure that a matter that has been the subject of a relevant complaint can be investigated by the PIRC as a serious incident or a matter in the public interest.</p> <p>Amendments 71, 72, 75 and 76 address concerns about the relationship between criminal investigations and other investigations. They make it clear that a matter that is being investigated by the PIRC under the direction of the prosecutor, or one that has been so investigated and as a result of which criminal proceedings have been brought against any person, cannot be investigated as a serious incident or a matter in the public interest. Similarly, matters that have been investigated in a fatal accident inquiry by the PIRC cannot be investigated by the PIRC again.</p>

Issue and Bill section	Amendment and Effect
(Section 66)  (Continued)	Government amendment 73 makes it clear that relevant police matters will be limited to incidents that have occurred or are alleged to have occurred and which involve the authority, the police service or a person serving with the police. Amendment 77 makes minor changes to clarify that incidents capable of being investigated as serious incidents, but which have not been referred by the SPA or the Chief Constable, may be investigated by the PIRC in the public interest.
<b>Reports on investigations</b>  (Section 68)	Amendments 80 and 81 seek to remove the statutory duty on the PIRC to publish reports of serious incident and public interest investigations and to replace it with a discretionary power and amendment 145 inserts a new provision to give the PIRC a power to publish complaint-handling review reports when he or she considers it appropriate to do so.
<b>Complaints against the PIRC</b>  (Section 70)	<p>The PIRC has no protection in the Police Public Order and Criminal Justice (Scotland) Act 2006 against actions for defamation. Other complaints handling bodies such as the Scottish Public Services Ombudsman are protected against these types of actions. The Police Complaints Commissioner made representations in his evidence to the Justice Committee for such protection to be given to the PIRC in the Bill.</p> <p>Government amendment 86 inserts a new section into the 2006 Act setting out that statements made by the Commissioner or his staff in connection with complaint handling reviews, criminal and fatal accident inquiry investigations, investigations of serious incidents and public interest investigations have absolute privilege. This includes statements made in communications for the purposes of such reviews and investigations and reports on such reviews and investigations. Reports to Scottish Ministers will likewise have absolute privilege.</p>
<b>Her Majesty's Inspectors of Constabulary in Scotland (HMICS)</b>  (Sections 74 to 78)	Government amendments 87 to 95 concern the roles and responsibilities of HMICS. Amendment 87 removes Scottish Ministers' power to direct HMICS to carry out periodic inspections of the Authority and the Police Service. Amendment 88 requires HMICS to prepare and publish a plan setting out the priorities for its inquiries and how it will carry them out. Amendment 93 places a duty on HMICS to provide reports of their inquiries to the Authority, Ministers (and to the Chief Constable if the report relates to the Police Service). Reports are to be published and also laid in Parliament. Amendment 94 places a requirement on the Scottish Police Authority and the Chief Constable to have regard to all HMICS reports when carrying out their functions.
<b>Provision of other goods and services</b>  (Section 84)	Amendments 97 and 98, in the name of the Justice Secretary, deal with the provision of goods and services by the SPA and the Police Service of Scotland to organisations and individuals specified by order. These amendments make it clear that an order may specify the types of persons to whom goods and services may be provided rather than listing those persons by name. Amendment 99 clarifies that those organisations to whom forensic services must be provided (namely, the Police Service, the PIRC, the Lord Advocate and procurators fiscal) will not be charged for those services and also removes the provision that any charging for the provision of goods and services must be limited to recovering

