



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

4th Report, 2012 (Session 4)

Stage 1 Report on the Police and Fire Reform (Scotland) Bill

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CONTENTS

Remit and membership

Report	1
Summary of conclusions and recommendations	1
General	1
Scottish Police Authority and Scottish Fire and Rescue Service Board	1
Role of the Scottish Ministers	2
Role of the Scottish Parliament	2
Priorities, strategic and local plans, and annual reports, including local scrutiny	3
Local accountability and scrutiny	3
Implementation	4
Issues specific to policing	5
Issues specific to fire and rescue	6
Introduction	7
Parliamentary scrutiny	7
Background to the Bill	7
Outline of the Bill	14
General principles of the Bill	14
Policy and Financial Memorandums	17
Structure	17
National governance	17
The Scottish Police Authority and Scottish Fire and Rescue Service Board	18
Relationship between the SPA and SFRS Board and local government	24
Power to specify the type of goods and services the SPA may provide	26

Reserves	26
Role of the Scottish Ministers	27
Role of the Parliament	30
Priorities, strategic and local plans, and annual reports, including local scrutiny	33
Strategic police priorities	33
Fire and rescue framework for Scotland	34
Strategic plans	34
Annual police plans	35
Local plans	35
Annual reports	36
Local accountability	36
Local budgets	37
Local scrutiny	39
Assets and liabilities	42
Implementation	43
Appointment of chief constable and chief fire officer	43
Outline business cases	45
Merging of services – VAT consequences	47
Cross-border arrangements	49
Policing	50
Police officer and staff issues	50
Forensic Services	53
Complaints and Investigations	55
Independent custody visiting	58
Human Rights	60
Fire and Rescue	61
Fire and rescue functions	61
Fire officer and staff issues	62
Annexe A: Reports from other committees	64
Annexe B: Extracts from the minutes	65
Annexe C: Index of oral evidence	68
Annexe D: Index of written evidence	70



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

Remit and membership

Remit:

To consider and report on:

- a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and
- b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Roderick Campbell
John Finnie
Christine Grahame (Convener)
Colin Keir
Jenny Marra (Deputy Convener)
Alison McInnes
David McLetchie
Graeme Pearson
Humza Yousaf

Committee Clerking Team:

Peter McGrath
Joanne Clinton
Andrew Proudfoot
Christine Lambourne



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

4th Report, 2012 (Session 4)

Stage 1 Report on the Police and Fire Reform (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

General

1. The majority of the Committee supports the general principles of the Police and Fire Reform (Scotland) Bill¹.

Scottish Police Authority and Scottish Fire and Rescue Service Board

Role, size and composition

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

¹ Alison McInnes MSP did not support the general principles of the Bill.

7. We believe that the same principles of transparency should apply to the SFRS Board.

Relationship between the SPA and SFRS Board and local government

8. 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.

9. The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms.

Power to specify the type of goods and services the SPA may provide

10. 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.

Reserves

11. 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.

Role of the Scottish Ministers

12. 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.

13. 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.

Role of the Scottish Parliament

14. 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.

15. The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police.

16. 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.

Priorities, strategic and local plans, and annual reports, including local scrutiny

17. The Committee notes that the chief constable 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.

Local accountability and scrutiny

Local budgets

18. 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.

19. The Committee would welcome clarification as to whether, in practice, local authorities will have a degree of influence over local police resources.

20. 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.

Rank of local commander and local senior officer

21. 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.

Local scrutiny

22. 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.

23. 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 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.

Community planning

24. 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.

25. 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.

Assets and liabilities

26. The Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint boards will be redistributed.

Implementation

Appointment of the chief constable and chief fire officer

27. 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.

28. 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.

29. 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.

Outline business cases

30. 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.

31. 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.

Value Added Tax

32. 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”.

Cross-border arrangements

33. 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.

Policing

Failure to perform duty

34. 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.

Police appeals tribunal

35. On balance we are persuaded by the argument that police appeals tribunal should have membership composing solicitors and advocates, in the interests of ensuring that proceedings are impartial and determined by an appropriately qualified body.

Retirement of senior officers

36. 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.

Forensic services

37. 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.

38. 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.

39. 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.

Complaints and investigations

40. 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.

41. 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.

42. 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.

43. The Committee agrees that the PIRC should have qualified privilege to protect him or her from defamation proceedings, as suggested by the Police Complaints Commissioner for Scotland.

44. The Committee invites the Scottish Government to clarify whether it considers there to be sufficient independent oversight of the PIRC's complaints handling procedures.

Independent custody visiting

45. 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.

Human Rights

46. 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.

Fire and rescue

Fire and rescue functions

47. 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.

Fire officer and staff issues

48. 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.

INTRODUCTION

Parliamentary scrutiny

49. The Police and Fire Reform (Scotland) Bill² was introduced in the Scottish Parliament on 16 January 2012. The Parliament designated the Justice Committee as lead committee to report on the general principles of the Bill at Stage 1, and the Local Government and Regeneration (LGR) Committee as secondary committee.

50. The Justice Committee issued a call for written evidence on the Bill, to which it received 43 written submissions and seven supplementary responses. The Committee took evidence on the Bill at five meetings between 28 February and 27 March, hearing from a range of police and fire bodies, unions, inspections, complaints and finance organisations, and police and fire authorities and joint boards, as well as the Cabinet Secretary for Justice.

51. The LGR Committee agreed to focus its scrutiny on those parts of the Bill relating to the arrangements for local authorities and implementation of local policing and fire service arrangements.³ It took evidence on 21 February and reported on 19 March.

52. The Finance Committee reported on the Financial Memorandum on the Bill on 20 March⁴, while the Subordinate Legislation Committee published its report on the Delegated Powers Memorandum on 22 March⁵.

Background to the Bill

The Police in Scotland

53. The earliest form of policing in Scotland was the duty of watch and ward, carried out by burgesses in burghs from at least the 12th century. Scotland's first constables were appointed in 1617, and in 1800 Glasgow was the first burgh in the UK to establish a police force along modern lines. The Burgh Police (Scotland) Act 1833 gave powers to Scottish burghs to create police forces, if they had not already done so; this meant that an individual act of parliament to form a specific police force was no longer required.⁶ Throughout the 19th and into the 20th centuries, the police service was largely seen as a responsibility of local government.

² Police and Fire Reform (Scotland) Bill, as introduced (SP Bill 8, Session 4 (2012)). 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).

³ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/48515.aspx>.

⁴ Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/48609.aspx>.

⁵ Scottish Parliament Subordinate Legislation Committee. 16th Report, 2012. *Police and Fire Reform (Scotland) Bill*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/48806.aspx>.

⁶ Police Information Centre. Website. Available at: <http://www.police-information.co.uk/policeinScotland.html> [Accessed 27 April 2012].

54. In 1960, a Royal Commission was appointed to review the constitutional position of the police throughout Great Britain.⁷ Its terms of reference were to consider and make recommendations on: (a) the constitution and functions of local police authorities; (b) the status and accountability of police forces, including chief officers; (c) the relationship of the police with the public and dealing with public complaints, and (d) remuneration of constables. The Commission reported in 1962 and recommended securing a more effective system of control and accountability over the police, by moving towards a more centralised model. It had two main concerns with the existing arrangements: (a) the problem of controlling chief constables, and (b) the lack of technical competence and an inadequate system of inspection within police authorities.⁸

55. The Police (Scotland) Act 1967 (the 1967 Act) was informed by the work of the Royal Commission and remains to this day the legislation underpinning policing in Scotland. The 1967 Act created the ‘tripartite’ sharing of responsibility for policing in Scotland between the Secretary for State, police authorities or joint police boards⁹, and the chief constables of each of the forces. It has been argued that the main mechanism for obtaining ‘policing by consent’, the principle by which police forces operate with the support and co-operation of the public, has been through the tripartite system.¹⁰

56. The police authorities or joint police boards, which are made up of local councillors, have responsibility for the following:

- setting the budget for their force;
- appointing senior police officers (with the agreement of the Scottish Ministers);
- determining the numbers of police officers and civilian support staff for their area;
- appointing civilian support staff; and
- playing a role in securing Best Value and continuous improvement within their force.¹¹

57. While the 1967 Act does not refer to the term ‘operational independence of chief constables’, this concept has become “common currency amongst those

⁷ National Archives. Website. Available at:

<http://www.nationalarchives.gov.uk/catalogue/DisplayCatalogueDetails.asp?CATID=7827&CATLN=3&FullDetails=True&j=1> [Accessed 27 April 2012].

⁸ Her Majesty’s Inspectorate of Constabulary for Scotland (2011). *Governance and Accountability of policing in Scotland: a discussion paper*. Available at:

<http://www.scotland.gov.uk/Resource/Doc/925/0117807.pdf> [Accessed 27 April 2012].

⁹ A joint police board supervises a police force covering several local authority areas. A police authority covers only one local authority area. Both joint police boards and police authorities have the same functions.

¹⁰ Dr Kenneth Scott. (2011) Presentation. *Police Accountability and Police Reform*. Available at: www.gla.ac.uk/media/media_195261_en.doc [Accessed 27 April 2012].

¹¹ Scottish Parliament Information Centre. (2012) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/47736.aspx> [Accessed 27 April 2012].

concerned with and commentating on policing in Scotland”.¹² The Scottish Government’s online publication on police powers and functions explains:

“Scottish Ministers retain the overall responsibility for policing policy. Police authorities and joint police boards are responsible for setting police budgets and ensuring that best value is attained for the public purse. Chief constables are responsible for the operational aspects of policing within their force areas.”¹³

58. Police forces in Scotland are established under the 1967 Act. The current structure of eight police forces in Scotland dates from local government regionalisation in 1975. The eight forces are: Central Scotland Police; Dumfries and Galloway Constabulary; Fife Constabulary; Grampian Police; Lothian and Borders Police; Northern Constabulary; Strathclyde Police, and Tayside Police. The forces vary substantially in terms of size, area, population and levels of funding.

59. From 1975, the forces reflected geographically the regional tier of local government, with the exception of the Lothian and Borders force, which covered two regional council areas, and Northern Constabulary, which covered Highland Region and the Island Authorities of Orkney, Shetland and Comhairle nan Eilean Siar (Western Isles). Following the most recent local government reorganisation in 1996, when regional and district councils were abolished and replaced with a single tier of 32 local authorities, the direct link between local government boundaries and the police service all but disappeared. However, Fife Council and Dumfries and Galloway Council continued to cover the same geographical areas as their constabularies.

60. With devolution in 1999, the majority of policing functions were transferred to Scotland.¹⁴ The tripartite arrangements remain unchanged, except that the functions of the Secretary for State were passed to the Scottish Ministers.

61. Police forces are currently funded by the Scottish Government and local authorities. The requirement on local authorities to match central government funding to a formula is no longer in place. However, in practice most local authorities have continued to match central government funding at a ratio of 49 per cent from local government to 51 per cent from central government. Funding is also provided by the Scottish Government for national policing services provided by the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA), and for other national priorities, such as police ICT and counter terrorism.¹⁵

¹² Her Majesty’s Inspectorate of Constabulary for Scotland. (2009) *Independent Review of Policing in Scotland*. Available at: www.scotland.gov.uk/publications/2009/01/23133505/10 [Accessed 27 April 2012].

¹³ Scottish Government. Website. Police Powers and Functions. Available at: <http://www.scotland.gov.uk/Publications/2003/07/17377> [Accessed 27 April 2012].

¹⁴ The police functions that remain reserved under the Scotland Act 1998 are those relating to the Firearms Acts 1968 to 1997, immigration and national security.

¹⁵ Scottish Government. (2011). *Keeping Scotland Safe and Strong: A Consultation on Reforming Police and Fire and Rescue Services in Scotland*. Available at: <http://www.scotland.gov.uk/Resource/Doc/357525/0120778.pdf> [Accessed 27 April 2012].

62. Before the 2007 Scottish Parliament elections, the Scottish National Party included in its manifesto a commitment to deliver 1000 additional police officers (to reach a number of 17,234). This policy was given effect through the Scottish Budget and Spending Review 2007 and the Scottish Government has since continued its commitment to maintain police numbers at a minimum of 17,234. The economic downturn has resulted in significant budget cuts to the public sector in Scotland, including to the police, which has increased the pressure for some sort of structural reform which would allow frontline policing at current levels to be maintained. It is against this backdrop that a number of reviews into policing and its structure have been conducted over recent years. Many of these are discussed below.

