



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

37th Meeting, 2017 (Session 5)

Tuesday 19 December 2017

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decisions on taking business in private:** The Committee will decide whether to take item 5 in private. The Committee will also decide whether consideration of a draft Stage 1 report on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill and a draft report on the Scottish Government's Draft Budget 2018-19 should be taken in private at future meetings.
2. **Draft Budget Scrutiny 2018-19:** The Committee will take evidence on the Scottish Government's Draft Budget 2018-19 from—

Rt Hon James Wolffe QC, Lord Advocate, and David Harvie, Crown Agent and Chief Executive, Crown Office and Procurator Fiscal Service.
3. **Public petitions:** The Committee will consider the following petitions—

PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrabi;

PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room;

PE1633 by Bill Alexander on private criminal prosecution in Scotland.
4. **Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (in private):** The Committee will continue consideration of a draft Stage 1 report.
5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk - Draft Budget 2018-19	J/S5/17/37/1
Private paper - Draft Budget 2018-19	J/S5/17/37/2 (P)

[Written submission from the Crown Office and Procurator Fiscal Service](#)

[All written submissions received](#)

Agenda item 3

Paper by the clerk - petitions	J/S5/17/37/3
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Agenda item 4

Private paper - Civil Litigation (Expenses and Group Proceedings) (S) Bill	J/S5/17/37/4 (P)
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[Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Bill and accompanying documents](#)

[Written submissions received on the Bill](#)

Agenda item 5

Private paper - work programme	J/S5/17/37/5 (P)
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Justice Committee

37th Meeting, 2017 (Session 5), Tuesday 19 December 2017

Draft Budget scrutiny 2018-19

Note by the clerk

Introduction

1. The Scottish Government's Draft Budget 2018-19 was published on Thursday 14 December. The Draft Budget 2018-19 can be accessed [here](#).
2. The Committee is responsible for scrutinising elements of the Draft Budget that fall within its remit. At its meeting on 7 November 2017, the Committee agreed that it would focus its budget scrutiny this year on the Crown Office and Procurator Fiscal Service (COPFS).
3. Earlier this year, the Committee completed its inquiry into the role and purpose of the COPFS. In its [report](#), the Committee made a number of recommendations relating to the resources and funding of the COPFS. These recommendations covered issues such as staffing levels, delivering efficiency savings and reducing 'churn'.
4. In advance of the publication of the Draft Budget 2018-19, the Committee issued a call for evidence on the financial planning of the COPFS. It also sought views on what progress had been made since its inquiry into the role and purpose of the COPFS. Six responses were received and can be accessed [here](#).

Justice Committee consideration

5. At its meeting on 19 December 2017, the Committee will take evidence from the Rt Hon. James Wolffe QC, Lord Advocate, and David Harvie, Crown Agent.
6. The Lord Advocate, who is the Ministerial head of the COPFS, negotiates the COPFS budget directly with the Cabinet Secretary for Finance and the Constitution. The Crown Agent is the Chief Executive of and the Accountable Officer for the COPFS.

Justice Committee
37th Meeting, 2017 (Session 5), Tuesday 19 December 2017
Petitions
Note by the clerk

Introduction

1. This paper invites the Committee to consider its ongoing petitions:
 - **PE1370**: Independent inquiry into the Megrahi conviction;
 - **PE1510 and PE1511**: Police and Fire Control Rooms;
 - **PE 1633**: Private Criminal Prosecution in Scotland.
2. The paper sets out the terms of each the petitions along with information on the most recent consideration by the Committee. It also provides updated information and links to other relevant documentation where appropriate.
3. The Justice Committee webpage summarising its consideration of these petitions in this Session can be found [here](#). Three of the petitions originate from Session 4 of the Parliament and information relating to their consideration by the previous Justice Committee can be found [here](#). Further information can also be found in the Session 4 Committee's [Legacy Report](#). The fourth petition, PE 1633, is a new petition.
4. Further general background information on the petitions process, provided by the Public Petitions Committee, can be accessed on its dedicated [webpage](#).

