



Police and Fire Reform (Scotland) Bill

Bill Number:	SP Bill 8
Introduced on:	16 January 2012
Introduced by:	Kenny MacAskill (Government Bill)
Passed:	27 June 2012
Royal Assent:	7 August 2012 (asp 8)

Passage of the Bill

[The Police and Fire Reform \(Scotland\) Bill](#) was introduced in the Parliament on 16 January 2012 with the Justice Committee designated as the lead committee for the Bill and the Local Government and Regeneration (LGR) Committee designated as a secondary committee. The LGR Committee's report to the Justice Committee was published on 19 March, the Finance Committee's report was published on 20 March and the Justice Committee's stage 1 report was published on 2 May. The Scottish Government produced a written response to the Justice Committee's stage 1 report on 9 May, and the Bill completed stage 1 proceedings following a parliamentary debate on 10 May 2012. Stage 2 consideration of the Bill was carried out by the Justice Committee at meetings on 29 May and 12 June.

The Bill was passed following the stage 3 parliamentary debate on 27 June receiving Royal Assent on 7 August 2012 to become the [Police and Fire Reform \(Scotland\) Act 2012](#) (asp 8).

Purpose and objectives of the Bill

The main purpose of the Bill was to create single police and fire and rescue services for Scotland. The Bill therefore sought to establish the Police Service of Scotland (PSS) and the Scottish Fire and Rescue Service (SFRS), together with new governing and funding arrangements, and to abolish the existing eight territorial police forces and eight fire brigades along with their governing bodies. The Bill also sought to abolish the Scottish Police Services Authority and the Scottish Crime and Drugs Enforcement Agency, to place independent custody visiting onto a statutory footing and to reconstitute the Police

Complaints Commissioner for Scotland as the Police Investigation and Review Commissioner (PIRC) with new investigatory powers.

Provisions of the Bill

The Bill, as introduced, was in 3 parts and 7 schedules. Part 1, the most substantial part of the Bill, was concerned with police reform and comprised 17 chapters.

Part 1

Chapter 1 sought to establish the Scottish Police Authority (SPA) as the governing body for the new single police service and to define its functions and powers while Chapter 2 sought to establish the Police Service of Scotland, including appointment of its members, and to define their duties, functions and terms of office. Chapter 3 sought to ensure that the SPA provides forensic services to the PSS, the Lord Advocate and procurators fiscal and also (as amended) to the PIRC. Chapter 4 provided a definition of the policing principles giving powers to the Scottish Ministers to determine the strategic priorities for the SPA, providing that the SPA must prepare a strategic police plan and that the chief constable must prepare annual police plans. Chapter 5 places a duty on both the SPA and the chief constable to secure best value for their respective organisations while Chapter 7 is concerned with local policing, including the chief constable's duty to provide adequate policing for each local authority area and the local authority role in policing; it also places a duty on the chief constable to participate in community planning and on local commanders to prepare local police plans. Chapter 10 was concerned with complaints and investigations placing a duty on the SPA and chief constable to maintain arrangements for the handling of complaints against the police. This chapter also sought to establish the new Police Investigations and Review Commissioner and to define its powers and duties. Chapter 15 provides for the funding of the SPA enabling the Scottish Ministers to make grants to the Authority. Chapter 16 places a duty on the SPA to make statutory arrangements for independent custody visiting which comply with the requirements of the UN's Optional Protocol to the Convention against Torture (OPCAT).

Part 2

Part 2 of the Bill sought to establish a new body – the Scottish Fire and Rescue Service (SFRS) and to provide for membership of, and appointments to, the SFRS, the appointment of a chief officer and staff of the SFRS, its powers, functions and funding arrangements. It sought to give the SFRS a duty to produce a strategic plan, to ensure that there are adequate arrangements in place for carrying out its functions in each local authority area, to produce local fire and rescue plans and to appoint a local senior officer for each area.

The Bill also sought to establish Inspectors of the SFRS and to provide for their duties and functions.

Parliamentary Consideration

This Bill represented the most significant public service reform since devolution and, in the case of the police service, the most significant change in living memory. Nevertheless, the Bill completed all three parliamentary stages in four months.