63. In January 2008, the then Justice Committee of the Scottish Parliament conducted an inquiry into the effective use of police resources, which concluded that resources were inadequate to meet policing commitments at that time, including the Scottish Government's proposal for an increase of 1000 officers. The inquiry also highlighted other areas where improvements could be made in the operation and governance of the police, and recommended that the Scottish Government initiate an independent review of the role and responsibilities of the police in Scotland "to ensure that we have a service that is fit for the 21st century".¹⁶

64. Later that year, the Cabinet Secretary for Justice invited Her Majesty's Inspectorate of Constabulary for Scotland (HMICS) to conduct an independent review of policing in Scotland, as recommended by the then Justice Committee. This review noted that policing in Scotland is a "relatively expensive concern costing more than £1 billion per annum" and that "forces are facing increasing financial pressures, arising both from current commitments and from a lack of robust costing of new demands".¹⁷

65. HMICS published a discussion paper in 2011, this time on the governance and accountability of policing in Scotland, which highlighted "weaknesses in police governance and accountability which have perpetuated since the 1962 Royal Commission and which, it is contended, must be redressed in supporting any future model of policing in Scotland".¹⁸ HMICS was also critical of the inconsistent way in which national policing functions were exercised—through a mix of lead police force, collaborative arrangements, the Scottish Crime and Drug Enforcement Agency, and other less formal arrangements. The Scottish Government claims in its Policy Memorandum that the new governance arrangements proposed in the Police and Fire Reform (Scotland) Bill will address these weaknesses.¹⁹

¹⁶ Scottish Parliament Justice Committee. (2008) News Release. Available at: <http://www.scottish.parliament.uk/newsandmediacentre/24566.aspx> [Accessed 27 April 2012].

¹⁷ Her Majesty's Inspectorate of Constabulary for Scotland. (2009) *Independent Review of Policing in Scotland*. Available at: <http://www.scotland.gov.uk/Publications/2009/01/23133505/0> [Accessed 27 April 2012].

¹⁸ Her Majesty's Inspectorate of Constabulary for Scotland. (2011) *Governance and Accountability of Policing in Scotland: A discussion paper*. Available at:

www.scotland.gov.uk/Resource/Doc/925/0117807.pdf [Accessed 27 April 2012].

¹⁹ Policy Memorandum, paragraph 73.

66. In 2011, the Scottish Government conducted two consultations on police reform. The first, '*A Consultation on the Future of Policing in Scotland*'²⁰, ran from 10 February until 5 May. It presented three options: a single service; a rationalised regional model; or retention of the existing eight service model with greater collaboration.

67. The consultation document outlined the Scottish Government's position that the status quo was untenable and that reform was necessary. In his foreword to the paper, the Cabinet Secretary for Justice indicated that there was a growing consensus that the eight force structure was unsustainable given the financial situation. However, he did not make clear at that stage whether the Scottish Government favoured a single service or regional model.

68. While there was general agreement that the adverse economic climate required changes to policing in Scotland, the consultation did not produce a consensus on a particular policing structure. Of the 219 respondents, 35 per cent gave no view or said there was insufficient information to enable an informed choice on structure; 21 per cent chose a regional model; 27 per cent preferred the status quo, and 10 per cent opted for a single service structure. Key issues highlighted in responses included the need to (a) protect local policing in communities, (b) strengthen local accountability, and (c) put in place arrangements for national governance to avoid political interference in enforcing the law.²¹

69. In July 2011, the Scottish Government invited comment from stakeholders on a draft Outline Business Case (OBC)²² for the reform of the police service, which had been developed by professionals, experts and stakeholders, building on work started in 2010 by the Scottish Policing Board. Each OBC used Target Operating Model (TOM) methods²³ to assess the most efficient way of delivering the key service functions, and this was then applied to the three reform options. Non-financial benefits were also estimated by identifying a series of outcomes, applying weighting to them and ranking each option for reform in terms of their potential to deliver against these options. This exercise identified the single service structure as performing best in relation to non-financial benefits.

70. The police OBC concluded that substantial efficiency savings could be made regardless of force structure and that most of these savings could be realised within the first five years. However, it identified the single service option as achieving the most significant savings. The OBC assumes that a level of savings will continue over a projected 15-year period. The costs of reform are estimated to peak after five years, reduce the following year, and remain on a level for the projected 15-year period.

²⁰ Scottish Government. (2011) *A Consultation on the Future of Policing in Scotland*. Available at: www.scotland.gov.uk/Publications/2011/02/10120102/0 [Accessed 27 April 2012].

²¹ Scottish Parliament Information Centre. (2011) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

²² Scottish Government. (2011) *Police Reform Programme Outline Business Case*. Available at: <http://www.scotland.gov.uk/Resource/Doc/357534/0120783.pdf> [Accessed 27 April 2012].

²³ The OBC describes a TOM as an optimum model for service delivery, allowing an informed assessment of the costs, benefits and risks associated with each option.

Fire and rescue services

71. The first organised public fire brigade in the United Kingdom was formed in Edinburgh in 1824 and, by the early years of the 20th century, there were over 180 municipal fire brigades operating in Scotland. The Fire Services Act 1947 established 11 fire brigades in Scotland and gave local authorities control of them through joint boards. This structure was streamlined to eight brigades in 1975 with the regionalisation of local government.²⁴

72. The statutory framework governing the fire and rescue services was modernised in the Fire (Scotland) Act 2005 (the 2005 Act), which placed a greater emphasis on the rescue aspect of the services, and established local authorities as the fire and rescue authorities for their area.²⁵ Scotland has two unitary fire boards: Fife, and Dumfries and Galloway, and six joint boards: Grampian, Tayside, Central, Lothian and Borders, Highland and Islands, and Strathclyde. As with the police, fire and rescue authorities and joint boards are made up of local councillors. They have responsibility for:

- establishing the fire and rescue services' local strategic direction and aims, in conjunction with the fire and rescue service senior management team;
- ensuring accountability to the public for the fire and rescue service performance; and
- ensuring that the service is managed effectively, with probity and integrity.²⁶

73. The majority of funding for the fire and rescue service is paid through revenue support grant made available directly to the 32 local authorities.

74. The Scottish Government's initial consultation²⁷ on reform of the fire and rescue services ran from 10 February until 5 May 2011, parallel to that on police reform. It outlined the Scottish Government's view that the eight brigade model could not maintain (or improve) performance and meet public expectations in the face of "unprecedented budget cuts" because of the way it was structured and organised. In the foreword to the document, the Minister for Community Safety made clear the Scottish Government's preference for a single fire and rescue service. Views were sought on proposals to decentralise resources and support functions, and suggestions invited on improvements, accountability mechanisms, and the balance between national and local involvement.

75. There was general agreement among the 171 respondents that the number of fire and rescue services in Scotland needed to be reduced but, of those who expressed a preference, more chose a regional structure than a single structure.

²⁴ Scottish Parliament Information Centre. (2011) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

²⁵ Fire (Scotland) Act 2005. Available at: <http://www.legislation.gov.uk/asp/2005/5/contents> [Accessed 27 April 2012].

²⁶ Scottish Parliament Information Centre. (2011) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

²⁷ Scottish Government. (2011) *A Consultation on the Future of the Fire and Rescue Service in Scotland*. Available at: www.scotland.gov.uk/Resource/Doc/341434/0113503.pdf [Accessed 27 April 2012].

However, a majority of submissions suggested that there was insufficient information on which to make an informed decision on structure.²⁸

76. Stakeholders were invited to comment on a draft fire and rescue service OBC²⁹ in July 2011, which had been developed in the same manner as that of the police service, building on work by a Ministerial Advisory Group. TOM methods were used to assess the most efficient way of delivering the key service functions and assessing the three reform options: the status quo (with enhanced collaboration), a regional structure of three or four brigades, or a single fire and rescue service.

77. The fire and rescue service OBC, like that of the police, suggested that significant financial and non-financial savings would be achieved by reform, but that these savings would vary depending on which of the three structural options were selected. However, the OBC suggested that the single service model would produce the largest savings, both financial and non-financial.

Scottish Government joint consultation on the police and fire and rescue services

78. On 8 September 2011, the Cabinet Secretary for Justice announced to the Parliament the Scottish Government's intention to introduce legislation to create a single national police service and a single national fire and rescue service, indicating this would deliver estimated savings of £130 million a year and £1.7 billion over 15 years.³⁰ On the same date, the Scottish Government launched a further consultation seeking views on the detail of these proposals, which ran until 2 November 2011.³¹ The Scottish Government also published the two OBCs for general comment on this date.

79. The Policy Memorandum on the Bill outlines the main issues raised during this consultation, including the need for more clarity in respect of local and national accountability mechanisms, the composition of the new oversight organisations, and the roles and responsibilities of local and chief officers.³²

80. A majority of political parties represented in the Scottish Parliament made commitments similar to those of the Scottish Government on establishing single police and fire and rescue services within their manifestoes for the 2011 election. It would appear that many of those organisations and individuals initially opposed to a single service model have since accepted that it is now inevitable. Despite any previous reservations, witnesses have engaged fully with the Committee's Stage 1 scrutiny of the Bill and have appeared genuinely committed to making the new structures and processes work as effectively as possible. The Committee wishes to thank all of the witnesses and those who provided written submissions for their valuable contribution to Stage 1 scrutiny of the Bill.

²⁸ Scottish Parliament Information Centre. (2011) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

²⁹ Outline Business Case for Reform of the Scottish Fire and Rescue Service. (2011). Available at: <http://www.scotland.gov.uk/Publications/2011/09/15153130/0> [Accessed 27 April 2012].

³⁰ Scottish Parliament. *Official Report, 8 September 2011*, Col 1560.

³¹ Scottish Government (2011). *Keeping Scotland Safe and Strong: A Consultation on Reforming Police and Fire and Rescue Services in Scotland*. Available at:

www.scotland.gov.uk/Publications/2011/09/15110325/0 [Accessed 27 April 2012].

³² Policy Memorandum, paragraph 14.

Outline of the Bill

81. According to the Scottish Government's policy memorandum, the main policy aims of the Bill are:

- to protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services;
- to create more equal access to specialist support and national capacity – like murder investigations teams, firearms teams or flood rescue – where and when they are needed; and
- to strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.³³

82. The Bill has two main parts.

83. Part 1 largely repeals the legislation underpinning policing in Scotland, the 1967 Act, and puts in place a new modernised framework for policing. The Bill also repeals Chapter 1 of the Police, Criminal Justice and Public Order (Scotland) Act 2006 (the 2006 Act), which established the SPSA and the SCDEA. The Bill also amends Chapter 2 of the 2006 Act to rename the Police Complaints Commissioner for Scotland and add investigatory powers in certain circumstances.

84. Part 2 amends the 2005 Act to establish the Scottish Fire and Rescue Service and transfers to it fire fighting, fire safety, and other functions under that Act. Aside from centralisation, reforms to the fire and rescue services are less extensive than those of police services because they were significantly updated relatively recently through the 2005 Act.

85. Further background to the Bill and its overall aims are set out in the Policy Memorandum and explored further in the briefings produced by the Scottish Parliament Information Centre on the Bill³⁴ and on the Financial Memorandum³⁵.

GENERAL PRINCIPLES OF THE BILL

86. The Committee is required under Rule 9.6.1 of Standing Orders to report on the general principles of the Bill. The general principles of the Bill are to merge both the police and the fire and rescue services into single services, transferring the governance and oversight responsibilities of local authorities to new national boards. The key issue for the Committee in considering the general principles of

³³ Policy Memorandum, paragraph 3.

³⁴ Scottish Parliament Information Centre. (2012) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

³⁵ Scottish Parliament Information Centre. (2012) *Police and Fire Reform (Scotland) Bill: Financial Memorandum*. SPICe Briefing 12/15. Available at: http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_12-15.pdf [Accessed 27 April 2012].

the Bill was whether the new national structures could deliver the services effectively throughout Scotland.

87. The general acceptance that reform is now inevitable³⁶ led the majority of witnesses not to focus on the general principles of the Bill, but instead to make constructive suggestions on how it might be improved, and their comments are included throughout the report. Only two respondents to the Committee's call for evidence made it absolutely clear that they remained opposed to the key principle of a single police force. UNISON Scotland stated that it "believes that the centralisation of police services in Scotland is wrong in principle"³⁷, while Reform Scotland argued that the Scottish Government had "not provided sufficient justification for taking a service which has historically been delivered at a local level and running it from the centre"³⁸.

88. The Committee looked at how the traditional role of local authorities would change under the Bill and whether this could hamper the services' ability to deliver their functions locally. The Bill does not specify if, or how many, local authority members should sit on the national boards and removes responsibility for setting local budgets for the services from local authorities. It does give local authorities a clear role in approving the local plans to be produced by the new services, but is silent on how they should make arrangements for doing so and on scrutiny of the services more generally. The Committee explores these arrangements further in the later in this report.

89. A further consequence of centralisation appears, at this stage, to be the loss of the ability to recover VAT for the provision of services under the Value Added Tax Act 1994. The Committee considers that, while it is important to highlight this issue at this stage, we do not believe that it is of such significance as to affect our decision on the general principles either way. VAT recovery is considered in more detail later in our report.