Options available to Committees considering petitions

5. Once a petition has been referred to a subject Committee it is for the Committee to decide how, or if, it wishes to take the petition forward. Among options open to the Committee are to:
 - Keep the petition open and write to the Scottish Government or other stakeholders seeking their views on what the petition is calling for, or views on further information to have emerged over the course of considering the petition;
 - Keep the petition open and take oral evidence from the petitioner, from relevant stakeholders or from the Scottish Government;
 - Keep the petition open and await the outcome of a specific piece of work, such as a consultation or piece of legislation before deciding what to do next;
 - Close the petition on the grounds that the Scottish Government has made its position clear, or that the Scottish Government has made some or all of the changes requested by the petition, or that the Committee, after due consideration, has decided it does not support the petition;
 - Close the petition on the grounds that a current consultation, call for evidence or inquiry gives the petitioner the opportunity to contribute to the policy process.
6. When closing a petition, the Committee should write to the petitioner notifying the decision and setting out its grounds for closure. Closing a petition does not preclude

the Committee taking forward matters relevant or partly relevant to the petition in another way.

PE1370: Independent inquiry into the Megrahi conviction

Terms of the petition

PE1370 (lodged 1 November 2010): *The petition on behalf of Justice for Megrahi (JFM), calls on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.*

Current consideration

7. At its meeting on [5 September 2017](#), the Committee agreed, as it had at its meetings on 2 May 2017 and 24 January 2017, to keep the petition open pending completion of Operation Sandwood. This is the operational name for Police Scotland's investigation into the nine allegations of criminality levelled by Justice for Megrahi at the Crown Office and Procurator Fiscal Service, the police, and forensic officials involved in the investigation and legal processes relating to Megrahi's conviction. The allegations range from perverting the course of justice to perjury.
8. The clerks understand from Police Scotland that the operation is ongoing and, although in its final stages, there are certain aspects that are not fully concluded. Once Police Scotland's report is completed, it will be submitted for consideration by an independently appointed Queen's Counsel appointed by Police Scotland, before going to the Crown Office.
9. Clerks continue to seek updates from Police Scotland as to a likely publication date but Police Scotland is not in a position to suggest when the report will be made public.
10. The petitioners have provided a written submission (**Annexe A**) requesting the Committee to confirm that the petition will remain open until Crown Office consideration of the police report is complete and any related decisions are made. The submission also states, along similar lines to previous submissions, that the petitioners continue to have regular meetings with the Operation Sandwood police team and that they have faith in the integrity and completeness of the police inquiry.
11. Following media coverage in relation to Megrahi's conviction, the petitioners provided a supplementary written submission (**Annexe B**).
12. On 4 July 2017, the Scottish Criminal Cases Review Commission (SCCRC) confirmed it had received an application to review the conviction¹. The SCCRC may refer a case to the High Court if it believes that a miscarriage of justice may have occurred and that it is in the interests of justice that a reference should be made. The

¹ Mr Megrahi previously applied to the SCCRC in 2003, who referred his case to the High Court for appeal in 2007; however, this appeal was abandoned in 2009. After Mr Megrahi's death in 2012, a new application was made to the SCCRC on his behalf in 2014, which was rejected in 2015 as the SCCRC had not had access to appeal materials from 2007-09.

SCCRC stated that it will give careful consideration to this new application, but that it will not make any further comment at this time. No further information is available.