It may be noted, however, that considerable work on the efficiency and effectiveness of the police and fire services, including the development of Outline Business Cases and public consultations on reform, took place over a two year period in the lead-up to the introduction of the Bill.

A number of recommendations were made, and concerns raised, by the Justice Committee in its stage 1 report. These included that:

- the SPA and SFRS boards should have no fewer than 11 members
- greater clarity was needed on the relationship between the national boards and local authorities
- the SPA and SFRS must be open and transparent in the delivery of its functions, including holding meetings in public
- the Bill should secure effective Parliamentary oversight of the police service
- post-legislative scrutiny will be crucial in assessing whether the move to single services has achieved the stated goals of reform
- local authorities should have the means to assess 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 obtain forensic services at no cost and should have qualified privilege against defamation proceedings
- clarity was needed on the PIRC's role in investigating serious incidents involving the police and on its powers to carry out public interest investigations
- clarity was required on when the full business cases would be ready and whether projected budgets would be adjusted accordingly
- clarity was sought over why, unlike joint police and fire boards, the SPA and SFRS would be unable to accrue reserves

- there was an urgent need to resolve the issue over the ability of the new police and fire and rescue services to recover VAT (not resolved before the Bill was passed)

Stage 2

The main amendments agreed to at stage 2 included those to:

- enable appointment of the chairs of the SPA and SFRS separately from members to allow for early appointment of the new service chiefs
- allow Ministers to add or remove ranks below that of chief constable (rather than deputy chief constable as originally proposed)
- clarify that the power of Scottish Ministers to call on senior officers to retire in the interests of efficiency and effectiveness means the efficiency and effectiveness of the Police Service rather than of the individual concerned
- reduce the proposed maximum penalty for the offence of neglect or violation of duty from 5 years imprisonment to two years
- require the SPA to provide forensic services to the PIRC free of charge
- give responsibility for preparing the annual police plan to the chief constable (rather than to the SPA)
- place the duty to engage in community planning on the chief constable (rather than the local commander) – and for this duty to be delegated to local commanders
- enable prosecutors to refer offences, other than those that lead to death or serious injury, to the PIRC and to clarify that the SPA or chief constable may refer serious incidents involving the police to the PIRC
- provide the PIRC with absolute privilege against actions of defamation in relation to statements made by the PIRC and his staff in carrying out their statutory duties
- remove the provision that chief constables who transfer to the PSS, but are not appointed to the chief constable post, retain the rank of chief constable

Stage 3

Unsuccessful amendments laid at stage 3 included amendments to:

- require the SPA and SFRS to reserve contracts for bodies which operate supported businesses, supported employment programmes or supported factories and for the SPA and SFRS to obtain Ministerial consent before they entered into contracts

- require the Scottish Ministers to provide full business cases before the 2012 Act comes into force
- compel the chief constable and chief officer to provide information to each local authority on resources allocated to each authority on 1 April 2012 and on 1 April each subsequent year
- ensure that local authority scrutiny committees maintained a gender balance with a representation of at least 40 per cent of each gender
- establish dispute resolution mechanisms to resolve disagreements between the SPA and local authorities
- establish a Scottish Policing Commission comprising MSPs
- place the general functions of the SFRS on the face of the Bill

Amendments agreed to at stage 3 included that:

- the SPA and SFRS boards should comprise not fewer than 10 nor more than 14 members (not including the chairs)
- local authorities must be consulted before appointment of a local commander and local authorities may specify policing measures for inclusion in the local policing plan
- transitional provisions to require the current police and fire and rescue authorities and joint boards, as well as chief constables and the Scottish Police Services Authority, to provide information and assistance to the SPA, chief constable and the SFRS
- a requirement for the SFRS and the SPA to meet in public unless there is good reason not to and for both these bodies to make clear and publish the circumstances in which proceedings will be held in private
- A duty on the Scottish Parliament to make arrangements for keeping the operation of the 2012 Act under review and to publish reports on this

The Bill, as amended at stage 3, was passed following a division: For 101, Against 6, Abstentions 14.

Denis Oag
Principal Researcher