90. While the Scottish Government argued that the connection between services and communities would be strengthened by the Bill, the Committee heard evidence that it would in fact erode the local authority role in policing and fire and rescue services. Professor Jim Gallagher of Nuffield College, Oxford, argued that the new local authority powers were much weaker than at present and questioned whether they provided greater accountability³⁹, while Councillor Pat Watters, President of COSLA, agreed that local authorities would no longer have any "real powers" or "something that the police are accountable for to local communities"⁴⁰. A number of witnesses suggested that some local accountability could be achieved if budgets were devolved to local authority level; this issue is considered in more detail later in the report.

91. However, there was a strong belief amongst many police and fire bodies that the changes would not be detrimental to local policing or fire and rescue services and indeed could benefit them. For example, Chief Constable Kevin Smith,

³⁶ Paragraph 32 of this report.

³⁷ UNISON Scotland. Written submission.

³⁸ Reform Scotland. Written submission.

³⁹ Professor Jim Gallagher. Written submission.

⁴⁰ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1204.

President of ACPOS, said “we and the Government agree absolutely with each other on the objectives of reform”⁴¹, while Brian Sweeney of the Chief Fire Officers Association Scotland stated “where a certain service has been bound administratively and financially by its borders and boundaries, the fact that they will be removed will offer a tremendous opportunity”⁴².

92. The Cabinet Secretary for Justice told the Committee he believed that the single services would “strengthen the links between police and fire and rescue services and the communities they serve by enabling individual local councils, not regional joint boards, to take on a new role at a national level and to shape services in the local area”.⁴³

93. In June 2011, the Commission on the Future Delivery of Public Services, chaired by Dr Campbell Christie CBE, proposed an “urgent, sustained and coherent programme of public service reform”.⁴⁴ The Commission identified a number of priorities for public service reform, including concentrating efforts on delivering integrated services and recognising that effective services must be designed with and for people and communities—not delivered ‘top down’ for administrative convenience. The Scottish Government responded by committing to a public service reform programme over this session of the Parliament with an emphasis on, among other things, a shift towards prevention, greater integration of public services at a local level, effective leadership, and improved performance.⁴⁵

94. In its Policy Memorandum on this Bill, the Scottish Government states that police and fire and rescue reform is one important element of its public sector reform programme.⁴⁶ However, UNISON Scotland argued that the proposals on police and fire and rescue reform are “exactly the sort of ‘top down’ approach the Christie Commission warned against”.⁴⁷

95. The Committee recognises there is an economic driver for reform. However, the majority of the Committee also accepts that reform of the police and fire and rescue services provides an opportunity to enhance service delivery across communities in Scotland. We are not convinced by the argument that, because policing and fire and rescue services have traditionally been delivered through local authorities, this structure should always remain. However, we do see a key role for local authorities in the new structure and an opportunity for them to determine their own mechanisms for involvement best suited to their local areas. Some of us think that some changes might be required to strengthen and secure their role. We explore these issues in more detail later in the report.

96. **Therefore, the majority of the Committee supports the general principles of the Bill.**

⁴¹ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 980.

⁴² Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1118.

⁴³ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1225.

⁴⁴ Scottish Government. (2011). *Commission on the Future Delivery of Public Services*. Available at: <http://www.scotland.gov.uk/Publications/2011/06/27154527/0> [Accessed 27 April 2012].

⁴⁵ Policy Memorandum, paragraph 191.

⁴⁶ Policy Memorandum, paragraph 192.

⁴⁷ UNISON Scotland. Written submission.

97. One member of the Committee was not convinced that local policing and fire and rescue services could be delivered successfully through a national structure and is concerned that local accountability is being lost in the Bill. That member therefore does not support the general principles of the Bill.⁴⁸

Policy and Financial Memorandums

98. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. We consider that the Memorandum provides adequate detail on the policy intention behind the provisions in the Bill and explains why alternative approaches considered were not favoured. The Committee was also content with the details of the consultations conducted by the Scottish Government prior to introduction of the Bill.

99. The same rule also requires the lead committee to report on the Financial Memorandum (FM). While the Committee considers the FM and comments from the Finance Committee later in this report, we wish to highlight here that there were concerns amongst some witnesses regarding the figures contained in the outline business cases (OBCs) used to inform the FM.

Structure

100. The remainder of this report is structured around three overarching themes relating both to the police and fire and rescue services which arose in evidence gathered by the Committee. These are: national governance; priorities, plans and reports, including local scrutiny; and implementation. The final two sections of the report explore specific issues relating to provisions on the police and on the fire and rescue service respectively.

NATIONAL GOVERNANCE

101. The Bill removes the current tripartite arrangements and puts in place new arrangements for national accountability and governance.

102. The Policy Memorandum on the Bill states that “the Bill sets out a clear legislative framework to ensure effective national governance for policing and fire and rescue services across Scotland and makes clear statutory provision for the:

- role of the Scottish Police Authority (SPA) and the Scottish Fire and Rescue Service (SFRS) Board;
- composition of the SPA and SFRS Board;
- role of the chief constable and chief fire officer;
- role of the Scottish Ministers, and
- role of the Scottish Parliament.”⁴⁹

103. A key theme arising in the evidence was the need to strengthen the national governance and accountability mechanisms set out in the Bill, including by

⁴⁸ Alison McInnes MSP.

⁴⁹ Policy Memorandum, paragraph 72.

enhancing the role of some of these organisations and individuals. This is explored in more detail below.

The Scottish Police Authority and Scottish Fire and Rescue Service Board

Role, size and composition of the SPA and SFRS Board

104. The Bill establishes two new statutory bodies: the SPA and the SFRS.

105. The SPA's main functions set out in section 2 of the Bill are to:

- maintain the Police Service;
- promote and support continuous improvement in the policing of Scotland; and
- hold the chief constable to account for the policing of Scotland.

106. The SFRS will replace the existing fire and rescue authorities and joint boards and all functions currently carried out by them will be transferred to the new body. It will provide fire and rescue services throughout Scotland and be governed by a Board. The chief officer of the SFRS will be held to account by the SFRS Board.

107. The SPA and SFRS Board will each consist of between seven and 11 members, appointed directly by the Scottish Ministers on the basis of relevant skills and expertise and in accordance with the Code of Practice for Ministerial Appointments to Public Bodies in Scotland.⁵⁰

108. The Policy Memorandum states that the new services will be “governed” by the SPA and SFRS Board, while both of these bodies will also “hold to account” the chief constable and the chief fire officer, and “play a critical role in scrutinising the services”.⁵¹ It further states that “the Scottish Government recognises that local councillors, especially those with experience of police and fire and rescue services, will have much to offer the governance of the new services, and the appointments process will allow the Scottish Ministers to appoint a number of members to both on the basis of skills and expertise relating to local government”.⁵²

109. The Policy Memorandum goes on to state that—

“The role of the SPA and SFRS Board is to ensure the effective delivery of policing and fire and rescue services across Scotland. As such, members are not attending meetings as representatives but to act in the best interests of the SPA and SFRS. There is therefore a potential conflict of interest that arises from representative membership and the Scottish Government has concluded the Bill should not include any statutory requirement for representative members. Board members will be sought with a range of skills and expertise, including current or recent expertise of local government.”⁵³

⁵⁰ Policy Memorandum, paragraph 84.

⁵¹ Policy Memorandum, paragraphs 74, 75 and 95.

⁵² Policy Memorandum, paragraph 84.

⁵³ Policy Memorandum, paragraph 85.

110. The Cabinet Secretary for Justice indicated in evidence to the Committee that the Scottish Government currently proposes a local authority membership of four for the SPA and SFRS Board.⁵⁴

111. In its report on the Bill, the LGR Committee recommended that the SPA and SFRS Board should each consist of 14 to 16 members to “provide the flexibility to allow for sufficient democratic and regional representation, as well as allow for practical considerations, such as vacancies or absences”.⁵⁵ It further agreed that local authority members should be appointed on merit through the public appointments process and that it was not necessary for a majority of board members to be from local authorities.⁵⁶

112. The Committee noted differing expectations amongst witnesses as to the role of the SPA and SFRS Board. Some argued that the boards should primarily be governing bodies, overseeing and maintaining the police and fire and rescue services, while holding the chief constable and chief fire officer to account. These witnesses were broadly content with the size and composition of the board as proposed in the Bill.

113. Others took the view that the SPA and SFRS Board should take on more of a scrutiny role; these witnesses tended to favour a larger membership to ensure adequate local government involvement.

114. Robert Black, the Auditor General for Scotland, was content with the existing proposals on the basis that “the average number of members on a FTSE 100 company is about 11, which resonates with the Bill”. He went on to say—

“I am comfortable with that order of magnitude, but it will only be possible ... if we are clear that it is a board of governance, not a board of representation. If it becomes a board of representation, it will inevitably become much larger and, consequently, operate at two speeds at once. At the first speed it will focus on the governance role, while at the second speed it will focus on the role of holding to account on behalf of communities, which is really difficult.”⁵⁷

115. In his written submission, the Auditor General referred to an Audit Scotland report on the SPSA which found “that the composition of the SPSA Board (which was structured to reflect the local governance arrangements for policing) created tensions in the competing roles and duties of some of its members”.⁵⁸

116. Brian Sweeney of the Chief Fire Officers Association Scotland said his organisation was also “broadly content on the membership of the national board”⁵⁹

⁵⁴ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1231.

⁵⁵ Scottish Parliament Local Government and Regeneration Committee 5th Report, 2012, paragraph 41.

⁵⁶ Scottish Parliament Local Government and Regeneration Committee 5th Report, 2012, paragraph 63.

⁵⁷ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Col 1090.

⁵⁸ Auditor General for Scotland. Written submission.

⁵⁹ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1116.

and Councillor George Kay from Fife Police, Fire and Rescue Committee preferred 13 members, but was “prepared to live with 11”⁶⁰.

117. Many of those witnesses who favoured a larger membership were local elected members, who had varying suggestions as to the optimum size of the board⁶¹, but tended to the view that “councillors must be the foundation of the SPA and SFRS Board”⁶².

118. Members of the Scottish Police Authorities Conveners Forum agreed that a minimum of 50 per cent of SPA members should be drawn from suitably experienced locally elected representatives.⁶³ The Society of Local Authority Chief Executives shared this view but further argued that half of the board should be appointed by the Scottish Government and the other half by local government to create “a genuine partnership between national and local government”.⁶⁴ Councillor Stephen Curran of Strathclyde Police Board stated that “diversity in the broadest sense is really significant” and is “an area that has been flagged up as a weakness in some police boards in policing generally”.⁶⁵

119. Reform Scotland believes that the SPA should be made up entirely of representatives of each of the 32 Scottish local authorities⁶⁶, but accepted the need for “people representing specialist national policing” along with Ministerial or senior civil servant representation on the board⁶⁷. Professor Jim Gallagher of Nuffield College, Oxford, was also of the view that the SPA could be a local government body—

“There is no reason in principle why a single force could not be part of local government. Rather than a quango appointed by Ministers, the SPA could be a local government body, consisting of elected councillors, perhaps with appointed members added. There would need to be rules about how the councillors were chosen, perhaps by a form of indirect election.”⁶⁸

120. Other witnesses favoured some representation from local elected members on the boards, but did not agree that they needed to be in the majority.⁶⁹ Indeed, Deputy Chief Constable Gordon Meldrum, Director General of the Scottish Crime and Drug Enforcement Agency stated that “the strength of the SPA will be in its balance and blend of democratically elected representatives ... and independents”.⁷⁰

⁶⁰ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1182.

⁶¹ Northern Joint Police Board, Highland and Islands Fire Board and Highland Council proposed a membership of 15 members, while COSLA and Dumfries and Galloway Council (Police and Fire and Rescue Service) suggested *at least* 15 members. Councillor Whyte of Lothian and Borders Police Board opted for between 15 and 18 members.

⁶² Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.

⁶³ Scottish Police Authorities Conveners Forum. Written submission.

⁶⁴ Society of Local Authority Chief Executives. Written submission.

⁶⁵ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1201.

⁶⁶ Reform Scotland. Written submission.

⁶⁷ Scottish Parliament Justice Committee. *Official Report, 6 March 2012*, Col 1048.

⁶⁸ Professor Jim Gallagher. Written submission.

⁶⁹ Scottish Parliament Justice Committee. *Official Report, 28 February 2012*, Cols 992-993.

⁷⁰ Scottish Parliament Justice Committee. *Official Report, 28 February 2012*, Col 993.