- 13. The Committee is asked to consider and agree what action it wishes to take in relation to the petition (see paragraph 5 for possible options), having regard to its decisions in January, May and September to keep the petition open pending the completion of Operation Sandwood.**

PE1510 and PE1511: Police and Fire Control Rooms

Terms of the petitions

PE1510 (lodged 23 March 2014): *Calls on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.*

PE1511 (lodged 27 March 2014): *Calls on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.*

Current consideration

14. At its meeting on 5 September 2017, the Committee agreed to keep the petitions open to allow for a response from the Scottish Fire and Rescue Service (SFRS) to a letter from the petitioners of PE 1511. The SFRS response was received on 10 November and is available at **Annexe C**. The Committee has also received a further response from the petitioner (**Annexe D**).
15. No further communications have been received from the petitioner for PE1510 prior to this meeting. The Inverness Fire and Rescue Service Control Room closed in December 2016. The SPA Board, at its meeting on 28 September 2017, approved the planned closure of the Inverness Area Control Room in January 2018.
- 16. The Committee is asked to consider and agree what action it wishes to take in relation to the petitions (see paragraph 5 for possible options). In relation to PE1511, the Committee may wish to consider whether the response from the SFRS addresses the issues raised by the petitioner, both prior to the Committee's meeting on 5 September and in the petitioner's most recent submission.**

PE 1633: Private Criminal Prosecution in Scotland

Terms of the petition

PE 1633 (lodged 19 January 2017): *Calls on the Scottish Parliament to urge the Scottish Government to change the law to give the people of Scotland the same legal rights as the rest of the UK by removing the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland.*

17. This petition was referred to the Justice Committee on 9 November 2017. The background information to the petition is available at **Annexe E**, and the [webpage for](#)

[the petition](#) contains all information of Parliamentary consideration to date, and submissions received.

18. The background information to the petition raises particular concerns relating to health and safety prosecutions. It notes that if the Health and Safety Executive (HSE) decides that it will not provide a report to the COPFS on an accident at work, then there is nothing that can be done.
19. The Public Petitions Committee considered the petition at its meeting on [30 March](#), and agreed to write to the Scottish Government, the HSE and the COPFS. The [COPFS](#) and the [Scottish Government](#) responses emphasise that it is not a requirement for the Lord Advocate to give permission for a private prosecution to proceed. If, however, the Lord Advocate does not concur, an individual can petition the court and the court may direct the Lord Advocate to give his concurrence, or authorise the private party to proceed without it, by ordering Criminal Letters to be issued. The Scottish Government response suggests, therefore, that the petition seeks to make a change to Scots law to remove a requirement which does not, in fact, exist.
20. [The HSE submission](#) says “Given HSE is not a prosecuting authority in Scotland we have no comment to make.”
21. The petitioner [subsequently wrote](#) to the Public Petitions Committee expressing concern that the cost of challenging the Lord Advocate may be prohibitive for some people. He also set out concerns in relation to the existing HSE guidelines, in the context of sports-related injuries. He stated that, as the guidelines currently stand, unless someone is killed at a sporting event, it is very unlikely that there will ever be an independent investigation into an injury. The petitioner’s view is that there is a failure by the HSE.
22. The Public Petitions Committee considered the petition again at its meeting on [15 June](#) and sought further information from the Scottish Government, the COPFS and the HSE on the prosecution of health and safety offences.
23. In [response](#) to the Public Petitions Committee, the COPFS stated that it does not have the statutory authority to instruct the Health and Safety Executive in relation to its work. It went on to state that that relationship was no different from the relationship between it and all other agencies that report suspected criminality to the Procurator Fiscal. The [response](#) from the HSE stated that it was an independent regulator and neither the UK Government nor Scottish Government is able to instruct it to undertake investigations. The [response](#) from the Scottish Government stated that it was appropriate for the COPFS to respond on this matter.
24. In a further [submission](#), the petitioner argued that the responses from the COPFS and the Scottish Government “effectively conceded that there was a gap in the law”. At its meeting on [9 November](#), the Public Petitions Committee concluded that the petition highlights an “anomaly in the system” and further work was merited. It agreed to refer the petition to the Justice Committee.
25. The petitioner has sent a submission ahead of this Committee’s consideration of the petition. This is included at **Annexe F**.