Issue and Bill section	Amendment and Effect
	the cost of providing those goods and services.
<b>Transfer of constables, staff property etc.</b>  (Section 95)	Government amendment 212 inserts a new subsection into section 95, to introduce a new schedule (introduced by amendment 213) to make provision about the period before the police service is established. The schedule makes provision in relation to senior officer appointments and connected provisions about the SPA. The effect of 212 and 213 (and 216) will be to allow the SPA to be established and senior officers to be appointed in the transitional period before the police service is established.
<b>Senior officers</b>  (Schedule 4)	Government amendments 104 to 111 will amend Schedule 4 to the Bill to remove the provision that chief constables who transfer to the Police Service, who are not appointed to the office of chief constable of the Police Service, would retain the rank of chief constable after transfer to provide that the only officers who hold the ranks of chief constable and deputy chief constable will be those who are appointed to those offices in the new police service. The amendments maintain the principle of no detriment by preserving senior officers' right to otherwise retain the terms and conditions of service that they held in their forces prior to their transfer to the new service.
<b>Strategic plan (SFRS)</b>  (Section 112)	<p>In evidence, COSLA suggested that the approach to the SFRS's strategic plan should be more in line with the approach to involving local authorities and others in the development of the strategic police plan.</p> <p>Amendments 221 and 222 require the SFRS to obtain views from local authorities and others on what the first (and subsequent) strategic plan should contain. It also requires that local authorities and others be sent copies of the draft plan to comment on, and places a duty on SFRS to have regard to those comments in preparing the plan.</p>
<b>Local Fire and Rescue plans</b>  (Section 113)	<p>Government amendments 131 to 135 are concerned with the operation of local authority scrutiny of the SFRS. Amendment 131 will insert new section 41E(3) into the 2005 Act to make express reference to representatives of SFRS employees. The purpose will be to ensure that local senior officers consult such representatives when they are preparing local fire and rescue plans.</p> <p>Amendment 132 will amend new section 41H of the 2005 Act to make it clear that the duty on the SFRS to provide a local authority with information or reports that relate to the carrying out of SFRS functions in that authority's area may include reports that are related to the local fire and rescue plan. Amendment 133 will ensure that feedback is provided by the local authority to the local senior officer.</p> <p>Amendment 135 is intended to adjust provisions that relate to the monitoring role of local authorities. The Cabinet secretary said (OR Col 1490) that the focus will remain on enabling local authorities to "monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority's area" He went on to dismiss concerns by Alison McInnes MSP that amendment 135 will limit the opportunities for local authorities to scrutinise local services. It is, he said, "intended only to ensure consistency of drafting with the equivalent police provisions in section 46(2). It responds to stakeholders' concerns that have arisen from a different drafting about the policy intent being different</p>

Issue and Bill section	Amendment and Effect
	across the police and fire services”.
<b>Prohibition on employment of police</b> (New section 117A)	Amendment 245, in the name of John Lamont MSP, seeks to allow special constables to be employed by a fire and rescue authority as fire fighters. This amendment was supported by the Government on the grounds that any potential conflicts of interest, “...could be managed by the Chief Constable or the Chief Fire Officer considering the individual circumstance”. (OR Col 1495).

The [Bill as amended at Stage 2](#) was published on 13 June 2012.

## SOURCES

Burnside, R (2012) *SB 12/15 Police and Fire Reform (Scotland) Bill: Financial Memorandum*. Edinburgh: Scottish Parliament Information Centre. Available at:

[http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_12-15.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_12-15.pdf)

Oag, D (2012) *SB 12/14 Police and Fire Reform (Scotland) Bill*. Edinburgh: Scottish Parliament Information Centre. Available at:

[http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB\\_12-14.pdf](http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_12-14.pdf)

Scottish Government (2012) *Response from the Scottish Government to the Justice Committee's Stage 1 Report on the Police and Fire Reform (Scotland) Bill*. Edinburgh: Scottish Government. Available at:

[http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Inquiries/SG\\_response\\_to\\_Police\\_and\\_Fire\\_Reform\\_\(Scotland\)\\_Bill\\_Stage\\_1\\_Report.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/SG_response_to_Police_and_Fire_Reform_(Scotland)_Bill_Stage_1_Report.pdf) [Accessed 21 June 2012]

Scottish Government (2012a) *Police and Fire Reform (Scotland) Bill: Supplementary Delegated Powers Memorandum*. Edinburgh: Scottish Government. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/Police\\_and\\_Fire\\_Reform\\_\(Scotland\)\\_Bill\\_-\\_supplementary\\_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Police_and_Fire_Reform_(Scotland)_Bill_-_supplementary_DPM.pdf) [Accessed 20 June 2012]

Scottish Parliament (2012) *Police and Fire Reform Scotland Bill (as introduced)* Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/Bill\\_as\\_introduced.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Bill_as_introduced.pdf) [Accessed 18 June 2012]

Scottish Parliament (2012a): *Police and Fire Reform Scotland Bill: Explanatory Notes*.

Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/Ex\\_Notes\\_and\\_FM.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Ex_Notes_and_FM.pdf) [Accessed 18 June 2012]

Scottish Parliament (2012b): *Police and Fire Reform Scotland Bill: Policy Memorandum*.

Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/Policy\\_Memo.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Policy_Memo.pdf) [Accessed 18 June 2012]

Scottish Parliament (2012c) *Police and Fire Reform (Scotland) Bill (as amended as Stage 2)*.

Edinburgh: Scottish Parliament. Available at:

[http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/b8as4-amend.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8as4-amend.pdf) [Accessed 20 June 2012]

Scottish Parliament Finance Committee (2012). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill, 2012 (Session 4)*. Edinburgh: Scottish Parliament.

Available at: [http://scottish.parliament.uk/S4\\_FinanceCommittee/Reports/fir12-PoliceandFireReformBill.pdf](http://scottish.parliament.uk/S4_FinanceCommittee/Reports/fir12-PoliceandFireReformBill.pdf) [Accessed 18 June 2012]

Scottish Parliament Justice Committee (2012). *Official Report, Tuesday 29 May 2012, Cols 1346 to 1411*. Edinburgh: Scottish Parliament. Available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7052&mode=pdf> [Accessed 21 June 2012]

Scottish Parliament Justice Committee (2012a). *Official Report, Tuesday 12 June 2012, Cols 1427 to 1501*. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7072&mode=pdf> [Accessed 21 June 2012]

Scottish Parliament Justice Committee (2012b). 4<sup>th</sup> Report, 2012 (Session 4). *Stage 1 Report on the Police and Fire Reform (Scotland) Bill*. SP Paper 120. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4\\_JusticeCommittee/Reports/jur-12-04w.pdf](http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/jur-12-04w.pdf) [Accessed 20 June 2012]

Scottish Parliament Local Government and Regeneration Committee (2012). 5<sup>th</sup> Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*. SP Paper 98. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4\\_LocalGovernmentandRegenerationCommittee/Reports/lgr-12-05w.pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/lgr-12-05w.pdf) [Accessed 19 June 2012]

Scottish Parliament (2012d) *Official Report 10 May 2012*. Cols 8769 to 8821. Edinburgh: Scottish Parliament. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7018&mode=pdf>

Scottish Parliament (2012e) 1<sup>st</sup> Groupings of Amendments for Stage 2. Edinburgh: Scottish Parliament. Available at: [http://scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/b8s4-stage2-g1.pdf](http://scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8s4-stage2-g1.pdf) [Accessed 21 June 2012]

Scottish Parliament (2012f) 2<sup>nd</sup> Groupings of Amendments for Stage 2. Edinburgh: Scottish Parliament. Available at: [http://scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/b8s4-stage2-g2.pdf](http://scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8s4-stage2-g2.pdf) [Accessed 21 June 2012]

Scottish Parliament (2012g) 1<sup>st</sup> Marshalled List of Amendments for Stage 2. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/b8s4-stage2-ml1.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8s4-stage2-ml1.pdf) [Accessed 21 June 2012]

Scottish Parliament (2012h) 2<sup>nd</sup> Marshalled List of Amendments for Stage 2. Edinburgh: Scottish Parliament. Available at: [http://www.scottish.parliament.uk/S4\\_Bills/Police%20and%20Fire%20Reform%20\(Scotland\)%20Bill/b8s4-stage2-ml2.pdf](http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8s4-stage2-ml2.pdf) [Accessed 21 June 2012]



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