121. A number of other witnesses were less concerned with the size or balance of membership on the boards and more with the skills and experience of members.⁷¹ For example, Richard Haigh of the Association of Principal Fire Officers Scotland said “it is not just about numbers, size and shape, but about the skill set and the expertise that are brought to the board”⁷², while Professor John McNeill, the Police Complaints Commissioner for Scotland, told the Committee that his “primary concern is that the individuals on the Scottish Police Authority are competent, in the sense that they hold the command team to account”⁷³. He went on to state that “there is a world of difference between hearing an account and holding to account” and that the national boards should concentrate on the latter.⁷⁴

122. The Bill provides for the SPA and SFRS Board to establish “committees for any purpose” and for those committees to create sub-committees. Members of these committees and sub-committees may include individuals who are not members of the SPA or SFRS board.⁷⁵

123. Some witnesses, including the Scottish Police Federation and the Scottish Crime and Drug Enforcement Agency, told the Committee that to service any such committees or sub-committees the boards would need a larger membership.⁷⁶

124. The Northern Ireland Policing Board is made up of 10 elected members from the Northern Ireland Assembly appointed under a system of proportional representation, and nine independent members who apply through an advertisement and are selected by the Northern Ireland Department of Justice. Assistant Chief Constable Alistair Finlay of the Police Service of Northern Ireland confirmed to the Committee that the board of 19 members was sufficient to staff its six sub-committees. He said that the size of the sub-committees enabled “good dialogue ... purposeful engagement and conversation” and indeed, that this was where much of the detailed work was done.⁷⁷

125. The Cabinet Secretary for Justice told the Committee that the Scottish Government had opted for a board of up to 11 members on the basis of the Auditor General’s comments on the boards of the top FTSE companies. He pointed out that a large board would be “unworkable” and that he “was certain the issue should be quality, not quantity” of members, however, “we need sufficient membership not only to reflect the fact that this is a national service, but to take account of gender, ethnicity and Scotland’s geographical differences”. He said he was further not persuaded that the majority of the board should be local authority members, but would be “happy to take on board the committee’s advice” in relation to the size and composition of the boards.⁷⁸

⁷¹ Chartered Institute of Public Finance and Accountability. Written submission.

⁷² Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1125.

⁷³ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Col 1078.

⁷⁴ *Ibid.*

⁷⁵ Police and Fire Reform (Scotland) Bill, schedule 1 and schedule 1A to Fire (Scotland) Act 2005.

⁷⁶ Scottish Police Federation and Scottish Crime and Drug Enforcement Agency. Written submissions.

⁷⁷ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Cols 1051-1052.

⁷⁸ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1232.

Time commitment and salaries of SPA and SFRS Board members

126. The Committee was asked by the LGR Committee to consider views on “the need for clarity over the status of the part or full time nature of the SPA members”.⁷⁹ The Cabinet Secretary for Justice confirmed to the Committee that he expected positions on the boards would be part-time to allow those who have other roles and commitments to participate.⁸⁰ A Scottish Government official added that consideration was being given to the salaries of the board members but that these still had to be finalised.⁸¹

Transparency of the SPA and SFRS Board

127. The Bill states that the SPA is expected to carry out its functions in a proportionate, accountable and transparent way.⁸²

128. The Committee heard evidence that the transparency of the workings of the SPA would be vital in providing a necessary link with the public. Sir Hugh Orde, President of the Association of Chief Police Officers, spoke of his experience as a previous chief constable of the Police Service of Northern Ireland, where transparency of the board was one of the most important areas in gaining the trust of the public—

“The policing board was, without question, independent and it had legitimacy, which was a vital factor. It could also, in law, hold me to account in public. We used to have 10 or 11 public meetings a year at which my senior management team and I would be held to account in front of television cameras—broadcast live if there was an exciting set of questions, not live if there was not. I would also be available afterwards for interview by the media. ... The need for transparency is the main point.”⁸³

129. When asked whether the meetings of the SPA should be held in public and fully minuted, Chief Constable Smith of ACPOS said “anything less would be a deficit”⁸⁴, and Councillor Martin Greig of Grampian Joint Police Board made “a heartfelt plea for the SPA to meet in public and to publish its minutes, agenda and all of its business”⁸⁵.

130. The LGR Committee heard concerns that there was no reference in the Bill to any requirement for engagement between the SPA, local authorities and the public.⁸⁶ In its written submission to that Committee, the Scottish Police Federation said this “had the potential to create a disconnection” that could “harm local policing”.⁸⁷ Integrity4Scotland was also of the view that “adequate provision is not

⁷⁹ Scottish Parliament Local Government and Regeneration Committee 5th Report, 2012, paragraph 42.

⁸⁰ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1233.

⁸¹ *Ibid.*

⁸² The Police and Fire Reform (Scotland) Bill. Section 2(3).

⁸³ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1131.

⁸⁴ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 995

⁸⁵ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1193.

⁸⁶ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 113.

⁸⁷ Scottish Police Federation. Written submission to the Local Government and Regeneration Committee.

included within the Bill for the people's direct involvement in and control of the police services".⁸⁸

Committee view

131. The Committee notes the differing views of witnesses in relation to the role, size and composition of the SPA and SFRS Board. **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.** We do not see the SPA and SFRS Board as bodies of local representation.

132. Notwithstanding these comments, the Committee agrees that the boards should have a balance of lay members and local elected representatives who can bring a range of experience, knowledge and perspectives to the table. **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 are of the view that all members should have equal status and should be appointed in the same manner (regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland, as proposed in the Bill).

133. **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.**

134. The Committee welcomes the Cabinet Secretary for Justice's statement that membership of the boards should take account of gender, ethnicity and Scotland's geographical differences.

135. The Committee notes that the positions on the SPA and SFRS Board are likely to be part-time, but would suggest that the Scottish Government makes clear to candidates that, during the 'setting up period' members will have considerable demands placed on them. **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.**

136. **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.** We recognise that there may be occasions that necessitate consideration of items in private, but would urge that this be subject to a formal decision of the board.

137. **We believe that the same principles of transparency should apply to the SFRS Board.**

⁸⁸ Integrity4Scotland. Written submission.

Relationship between the SPA and SFRS Board and local government

138. The Bill does not place a duty on the SPA or the SFRS Board to establish formal mechanisms through which to engage with local authorities, which the Scottish Crime and Drug Enforcement Agency (SCDEA), amongst others, argued were needed “to ensure proper dialogue and discussion of finite police resources to meet both national and local demands”.⁸⁹

139. The LGR Committee also noted views of “many stakeholders” that there was a lack of clarity in the Bill in terms of ensuring that “there is a sufficiently robust and structured relationship between the national boards and local authorities”.⁹⁰

140. Councillor Kay of Fife Police, Fire and Safety Committee told the Committee that the issue that still needed to be addressed in the Bill was the communication between the SPA and local authorities, which he described as “crucial”.⁹¹ The SCDEA suggested that this could be achieved through establishment of a sub-committee of the SPA with responsibility for oversight in relation to national and local connectivity, similar to the Northern Ireland Policing Board’s community engagement committee.⁹² Deputy Chief Constable Gordon Meldrum from the SCDEA told the Committee that national accountability and local accountability could not each “sit in splendid isolation from the other”.⁹³

141. Councillor Whyte of the Lothian and Borders Police Board warned the LGR Committee of a possible “disconnect” between a national police board and local government if too much emphasis is placed on “centralised national issues” to “the detriment of local policing”.⁹⁴

142. Some witnesses highlighted concerns at the lack of detail in the Bill on how disagreements between national and local authorities regarding such matters as funding would be resolved. For example, Councillor Durham of the Scottish Fire Conveners Forum told the Committee that “given the level of savings that will have to be found in the years ahead, there are almost certainly going to be tensions between local aspirations for service provision and what the national plan might say” and that “if that happens there must be resolution”.⁹⁵ He added that “ultimately, either the Parliament or the Ministers will have to engage in resolving disputes”.⁹⁶

143. Brian Sweeney of the Chief Fire Officers Association Scotland agreed that tensions will emerge between the national boards and local government and suggested that there might be “a natural ombudsman role for Her Majesty’s Chief Inspector of Fire and Rescue Authorities”.⁹⁷ Councillor Blake from Dumfries and

⁸⁹ SCDEA. Written submission.

⁹⁰ Scottish Parliament Local Government and Regeneration Committee 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill, paragraph 60.*

⁹¹ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1189.

⁹² SCDEA. Written submission.

⁹³ Scottish Parliament Justice Committee. *Official Report, 28 February 2012*, Col 986.

⁹⁴ Scottish Parliament Local Government and Regeneration Committee. *Official Report, 21 February 2012*, Col 648.

⁹⁵ Scottish Parliament Justice Committee. *Official Report, 13 March 2012*, Col 1114.

⁹⁶ *Ibid.*

⁹⁷ Scottish Parliament Justice Committee. *Official Report, 13 March 2012*, Col 1116.

Galloway Council (Police and Fire and Rescue Authority) said that conflict between national government and local authorities regarding resources could be resolved through an element of devolved local budgeting flexibility⁹⁸ (an issue which is discussed later in the report).

144. Chief Constable Smith of ACPOS said that there needed to be “direct connectivity between the local and the national”⁹⁹ and explained this further in evidence to the LGR Committee—

“We want dispute prevention, rather than a complicated process of dispute resolution. Things will happen the way they happen just now—through effective relationships and through being able to speak to the next person up the chain. Many things will be resolved in the way that they are today—through effective dialogue and good relationships.”¹⁰⁰

145. Councillor Whyte agreed and said he did not think that any of his colleagues on the Scottish Police Authorities Conveners Forum would advocate a fixed dispute resolution mechanism as “the problem with those is that we would get into dispute resolution very quickly”.¹⁰¹

146. The Cabinet Secretary for Justice told the Committee that any disagreements between the national boards and local government “will have to be dealt with by those who are involved at the time ... it will depend on the nature of the problem” and that “representations could be made by the local authority to the police authority”.¹⁰²

Committee view

147. The Committee accepts the view expressed by some witnesses that including a formal dispute resolution mechanism in the Bill could encourage use of formal channels rather than retaining an element of flexibility to resolve such disagreements. **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.**

148. We do however believe that further clarity on the relationship between the national boards and local authorities could help to avoid some of the disputes that witnesses suggest might occur. **The Committee asks the Scottish Government to provide greater clarity on the relationship between the national boards and local authorities, perhaps within the guidance it is developing on local scrutiny mechanisms** (to be informed by the pathfinder work, which is discussed later in this report).

⁹⁸ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1190.

⁹⁹ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 988.

¹⁰⁰ Scottish Parliament Local Government and Regeneration Committee. *Official Report*, 21 February 2012, Col 662.

¹⁰¹ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1188.

¹⁰² Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1247.

Power to specify the type of goods and services the SPA may provide

149. Section 84(1)(b) provides that the SPA may provide goods and services of such type as the Scottish Ministers may by order specify to such other persons “as may be so specified”.

150. The Subordinate Legislation Committee was concerned “that this power appeared to be very general in its terms, and (at its broadest) might be taken to enable the Scottish Ministers to make regulations permitting the Authority to supply goods and services of any description to any person”.¹⁰³ In its report on the Bill, that Committee explained that “the Scottish Ministers indicate that this power would only be exercised where they are satisfied that it was appropriate for particular goods and services to be supplied to particular categories of person, and that by making it exercisable by subordinate legislation then the Parliament also has an opportunity to satisfy itself as to the appropriateness of what is proposed”.¹⁰⁴ The Scottish Government also said that they envisage that the power might be used, for example, to enable the SPA to charge overseas governments and police forces for the provision of forensic services.¹⁰⁵

151. The Subordinate Legislation Committee still however considered that the power in section 84(1)(b) was capable of being exercised “in a particularly broad manner so as to specify goods and services of any nature”. It further argued that “given the apparent intention of the Scottish Ministers is to permit the Scottish Police Authority to supply goods and services which are connected with its functions, ... the power ought to be so drafted as to reflect that intention.”¹⁰⁶

152. 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.

Reserves

153. The Police and Fire Services (Finance) (Scotland) Act 2001 currently allows police authorities, joint police boards and joint fire boards to carry forward unspent balances from one financial year to the next. In this way, reserves of up to 5% of revenue budgets can be held. However, the 2001 Act would be repealed by Schedule 7 of the Bill, and as a consequence, the SPA and SFRS will be unable to accrue financial reserves.¹⁰⁷

154. Concern was expressed regarding the loss of the ability to hold reserves, including by the Scottish Police Authorities Conveners Forum which argued that “the necessity of being able to hold and utilise reserves to smooth out unexpected

¹⁰³ Scottish Parliament Subordinate Legislation Committee 16th Report, 2012, paragraph 32.

¹⁰⁴ Scottish Parliament Subordinate Legislation Committee 16th Report, 2012, paragraph 33.

¹⁰⁵ *Ibid.*

¹⁰⁶ Scottish Parliament Subordinate Legislation Committee 16th Report, 2012, paragraph 35.

¹⁰⁷ Scottish Parliament Information Centre. (2012) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

operational demand is essential and well proven by current police authorities”.¹⁰⁸ The Chief Fire Officers Association Scotland had similar concerns regarding fire reserves—

“... the new service is not permitted to hold reserves, something which is recognised as sound financial management practice. These detrimental impacts on the service when compared to current practices are matters which we would ask the Scottish Government to consider when reviewing the proposed legislation and legal standing of the new single service.”¹⁰⁹

155. Her Majesty’s Inspectorate of Constabulary for Scotland suggested that for the first three years post-reform the police service should retain the ability to create and carry forward reserves and that this arrangement could be reviewed at the end of this period.¹¹⁰

156. A Scottish Government official told the Finance Committee that the majority of public services in Scotland are managed without reserves. He went on to say that the Scottish Government did “not think that the loss of capacity to hold reserves will impact adversely on either service” and “there ought to be enough scope for effective financial management within those budgets to manage without building up reserves.”¹¹¹

157. The Committee notes the views of some witnesses that the ability to accrue reserves is sound financial practice. **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.**

Role of the Scottish Ministers

158. The Policy Memorandum states that, while the Scottish Ministers will continue to be accountable to the Scottish Parliament for policing and fire and rescue services, the provisions in the Bill “provide a clear separation between the Scottish Ministers and the services by ensuring their role is primarily a strategic one”.¹¹² The Scottish Ministers will be responsible for appointing members of the SPA and SFRS Board, approving the appointment of the chief constable and chief fire officer, and setting national budgets and strategic priorities.¹¹³

159. Section 5 of the Bill also requires the SPA to comply with any direction (general or specific) given by the Scottish Ministers and for such directions to be published and laid before the Parliament. Such a direction may not be given in respect of (a) a specific operation being or to be carried out by the police service, or (b) the way in which the police service carries out (or is to carry out) a specific operation.

¹⁰⁸ Scottish Police Authorities Conveners Forum. Written submission.

¹⁰⁹ Chief Fire Officers Association Scotland. Written submission.

¹¹⁰ Her Majesty’s Inspectorate of Constabulary for Scotland. Written submission.

¹¹¹ Scottish Parliament Finance Committee. *Official Report*, 22 February 2012, Col 722.

¹¹² Policy Memorandum, paragraph 87.

¹¹³ *Ibid.*

160. Section 116 of the Bill will amend the 2005 Act to allow the Scottish Ministers to give the SFRS general or specific directions that must be complied with. The Policy Memorandum states that “this new power of direction will not impact on the Scottish Ministers’ existing power of direction where there is a failure to act in accordance with the fire and rescue framework; this is retained as a distinct mechanism for enforcing adherence to the framework”.¹¹⁴

161. The Policy Memorandum states that the Scottish Government did give consideration to whether a Ministerial power of direction was necessary but concluded that the power “is required to enable the Scottish Ministers to act in the public interest and to execute the will of the Scottish Parliament if necessary”. It further states that the Scottish Government had also considered specifying the circumstances in which the power might be used but concluded that this was “undesirable” and confirms that “like all such powers it would be used sparingly if at all”.¹¹⁵

162. Some stakeholders were concerned that the powers of the Scottish Ministers within the Bill bordered on political interference. ACPOS said that the powers risked threatening the operational independence of the police, which the Scottish Government had appeared to be attempting to protect.¹¹⁶ Professor Jim Gallagher took the view that there were particular dangers in relation to increasing the powers of Ministers over policing, which did not apply to other public bodies—

“I am sure that present Ministers will want to have these powers so that they can make the police service run better: that is proper ambition, but such a wide suite of powers might also be misused. Such misuse may be unlikely, but it would happen, if at all, only insidiously and gradually. It might be better to draw some rather firmer boundaries around Ministers’ powers to affect operational policing to be as sure as possible that does not happen”.¹¹⁷

163. COSLA questioned whether the Scottish Ministers’ power to set strategic police priorities (discussed in the next section of this report) might relate to operational matters¹¹⁸ and the Scottish Police Federation (SPF) considered that the provisions requiring the chief constable to police Scotland with regard to these priorities could “impinge on operational independence”. The SPF agreed that this provision for Scottish Ministers to set strategic police priorities, along with the requirement for the SPA to submit its strategic police plan to the Scottish Ministers for approval, could amount to “a shift in the mechanics of accountability and governance to the detriment of operational independence”.¹¹⁹

164. Witnesses had particular concerns that the provision for Ministerial direction in section 5 could open the police service to accusations of political control or inappropriate Ministerial influence. The Scottish Police Authorities Conveners Forum argued that, “if one aim of the Bill is to keep policing separate from

¹¹⁴ See paragraph 193 of this paper for further details of Scottish Fire and Rescue Framework.

¹¹⁵ Policy Memorandum, paragraph 91.

¹¹⁶ ACPOS. Written submission.

¹¹⁷ Professor Jim Gallagher. Written submission.

¹¹⁸ COSLA. Written submission.

¹¹⁹ Scottish Police Federation. Written submission.

Ministerial control, then the general or specific power of direction does not provide the essential separation”.¹²⁰ Scottish Women’s Aid agreed—

“In terms of overall independence, accountability and decision-making powers of the Authority, we would question how this will be maintained if Ministers are to have a power of direction over the Authority, regardless of how little this power would be used in practice.”¹²¹

165. Her Majesty’s Inspectorate of Constabulary for Scotland also questioned why a Ministerial power of direction for the SPA was needed at all and suggested that the Parliament should be given a role in the scrutiny of any direction, in order to move from ministerial influence towards democratic accountability.¹²²

166. The Association of Scottish Police Superintendents, amongst other witnesses, argued that safeguards were required regarding use of the power of direction to ensure that it cannot be misused.¹²³ The Scottish Police Federation (SPF), for example, suggested that such safeguards could be achieved by amending the Bill so that “a direction may not be given in respect of any operation or on any issue which may affect an operational matter”.¹²⁴ Others suggested that protection could be achieved by defining ‘operational’ in the context of this provision¹²⁵ and Calum Steele of the SPF provided the Committee with a possible definition, which could be used as a starting point for discussions on the matter¹²⁶.

167. Professor John McNeill, the Police Complaints Commissioner for Scotland, told the LGR Committee that he did not “subscribe to the myth of operational independence” as this could be construed as independence from local communities rather than from political control. He preferred “the concept of operational primacy”.¹²⁷ Andrew Laing, Her Majesty’s Inspector of Constabulary for Scotland took a similar view that “it is not independence from the citizen or the system of governance, but independence to exercise the law free from undue influence”.¹²⁸ The Auditor General for Scotland, who drew a parallel between this part of the Bill and legislation setting out his own role, told the Committee that it was possible to guarantee independence “without the need to define in statute such things as operational independence, which is almost impossible anyway—otherwise it would have been done by now”.¹²⁹

168. However, other stakeholders were perfectly content with the provision, such as the Scottish Institute for Policing Research, which singled out section 5 as “embodying a fundamental principle that the Scottish Ministers should not issue

¹²⁰ Scottish Police Authorities Conveners Forum. Written submission.

¹²¹ Scottish Women’s Aid. Written submission.

¹²² Her Majesty’s Inspector of Constabulary for Scotland. Written submission.

¹²³ Association of Scottish Police Superintendents. Written submission.

¹²⁴ Scottish Police Federation. Written submission.

¹²⁵ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1197.

¹²⁶ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 1006.

¹²⁷ Scottish Parliament Local Government and Regeneration Committee. *Official Report*, 21 February 2012, Col 658.

¹²⁸ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Col 1079.

¹²⁹ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Col 1078.

directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation".¹³⁰

169. The Cabinet Secretary for Justice told the Committee that "the power of ministerial direction does not allow me to interfere with operational matters, because it refers to the Scottish Police Authority". He said he was aware of the concerns of the Committee and others, "but we have built into the Bill clear requirements to ensure that the Cabinet Secretary for Justice, whoever he or she is, cannot interfere with the operational decisions by the chief constable, whoever he or she is".¹³¹

170. Very few views were expressed about section 116, the equivalent provision to section 5 covering fire and rescue. It appears witnesses had few concerns with this provision.

Committee view

171. The Committee acknowledges the concerns of witnesses regarding the role of Scottish Ministers and, in particular, views on the possible misuse of the power of Ministerial direction, but also notes that the power applies to the national boards rather than to the chief constable or chief fire officer.

172. 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. It is not possible to be completely certain whether the statutory test set out in the Bill is entirely robust, but it appears to codify an appropriate balance. **Furthermore, we are not convinced that including a definition of operational independence on the face of the Bill would be helpful.**

173. 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.

Role of the Parliament

174. The Scottish Parliament has always had the ability to inquire into the police and fire and rescue services. For instance, as noted in the introduction, the predecessor Justice Committee in Session 3 of the Parliament conducted a major inquiry into police resources in 2008.

175. However, it could be argued that the centralisation of police and fire and rescue services under the Bill requires the Scottish Parliament to have an enhanced, more institutionalised, and more formal role, especially given the

¹³⁰ Scottish Institute for Policing Research. Written submission

¹³¹ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1237.

abolition of police and fire authorities and joint boards, which hitherto have provided the main democratic oversight. The Committee accepts that such a role should consist of examining the policies and strategies of the police service that are of public interest rather than querying operational matters.

176. Parliamentary oversight of the police varies across Europe. In general, where there is a single national chief constable or commissioner, the constable or commissioner is responsible to the Minister for Justice, who is in turn answerable to Parliament. Some countries, like Sweden, have an ombudsman system, with the ombudsman dealing with the public's complaints and reporting their findings to the Parliament. As outlined earlier, in Northern Ireland, parliamentary scrutiny of a sort is provided by the Northern Ireland Policing Board (NIPB), 10 of whose 19 members are also Members of the Northern Ireland Assembly. However, the NIPB is more akin to the SPA rather than being a parliamentary oversight body. The Committee does not consider that MSPs should be members of the SPA as we consider that might create confusion as to its primary role which, we reiterate, should be as a body responsible for ensuring the effective governance of the Scottish police service.

Provisions in the Bill-evidence

177. The Policy Memorandum states that the Bill will, for the first time, enable the Scottish Parliament to have a formal role in scrutinising the police and fire and rescue services, and will, therefore, enhance the Parliament's oversight. The Memorandum also notes that the Parliament's role in approving the fire and rescue framework will continue under the Bill.¹³²

178. Under the Bill, the key strategic planning documents, as well as the annual report and accounts for each service (all discussed later in the report), must be laid before the Parliament. The Bill also requires the Police Investigations and Review Commissioner, Her Majesty's inspectors of constabulary in Scotland, and the inspectors of the SFRS to lay their published reports before the Parliament. This was welcomed by the LGR Committee, which said that the requirements to lay the fire and police annual reports and strategic plans before the Parliament "will provide an opportunity to establish a degree of democratic accountability for the services, and to provide parliamentary scrutiny of their progress".¹³³

179. Not all witnesses were persuaded that the Scottish Parliament should have a scrutiny role extending beyond what was already set out in the Bill. For instance, Councillor Whyte of Lothian and Borders Police Board considered that it was the SPA's role to provide governance and accountability and did not see how the Parliament having a further oversight role would fit into that.¹³⁴

180. However, most witnesses who expressed a view agreed that the Parliament should have an enhanced role. For instance, the Fire Brigades Union agreed that "the Scottish Parliament must take an active role in both the scrutiny and setting the direction of the [fire and rescue] service"¹³⁵, while Councillor Durham of the

¹³² Policy memorandum, paragraph 94.

¹³³ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 119.

¹³⁴ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1193.

¹³⁵ Fire Brigades Union. Written submission.

Scottish Fire Conveners Forum said an enhanced role for the Parliament would give confidence as “there is always a concern about the centralisation of power”.¹³⁶

181. The most detailed contribution on parliamentary scrutiny came from the Auditor General for Scotland, who called for a formal mechanism to give the Parliament “a major role in ensuring there is open, participative and transparent oversight of policing in Scotland”.¹³⁷ He made a number of suggestions as to how this might be achieved. These included establishing a specific committee¹³⁸ or giving additional responsibilities to the Justice Committee. In relation to the second suggestion, however, he noted the tendency for successive Justice Committees to be heavily burdened with legislation, which might compromise any enhanced scrutiny role.

182. Another suggestion from the Auditor General was the creation of a Commission, similar to the Scottish Commission for Public Audit, “which was put in place to safeguard the independence of the Auditor General ... while ensuring public scrutiny of Audit Scotland”.¹³⁹ The Auditor General’s view was that these arrangements had worked very well. (The SCPA is a body set up by virtue of the Public Finance and Accountability (Scotland) Act 2000, which laid out some of the “ground rules” for effective scrutiny of public spending, post-devolution. It is not formally a parliamentary committee but consists of five MSPs assisted and resourced by the Scottish Parliament.)

183. The Cabinet Secretary for Justice told the Committee that the Scottish Government accepted “the logic and merit” of the argument that there should be parliamentary involvement and scrutiny of the single services and were “open to discussion”. However, it was ultimately for the Parliament “to decide on the shape of that scrutiny”.¹⁴⁰

Switch to single services – parliamentary scrutiny of efficiency / effectiveness

184. In relation to the key question of whether a move to single services would increase the efficiency and effectiveness of the police and fire services, the Finance Committee made the specific recommendation that (should the Bill be enacted) the Scottish Parliament should monitor the financial and non-financial consequences of the move to single forces over the first 15 years. It also recommended that the Scottish Government should ensure that the appropriate data is collated over this period.¹⁴¹

Committee view

185. The Committee accepts that the move to national services and the abolition of local government police and fire and rescue authorities and boards places an onus on the Scottish Parliament to enhance and formalise

¹³⁶ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1128.

¹³⁷ Auditor General for Scotland. Written submission.

¹³⁸ It is within the power of the Scottish Parliament to set up committees for specific purposes. There is no need for the relevant legislation to “permit” the Parliament to set up a committee.

¹³⁹ Auditor General for Scotland. Written submission.

¹⁴⁰ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1228.

¹⁴¹ Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*, paragraph 162.

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. We also note that the Scottish Parliament has considerable discretion to order its own affairs in relation to this issue and that individual committees, such as the Justice Committee, always have the power to inquire into matters within their remit.

186. However, the passage of the Bill affords a unique opportunity to discuss how best to secure that enhanced scrutiny and, in particular, to consider whether some principles are so important that they should be enshrined in the founding legislation in order to ensure that the appropriate checks and balances are in place in relation to the new national services, and in particular the national police service.

187. The Committee considers that there is a strong case to be made for the Bill securing Parliamentary oversight of the police. The Committee notes that it would be possible for this enhanced scrutiny role to be undertaken for example by the Justice Committee, or by an ad hoc Committee appointed by the Parliament, or by a statutory Parliamentary body along similar lines to the Scottish Commission for Public Audit. We would wish such options and others to be explored further. There is a particular importance and public interest attached to the policing of Scotland, and the long-established principle that policing should be carried out with the consent of the people. We leave open the question whether such oversight should extend beyond the police to other bodies covered by the Bill.

188. 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.

PRIORITIES, STRATEGIC AND LOCAL PLANS, AND ANNUAL REPORTS, INCLUDING LOCAL SCRUTINY

189. This section considers the strategic police priorities, strategic and local plans, and annual reports that are required to be produced under the Bill, including the role of local authorities in scrutiny of the local plans.

Strategic police priorities

190. Under section 33 of the Bill, the Scottish Ministers may determine strategic priorities for the SPA, which may relate to (a) the policing of Scotland, or (b) the carrying out of the SPA's functions. Before determining these priorities, the Scottish Ministers must consult with the SPA, persons whom they consider represent local authorities, and others as they consider appropriate. The strategic police priorities must be published in a manner the Scottish Ministers consider appropriate.¹⁴²

¹⁴² Police and Fire Reform (Scotland) Bill. Section 33(5)

191. There was a variety of views on who should be consulted by the Scottish Ministers in the preparation of the strategic police priorities. For example, some witnesses were of the view that local elected members should, in addition to the local authority representative bodies, be included in the consultation on strategic police priorities. For example, Highland Council and Northern Joint Police Board, jointly argued—

“There may be merit in specifying in the Bill the need for Ministers to consult [on the strategic police priorities] with local elected representatives involved in the scrutiny of their local police plans, especially if the strategic police priorities are to be informed (at least in part) by community safety issues and priorities in communities. This approach may also reduce the time required to consult local authorities on the strategic police plan.”¹⁴³

192. Others, including Scottish Women’s Aid, argued that the Scottish Ministers should conduct a public consultation on the strategic police priorities and “have regard to any comments received” within the set period.¹⁴⁴ The Scottish Police Federation suggested that the chief constable be consulted on the priorities, while Her Majesty’s Inspectorate of Constabulary for Scotland asked that it be included as a statutory consultee on the priorities, the strategic plan, and all other policing consultations provided for in the Bill.¹⁴⁵

Fire and rescue framework for Scotland

193. Under the 2005 Act, the Scottish Ministers are required to produce a framework document setting out priorities and objectives for ‘relevant authorities’ in connection with the carrying out of their functions. The Scottish Ministers also have a duty to report to the Scottish Parliament on (a) the extent to which relevant authorities are acting in accordance with the framework document, and (b) any steps taken by them for the purpose of securing that relevant authorities so act.¹⁴⁶ The Bill does not amend this section of the 2005 Act.

Strategic plans

194. The Bill provides that the SPA and SFRS are responsible for developing strategic plans. Under section 36, the SPA must “involve” the chief constable in preparation of the strategic plan, but there is no equivalent provision for the chief fire officer. The Committee understands this distinction is because the chief constable is not an employee of the SPA, whereas the chief fire officer is directly employed by the SFRS.

195. Section 34 of the Bill requires the SPA, when preparing its strategic plan, to send a draft to each local authority, inspectors of constabulary, and others it considers likely to have an interest. The SPA must have regard to any comments it receives and must then submit its final plan to the Scottish Ministers for approval. Once approved, the SPA is required to lay a copy of its strategic plan before the

¹⁴³ Northern Joint Police Board. Highland Council. Written submissions.

¹⁴⁴ Scottish Women’s Aid. Written submission.

¹⁴⁵ Scottish Police Federation. Her Majesty’s Inspectorate of Constabulary for Scotland. Written submissions.

¹⁴⁶ Fire (Scotland) Act 2005, Section 42(1).

Parliament. The strategic plan must be reviewed by the SPA at least every three years or where strategic police priorities have been revised. The consultation process outlined above applies to any revised strategic plan.

196. Similarly, section 112 of the Bill requires the SFRS, when preparing its strategic plan, to have regard to the fire and rescue framework document and to consult with each local authority, persons it considers to represent local authorities, persons it considers to represent employees of the SFRS, and others as it considers appropriate. The plan would then be submitted to the Scottish Ministers for approval, and once approved, laid before the Scottish Parliament.

197. The Scottish Police Federation argued that the chief constable should be responsible for preparing the strategic plan for approval by the SPA, rather than the SPA merely being ‘involved’ in its preparation.¹⁴⁷ John Duffy from the Fire Brigades Union told the Committee that “there should be a national vision of where we are all going, combined with practical station-based plans that set out what the stations will deliver and that are clustered together to form a local plan for the local authority”.¹⁴⁸

Annual police plans

198. Section 35 of the Bill requires the SPA to prepare an annual plan setting out arrangements for carrying out its functions and for the policing of Scotland for that annual period. Again, the chief constable must be “involved” in the preparation of this plan and it must be laid before the Scottish Parliament. There is no similar provision in the Bill requiring the SFRS to produce annual fire and rescue plans.

Local plans

199. The Bill provides that, for each local authority area, the chief constable must designate a constable as local commander¹⁴⁹ and the chief officer must designate an employee of SFRS as local senior officer.¹⁵⁰ Each local commander or local senior officer may cover more than one local authority area. The Policy Memorandum states that the local commander and local senior officer “will be the first point of senior contact for the local authority and other partners locally and the lead officer for the services in community planning”.¹⁵¹ The Bill does not stipulate the rank of the local commander or senior officer.

200. Section 48 places a duty on the local commander to prepare the local police plan, first having had regard to the most recently approved strategic police plan and, after “appropriate” consultation, to submit the plan to the local authority for approval. The plan is to set out the main priorities, objectives and arrangements for the policing of the local authority area. It is also to describe how these priorities and objectives will “contribute to the delivery of any other relevant local outcomes identified which are identified by community planning”.¹⁵² Local plans must be

¹⁴⁷ Scottish Police Federation. Written submission.

¹⁴⁸ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1152.

¹⁴⁹ Police and Fire Reform (Scotland) Bill, section 45.

¹⁵⁰ Police and Fire Reform (Scotland) Bill, section 113.

¹⁵¹ Policy Memorandum, paragraph 42.

¹⁵² Police and Fire Reform (Scotland) Bill, section 48(2)(e).

reviewed at least once every three years and may be revised at any time following agreement between the local commander and the local authority.

201. Section 113 places a statutory duty on the SFRS to prepare the local fire and rescue plan for each local authority area. Again, the plan will set out the main priorities and objectives for the SFRS in the local authority area and show how these “contribute to the delivery of any other relevant local outcomes identified by community planning”.¹⁵³ In preparing the plan, the SFRS must have regard to the fire and rescue framework for Scotland and the strategic plan, and consult such persons as it thinks fit. It must then submit the plan to the local authority for approval. The SFRS can at any time review the plan.

202. Provisions in the Bill giving local authorities the power to ‘approve’ the local plans were welcomed by witnesses, many of whom had raised concerns during the Scottish Government’s second consultation on reform in September 2011, when it had appeared that local authorities would only be able to ‘comment’ on the plans.

203. The LGR Committee stated in its report that the requirements to lay the fire and police annual reports and strategic plans before the Scottish Parliament, will provide an opportunity to establish a degree of democratic accountability for the services, and to provide parliamentary scrutiny of their progress.¹⁵⁴

Annual reports

204. Sections 40 and 114 of the Bill further provide for the SPA and SFRS to prepare annual reports containing assessments of the performance of the SPA and police service, and SFRS respectively during the reporting year. Both annual reports must be laid before the Scottish Parliament.

205. The Committee generally welcomes provisions in the Bill on strategies and plans.

206. However, **the Committee notes that the chief constable 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.**

LOCAL ACCOUNTABILITY

207. The role of current police and fire and rescue authorities and joint boards is outlined in the opening section of this report. The Committee takes the opportunity to explore local accountability under the Bill in the section below.

¹⁵³ Police and Fire Reform (Scotland) Bill, section 113(2)(e).

¹⁵⁴ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 119.

Local budgets

208. With reform, it is intended that funding for the new services will be provided entirely by the Scottish Government. Some stakeholders argued that budgets should be devolved to local authorities and local commanders so that there would be a form of accountability to the local authority for policing within that area.¹⁵⁵ Councillor Stephen Curran from Strathclyde Police Authority argued that “it is difficult to get buy-in at local level and true accountability” if the budget is nationally controlled¹⁵⁶, while Councillor Greig of Grampian Joint Police Board, added—

“There is a very significant democratic deficit in the new set-up, because policing is a local government function. We rely on community policing to operate according to the principle of policing by consent. That means that decisions on budgets and performance relating to police forces need to be made locally.”¹⁵⁷

209. However, Chief Superintendent O’Connor of the Association of Scottish Police Superintendents said that, there have always been and always will be concerns from rural parts of the country that resources will be drawn towards the central belt, but on the other hand, some in the central belt fear that their resources will be drawn to rural areas.¹⁵⁸ Chief Constable Smith of ACPOS reassured the Committee that “we will come up with a resource allocation model that will consider things such as crime and incidence, and the community-based style of policing that we want”.¹⁵⁹

Additional police officers funded by local authorities

210. Councillor Pat Watters of COSLA told the Committee that some local police authorities and boards were providing additional funding to employ extra police officers to work on particular priorities within their local authority areas. He added that between 600 and 800 additional police were being funded in this manner and sought clarity on what would happen to them after the transfer to a single force.¹⁶⁰

211. In a supplementary written submission to the Committee, COSLA commented further on this matter—

“Councillor Watters questioned whether councils would continue to fund these posts in 2012/13, given that the additional funding being provided would likely transfer with the posts out of local government and into the new single service budget to subsidise the commitment to 1000 extra police officers in the new single service. ... the simplest way for a council to avoid losing the funding on 31 March 2013 is not to be funding a post at that time.”¹⁶¹

¹⁵⁵ COSLA. Written submission.

¹⁵⁶ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1190.

¹⁵⁷ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1183.

¹⁵⁸ Scottish Parliament Justice Committee. *Official Report, 28 February 2012*, Col 983.

¹⁵⁹ Scottish Parliament Justice Committee. *Official Report, 28 February 2012*, Col 982.

¹⁶⁰ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1208.

¹⁶¹ COSLA. Supplementary written submission.

212. A Scottish Government official explained he expected that the arrangements that were currently in place would continue in the new single service.¹⁶²

Rank of local commander and local senior officer

213. Specific concerns were also expressed by some witnesses that, depending on their rank, local commanders and local senior officers will have varying degrees of influence within their respective services. However, the LGR Committee reported that rank of local commanders and local senior officers was not an issue; “it is the skill set of these officers that will be central to their success, especially in engaging with local communities and community planning partnerships”.¹⁶³

214. The Scottish Institute for Policing Research noted that “ranks are likely to vary across Scotland, depending on the nature and complexity of the policing arrangements of different areas” and this “may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank, which may have implications in negotiations for resources”.¹⁶⁴ Highland Council shared these concerns—

“In rural or smaller local authorities a lower ranking officer will be appointed because in an organisation with a hierarchical structure, they would have a lower level of authority within the SPS potentially limiting their capacity to influence the national policing plan and the resources required for the local police plan.”¹⁶⁵

215. Bob Jack, spokesperson for community safety at the Society Of Local Authority Chief Executives told the LGR Committee that, while all 32 local commanders could not be of the same rank “because they will be looking after areas of considerable difference in size, geography and so on”, he felt that a large span of ranks was unacceptable due to the “huge difference in seniority and authority”.¹⁶⁶

216. However, Chief Constable Smith of ACPOS suggested that the rank of the local commander was “a bit of a red herring” and that “the important thing is the professional relationships that exist locally”.¹⁶⁷ In Northern Ireland, the equivalent of local commanders under the Bill, were formerly of different rank, but now are all chief superintendents. Assistant Chief Constable Finlay of the Police Service of Northern Ireland said that rank was probably not an issue in the past in determining how much leverage local commanders had over resources.¹⁶⁸

Committee view

217. The Committee believes that, in the interests of transparency and accountability, a “snapshot” of resource allocation within local authority

¹⁶² Scottish Parliament Justice Committee. *Official Report*, 27 March 2012. Col 1242.

¹⁶³ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 95.

¹⁶⁴ Scottish Institute for Policing Research. Written submission.

¹⁶⁵ Highland Council. Written submission.

¹⁶⁶ Scottish Parliament Local Government and Regeneration Committee. *Official Report*, 21 February 2012, Col 645.

¹⁶⁷ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 988.

¹⁶⁸ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Cols 1058-61.

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.

218. The Committee notes and welcomes the evidence from Chief Constable Smith that he envisages an appropriate resource allocation model which strikes a balance between the national priorities and local community-based policing. **The Committee would welcome clarification as to whether, in practice, local authorities will have a degree of influence over local police resources.**

219. **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.**

220. **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.**

Local scrutiny

221. The Bill is silent on how local authorities should make arrangements for their scrutiny of local policing and local fire and rescue services and their consideration and approval of the local police plan. The Policy Memorandum explains that this is deliberate—

“It will be for the local authorities to determine the most appropriate local mechanism for exercising their role outlined in the Bill, and formalising their relationship with the local commander and local senior officer and other partners to help shape and deliver local outcomes.”¹⁶⁹

222. The Scottish Government has asked local authorities to run ‘pathfinder’ projects to pilot these local arrangements prior to implementation of the legislation, if passed. The Cabinet Secretary for Justice confirmed that there are currently 16 pathfinders in operation, with more expected after the local government elections.¹⁷⁰ A Scottish Government official confirmed that the pathfinders would “inform national guidance on operation of the scrutiny and accountability arrangements”, which was to be in place for 1 April 2013. He added that “instead of putting any prescriptions in the bill, we will take what we learn from the pathfinder process and put it into guidance outwith primary legislation.”¹⁷¹

223. A number of respondents were of the view that these local arrangements should be specified on the face of the Bill. For example, Dumfries and Galloway Council (Police and Fire and Rescue Authority) argued that “a statutory basis for councils in relation to local committee arrangements for police and fire and rescue

¹⁶⁹ Policy Memorandum, paragraph 44.

¹⁷⁰ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1243.

¹⁷¹ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1245.

services would be helpful, perhaps in the form of a framework setting out the role of committees, but avoiding being prescriptive, given that best practice and guidance might come from the pathfinder projects”.¹⁷² Councillor Ross of the Northern Joint Police Board (NJPB) agreed—

“It is important that there is not a large and ineffective talking shop; there needs to be something with substance and influence. The real test will be whether it has those—reassurance on that is needed. Clarity on the Bill might give such reassurance.”¹⁷³

224. The policy memorandum states that the impact of the Bill on local authorities is likely to be cost neutral as efficiency savings from not having police and fire and rescue boards and authorities are likely to balance out the cost of local scrutiny.¹⁷⁴ Others suggested that having 32 local councils rather than eight boards scrutinising local policing could increase costs.¹⁷⁵

225. The LGR Committee stated in its report that clarity from the Scottish Government on how any new committee structures would be financed would be welcome.¹⁷⁶ In addition, the Finance Committee asked the Justice Committee to “seek assurances from the Cabinet Secretary for Justice that local authorities will be adequately resourced in order to effectively carry out their police and fire and rescue monitoring and scrutiny functions under the Bill”.¹⁷⁷

226. Stakeholders also noted that no provision was made in the Financial Memorandum for funding to be given to local authorities to support their new role, and called for such resources to be made available.¹⁷⁸ Furthermore, the Chartered Institute of Public Finance and Accountability suggested that, “the risk is that, local authorities could elect not to maintain committees without an appropriate funding stream”.¹⁷⁹

227. Under current arrangements, officials, such as a clerk and treasurer, provide administrative support and professional advice to police and fire authorities and joint boards. The Committee heard that it was unclear what the arrangements for transferring such staff would be. For instance, Councillor Greig of Grampian Joint Police Board said—

“The boards have built up a great deal of expertise and the clerking function has built up the professional aspect. I am not yet clear about how that will

¹⁷² Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.

¹⁷³ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1196.

¹⁷⁴ Financial Memorandum, paragraph 184.

¹⁷⁵ Finance Committee Report, 2012 (Session 4). Report on Financial Memorandum on the Police and Fire Reform (Scotland) Bill, paragraph 134.

¹⁷⁶ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill, paragraph 134.*

¹⁷⁷ Scottish Parliament Finance Committee Report, 2012 (Session 4). Report on Financial Memorandum on the Police and Fire Reform (Scotland) Bill, paragraph 138.

¹⁷⁸ Scottish Parliament Local Government and Regeneration Committee. *Official Report, 21 February 2012*, Cols 661, 665 and 666.

¹⁷⁹ Chartered Institute of Public Finance and Accountability. Written submission.

transfer to the new local policing committees. It is important for the committee to think about that too.”¹⁸⁰

228. The LGR Committee also considered this issue and recommended that the Scottish Government “takes such measures as are necessary, including working with staff and their representatives, in order to minimise any negative impact on staff morale”.¹⁸¹

229. 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.

230. 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 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.

231. One member is, however, concerned at the speed of the process and believes that the role of local authorities in the new services should at this stage be clear.¹⁸²

Community planning

232. The Local Government in Scotland Act 2003 places duties on all local authorities to initiate, facilitate and maintain community planning, including consulting and co-operating with communities and core partners, which includes police and fire authorities and joint boards¹⁸³.

233. Section 47 of the Bill places a statutory duty on local commanders to participate in community planning, replacing the duty on chief constables under the 2003 Act. The Bill places a similar duty on local senior officers (section 113 inserting new section 41J into the 2005 Act). A number of witnesses, including Dumfries and Galloway Council (Police and Fire and Rescue Authority) called for the statutory duty to participate in local community planning activity to be extended to the chief constable and chief fire officer (in addition to the local commander and local fire officer)¹⁸⁴, while Professor Jim Gallagher of Nuffield College, Oxford highlighted an apparent inconsistency as regards the chief constable’s local policing duties—

¹⁸⁰ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1181.

¹⁸¹ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 143. *NB: This quote also refers to civilian staff in the police and fire and rescue services.*

¹⁸² Alison McInnes MSP.

¹⁸³ Scottish Parliament Information Centre. (2012) *Police and Fire Reform (Scotland) Bill*. SPICe Briefing 12/14.

¹⁸⁴ Dumfries and Galloway Council (Police and Fire and Rescue Authority). Written submission.

“At present, the duty to participate in community planning falls on the chief constables. Under the Bill this will devolve to local commanders. This is in practice where it would be discharged for the most part, but it is anomalous that although the chief constable is under a duty to provide local policing, no community planning duty falls on him or her or the SPA.”¹⁸⁵

234. 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.

235. 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.

Assets and liabilities

236. Schedules 4 and 5 of the Bill make provision for the transfer of the assets and liabilities currently owned by police and fire and rescue boards and unitary authorities by means of a transfer scheme. The Bill is not explicit on how assets and reserves from the current boards and authorities will be allocated under the new structure. A submission from ACPOS states its understanding that the police reserves currently held by police authorities and boards will be returned to the Scottish Government and COSLA on a 51 per cent / 49 per cent split.¹⁸⁶

237. The Finance Committee considered this matter in more detail and sought clarification on the Government’s plans for the transfer of assets and reserves and how the funding will be re-distributed.¹⁸⁷

238. Correspondence jointly issued by the Cabinet Secretary for Justice and the President of COSLA to police and fire board conveners dated 12 April 2012 confirmed that they had reached an agreement on how existing reserves would be allocated—

“At a national level, we have agreed that all remaining uncommitted reserves at the date of establishment of the single services will be divided between central and local government on an agreed basis, with 100 per cent of fire reserves and 49 per cent of police reserves being passed back to constituent authorities and 51 per cent of police reserves to the Scottish Government”.¹⁸⁸

¹⁸⁵ Professor Jim Gallagher. Written submission.

¹⁸⁶ ACPOS. Written submission.

¹⁸⁷ Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*, paragraph 142.

¹⁸⁸ Correspondence from COSLA and Scottish Government to police and fire board conveners on existing reserves (12 April 2012). Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20120412_COSLA_and_SG_Transition_Period.pdf [Accessed: 1 May 2012].

239. The Committee welcomes the agreement between the Scottish Government and COSLA in relation to the allocation of existing reserves. However, **the Committee seeks clarification as to how the assets and liabilities of the current police and fire and rescue authorities and joint boards will be redistributed.**

IMPLEMENTATION

240. On 21 February 2012, the Scottish Government announced that the single services would begin operating from 1 April 2013.¹⁸⁹ A number of witnesses expressed concern that this timetable may be difficult to achieve, but highlighted a number of issues on implementation that, if resolved at an early stage, may make the timescale more realistic. These are outlined below.

Appointment of chief constable and chief fire officer

241. Chief constables are currently appointed by the police authority/joint police board for their area, subject to the approval of the Scottish Ministers. The Bill provides for the SPA to appoint the chief constable, on approval of the Scottish Ministers, and for the first chief officer of the SFRS to be appointed by the Scottish Ministers, with subsequent chief officers appointed by the SFRS, on approval of the Scottish Ministers.¹⁹⁰

242. It is understood that the first chief constable and chief fire officer will be in post around December 2012 (after the SPA and SFRS Board are in place to appoint them).¹⁹¹

243. The Policy Memorandum explains that the Scottish Government gave consideration to whether the Scottish Ministers should make the first chief constable appointment to provide more planning time, but concluded that this would not provide the right degree of separation between the Scottish Ministers and the leader of the new service.¹⁹²

244. A significant body of opinion¹⁹³ formed during the Committee's scrutiny on the pressing need for early appointment of the chief constable and the chief fire officer, and a number of supplementary written submissions were provided to this effect. For example, Chief Constable Smith of ACPOS stated in his supplementary submission, supported by all other chief constables, the Scottish Crime Drug Enforcement Agency and Scottish Police Services Authority, that—

¹⁸⁹ Scottish Government (21 February 2012). News Release. Available at: <http://www.scotland.gov.uk/News/Releases/2012/02/policeandfireheadquarters> [Accessed 27 April 2012].

¹⁹⁰ Police and Fire Reform (Scotland) Bill, sections 7 and 99 (inserting Schedule 1A to the 2005 Act).

¹⁹¹ ACPOS. Supplementary written submission.

¹⁹² Policy Memorandum, paragraph 153.

¹⁹³ ACPOS, SPF, SCDEA, SPSA, HMICS, Auditor General, COSLA, and Councillor Kay of Fife Police, Fire and Safety Committee supported the view that the chief constable and/or the chief fire officer should be appointed as early as possible.

“As currently scheduled, there is insufficient time between December 2012 and 1 April 2013 for the new chief constable to be fully prepared to take control of a new organisation and be ready for Day 1”.¹⁹⁴

245. Her Majesty’s Inspectorate of Constabulary for Scotland agreed that this was “an emerging priority for police reform” and one which he considered was “so critical ... that failure to address it now is likely to present a significant barrier to progress in the interim period and, indeed, to deliver the stated aims in the mid and longer-term within the context of the Comprehensive Spending Review”.¹⁹⁵

246. Councillor Pat Watters, President of COSLA, suggested this might be achieved through the current police conveners working jointly with the Cabinet Secretary.¹⁹⁶ The Auditor General for Scotland suggested that the Bill be amended so that the first appointments of the conveners of the SPA and SFRS, the chief constable and the senior fire officer be made by the Parliament, with the possible involvement of the Crown Office in the case of police appointments, and with the agreement of the Cabinet Secretary for Justice.”¹⁹⁷

247. Similar comments were made by fire bodies in relation to the early appointment of the chief fire officer.¹⁹⁸ Highland and Islands Fire Board suggested that, if appointments to the SFRS could not be fast-tracked under provisions in the Bill, the first appointment should be made by the new chairs of the joint boards to enable the chief fire officer to be in place by September 2012.¹⁹⁹

248. The LGR Committee noted the suggestion of some of its witnesses that transitional board members be appointed on an interim basis to progress the work towards the establishment of the services²⁰⁰, including early appointments of the chief constable and chief fire officer.

249. In response to evidence received, the Cabinet Secretary for Justice said that, while ministerial appointment of the chief constable had to be avoided, he was prepared to “listen and reflect” on the concerns raised in evidence.²⁰¹

250. 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.

251. One member of the Committee, while accepting the case for early appointments under the current timetable, believes that the fundamental problem is that the timetable for reform is unrealistic and considers that, rather than

¹⁹⁴ ACPOS. Supplementary written submission.

¹⁹⁵ Her Majesty’s Inspector of Constabulary for Scotland. Supplementary written submission.

¹⁹⁶ Scottish Parliament Justice Committee. *Official Report, 20 March 2012*, Col 1213.

¹⁹⁷ Auditor General for Scotland. Supplementary written submission.

¹⁹⁸ Chief Fire Officers Association Scotland. Written submission.

¹⁹⁹ Highland and Islands Fire Board. Written submission.

²⁰⁰ Scottish Parliament Local Government and Regeneration Committee. 5th Report, 2012 (Session 4). *Report to the Justice Committee on the Police and Fire Reform (Scotland) Bill*, paragraph 156.

²⁰¹ Scottish Parliament Justice Committee. *Official Report, 27 March 2012*, Col 1226.

bringing forward the appointments, the entire timetable for reform should be revisited.²⁰²

252. 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.

253. While we understand the Scottish Government's position that ministerial appointment of the chief constable must be avoided, the Committee considers that other procedures could be put in place for appointment of the first chief constable.²⁰³ **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.**

Outline business cases

254. The Financial Memorandum (FM) on the Bill "summarises the best available evidence and analysis and is largely based on that used in the outline business cases (OBCs) to support decisions on the structure of future services in September 2011". The FM "does not provide a plan or blueprint for the future delivery of the services and it is not intended to be used to set future budgets".²⁰⁴

255. The Finance Committee explored in more detail concerns surrounding the use of the OBCs to inform the FM, along with the projected savings and redundancies it proposes, and invited this Committee to pursue the matter with the Cabinet Secretary for Justice.²⁰⁵

256. A number of witnesses said that they expected a full business case (FBC) to be developed by the Scottish Government to inform the FM and were concerned that "best estimates" for the costs and savings from the OBC were instead being relied upon.²⁰⁶ Chief Constable Smith of ACPOS warned of the dangers of basing "significant decisions about investment" and savings on the OBCs which "outlined at a high level what might be achieved" but did not set out any timescales.²⁰⁷ Mr Haigh of the Association of Principal Fire Officers Scotland had similar concerns that the Bill was moving forward on the basis of the fire OBC.²⁰⁸

257. Chief Constable Smith further explained that, while savings would be made, his "personal and professional view was that the savings set out in the Bill will not be achieved in the coming years" and that this is "the biggest risk to the reform and redesign of a critical public service".²⁰⁹

258. Witnesses commented on the difficulties in achieving the projected savings within the context of the Scottish Government's on-going commitment to maintain

²⁰² Alison McInnes MSP.

²⁰³ Witnesses' suggestions are at paragraphs 198 and 199 in this report.

²⁰⁴ Financial Memorandum, paragraph 133.

²⁰⁵ Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*, paragraph 172.

²⁰⁶ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 980.

²⁰⁷ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 971–972.

²⁰⁸ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1106.

²⁰⁹ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 972.

a level of 17,234 police officers and no compulsory redundancies.²¹⁰ Councillor Grant of COSLA spoke of the impact on front-line officers of losing civilian staff through redundancies—

“The Government has a policy of no compulsory redundancies, so if people do not decide to take voluntary redundancy they will transfer, and the new police authority will have to manage the situation. If the authority is to make savings of the order that is being talked about, something like 2,000 support staff will have to go. If those support staff go because the money must be saved, the cops will have to take up the slack. We really do not want to pay police, who should be out there doing business on the street, to sit behind a desk and pick up a phone. That does not seem sensible at all.”²¹¹

259. Dave Watson from UNISON Scotland told the Committee that “the chief officers will have no choice; if they are stuck with 17,234 as an absolutely rigid and no-budge figure, the chief officer will simply have to take officers off the streets to do civilian jobs”. He went on to convey the results of a recent survey of UNISON members which he says “illustrates that we are already getting police civilian posts being substituted by police officers”.²¹² However, Chief Constable Smith disputed this “notion” earlier in the meeting.²¹³

260. A large number of witnesses believe that there needs to be a balanced workforce, with duties being undertaken by the most appropriate person regardless of whether that be a police officer or a civilian member of staff.²¹⁴ Mr Watson said—

“In five or six years, we will be sitting round a table like this with Audit Scotland, who will say that the situation is ridiculous because we are paying police officers, at great cost, to do jobs that they are not qualified to do. We should not wait until then. Let us take the opportunity of the establishment of a new police force to consider the right balance between police officers and civilians.”²¹⁵

261. However, Calum Steele from the Scottish Police Federation suggested that “we must look at the jobs that we do and ask ourselves not who does them, but whether they need doing in the first place”. He cited a number of existing civilian positions, including ‘change manager’, ‘business manager’ and ‘performance manager’ where he was unclear whether they were essential to the delivery of policing.²¹⁶

262. John Duffy of the Fire Brigades Union indicated that the fire and rescue OBC did “not allow for the protection of the front line and financial savings; it will have to be one or the other”.²¹⁷ Some fire service bodies were concerned that the OBC

²¹⁰ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 975.

²¹¹ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1212.

²¹² Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 1007.

²¹³ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 983.

²¹⁴ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Cols 972-973.

²¹⁵ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 1015.

²¹⁶ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 1009.

²¹⁷ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1150.

significantly underestimated the costs allocated to cover the projected redundancies in the fire and rescue service, and that rather than costing £4 million the figure would be nearer £10 million.²¹⁸

263. Others highlighted that significant savings, which had not been anticipated in the FM had already been made both in policing and in the fire and rescue service. For example, Councillor Whyte of Lothian and Borders Police Board said that police authorities and joint boards had already considered the hard choices so it was “difficult to see how we will go about producing the savings”.²¹⁹

264. 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.

265. 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.

Merging of services – VAT consequences

266. Currently, police and fire services are able to recover VAT costs incurred (under section 33 of the Value Added Tax Act 1994) because they (a) carry out local authority functions, and (b) have a power to draw on local taxation. The FM indicates that the new services may not qualify for section 33 exemption status due to centralisation. It further states that, if the new bodies were subject to VAT, this could be a recurring annual cost of £21.5m for the single police service and £4m for the single fire and rescue service.²²⁰

267. The Finance Committee explored this issue in more detail and wrote to HM Treasury to seek some clarity. In its response, HM Treasury explained that—

“The Section 33 refund scheme was introduced together with VAT in 1973, following a commitment that VAT would not become a burden on local taxation. Since then, successive Governments have maintained its original policy objective by only granting access to bodies which both carry out local authority functions and have a power to draw upon local taxation.”²²¹

268. The Finance Committee invited this Committee to seek an update from the Cabinet Secretary “on all steps that the Scottish Government is taking to try to resolve this issue”.²²²

²¹⁸ Chief Fire Officers Association Scotland. Written submission.

²¹⁹ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012. Col 1191.

²²⁰ Financial Memorandum, paragraph 178.

²²¹ Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*. (Annexe A).

²²² Scottish Parliament Finance Committee Report, 2012. (Session 4). *Report on the Financial Memorandum of the Police and Fire Reform (Scotland) Bill*, paragraph 175.

269. The Committee heard from Assistant Chief Constable Finlay that the Police Service of Northern Ireland has VAT exemption status under section 99²²³ of the 1994 Act—

“It is a long-standing arrangement that affects not only the PSNI but other public services in Northern Ireland. The reason is the structure of public services in Northern Ireland. A centralised model was put in place some considerable time ago due to conditions in Northern Ireland over previous years during the troubles and so on. Centralised units were put in place such that, for example, housing came from the Northern Ireland Housing Executive. That model included a decision being made—I do not know by whom or in what capacity—that we would be treated like a local authority.”²²⁴

270. Many witnesses, including Councillor Grant of COSLA, expressed concern that, if VAT could not be recovered, the new services would be required to find more savings, which could equate to additional job losses.²²⁵ Highland and Islands Fire Board agreed that this “additional cost to the public purse” will “reduce resources for the new services”²²⁶, and the Chief Fire Officers Association Scotland argued that the potential loss of VAT recovery would cost around £10 million annually, rather than the £4 million per annum suggested in the outline business cases²²⁷.

271. Chief Constable Smith of ACPOS told the Committee that, although the VAT issue was important in the context of reform, it was “not the most critical issue” and he was confident that the Scottish Government was “doing everything it can do to resolve the issue”.²²⁸ However, Dave Watson from UNISON Scotland said he was “not confident” that the VAT issue would be resolved as “we have not solved it with the Scottish Police Services Authority” and suggested that this would mean “another 600 jobs will go”.²²⁹

272. Although not commenting specifically on the issue of obtaining VAT recovery, Professor Jim Gallagher observed that the SPA could be a local government body, consisting of elected councillors, perhaps with appointed members added”.²³⁰ It is unclear whether making structural changes along these lines might strengthen the legal case for VAT recovery. However, the Committee has already recommended that the SPA and SFRS Board should not be local scrutiny bodies.

273. In evidence to the Committee, the Cabinet Secretary for Justice highlighted the Police Service of Northern Ireland and the security services of the UK as

²²³ Section 99 of the Value Added Tax Act 1994 provides for refund of VAT to Government of Northern Ireland. The 1994 Act is available at:

<http://www.legislation.gov.uk/ukpga/1994/23/section/99> [Accessed 27 April 2012].

²²⁴ Scottish Parliament Justice Committee. *Official Report*, 6 March 2012, Col 1067.

²²⁵ Scottish Parliament Justice Committee. *Official Report*, 20 March 2012, Col 1212.

²²⁶ Highland and Islands Fire Board. Written submission.

²²⁷ Chief Fire Officers Association Scotland. Written submission.

²²⁸ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 974.

²²⁹ Scottish Parliament Justice Committee. *Official Report*, 28 February 2012, Col 1007.

²³⁰ Professor Jim Gallagher. Written submission.

examples of similar 'national' bodies that were still able to recover VAT and insisted that negotiations on VAT recovery with HM Treasury were continuing.²³¹

Committee view

274. The Committee notes that the Scottish Government was aware that removing policing and fire and rescue services as local authority functions could lead to removal of their entitlement to recover VAT under section 33 of the Value Added Tax Act 1994, and indeed accounted for this within the outline business cases. We acknowledge that the Scottish Government's view is that there is a strong financial case for a move to single bodies, even if the VAT issue is not resolved to its satisfaction.

275. The Committee further notes that the Scottish Government is in negotiations with HM Treasury to establish whether this situation can be avoided.

276. 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".

Cross-border arrangements

277. The British Transport Police (BTP) and British Transport Police Authority highlighted that the Bill would repeal the existing mutual aid and collaboration provisions in the 1967 Act. They added that the Bill does not cover how mutual aid and collaboration between the police service of Scotland and the BTP are to be provided in the future and suggested that existing mutual aid provisions and collaboration provisions be retained.²³²

278. Mr Sweeney of the Chief Fire Officers Association Scotland indicated that Lothian and Borders Fire and Rescue Service had questioned whether the indemnification and insurance of Scottish-based fire fighters operating in England would be valid and, if so, whether the principles of Scots law or English civil law would apply.²³³ He provided supplementary evidence explaining that "this is a technical matter which needs to be resolved by the UK and Scottish Governments".²³⁴ It is unclear whether this issue arises through the Bill or is an on-going issue of concern.

²³¹ Scottish Parliament Justice Committee. *Official Report*, 27 March 2012, Col 1230.

²³² British Transport Police and British Transport Police Authority. Written submission.

²³³ Scottish Parliament Justice Committee. *Official Report*, 13 March 2012, Col 1110.

²³⁴ Chief Fire Officers Association Scotland. Supplementary written submission.