26. The Committee may wish to consider what action, if any, it wishes to take in relation to the above petition. Possible options are set out at paragraph 5 above. If this is an issue that the Committee does wish to explore further, it may wish to consider taking oral evidence from the petitioner, the COPFS, the HSE and/or the Scottish Government. In his written submission to the Committee, the petitioner has suggested that the Committee may wish to seek the views of the Law Society and the Faculty of Advocates.

Letter from Justice for Megrahi

5 December 2017

Justice for Megrahi (JfM) submission to the Justice Committee of the Scottish Parliament's consideration of PE 1370 on 19th December 2017

Introduction

As you are aware the above petition has been kept open by the Justice Committee since 8 November 2011 to allow various developments related to the Lockerbie case to be monitored by the Committee.

The Committee last considered the petition at its meeting on 5 September 2017, when it agreed to keep the petition open pending the completion of Operation Sandwood.

In this submission JfM wishes to bring the committee's attention to matters which have developed since the petition was last considered.

Developments

Operation Sandwood: JfM has continued to co-operate fully with Police Scotland and had a further process meeting with them in October. Another meeting is planned for 15th December.

Our understanding is that in respect of Operation Sandwood, the main enquiry is completed and essential forensic reports received. It is anticipated the final report will shortly be passed to Police Scotland's independent QC as a preliminary to its being submitted to Crown Office.

We continue to have complete faith in the police to deliver a thorough and objective report and in particular value the close liaison they have encouraged as their investigation proceeded.

Crown Office Consideration of Police Report: As previous correspondence with the Committee shows we continue to have concerns about the objectivity and independence of Crown Office personnel who will consider the Operation Sandwood report.

While acknowledging the appointment of James Wolffe QC as Lord Advocate, we would ask the committee to note that when the Police report is received by Crown Office, it must be subject to objective, unbiased and independent consideration.

It remains essential that the ongoing political scrutiny of the process by the Justice Committee continues and does not stop when the report goes to Crown Office. It is in the public interest that political monitoring continues while Crown Office considers the Operation Sandwood report and makes its final conclusions public.

Scottish Criminal Cases Review Commission (SCCRC): We understand that an application for another appeal has been made to the SCCRC by Mr Megrahi's family.

We are not aware of the details of their submission but believe that the findings of the Operation Sandwood report will be critical to the appeal consideration.

Conclusion

We believe that the political oversight being provided by the Justice Committee into this major criminal investigation is very much in the public interest. Having monitored the progress of the police investigations for nearly 4 years it is essential that Crown Office, an organisation that has shown provable bias in the past, is held to political account to ensure the openness and objectivity of its consideration and the probity of its eventual decision.

Given the central importance of the findings of Operation Sandwood to any future prosecutions, enquiries or appeals, we would respectfully urge the Committee to allow Petition PE1370 to remain on the table.

Robert Forrester
On behalf of the Committee of Justice for Megrahi.

Letter from Justice for Megrahi

6 December 2017

Justice for Megrahi (JfM) supplementary submission to the Justice Committee of the Scottish Parliament's consideration of PE 1370 on 19th December 2017

Introduction

This is a supplementary to my original Justice Committee submission for their meeting on Tuesday 19th December 2017.

Political Interventions

As the 29th anniversary of the Lockerbie tragedy approaches on 21st December, the doubts about the integrity of the investigation, trial and conviction of Abdelbaset al-Megrahi, which are central to JfM's 9 criminal allegations being investigated by the Operation Sandwood team, continue to mount.

On St. Andrew's Day the National newspaper, and other media outlets, publicised comments by former First Minister Alex Salmond and former Secretary for Justice Kenny MacAskill, two politicians who were at the very centre of controversy surrounding Mr Megrahi's repatriation, casting further doubts on the conviction.

The following is an extract from the National newspaper:

'In a special St Andrew's Day edition of the Alex Salmond Show on RT today, MacAskill makes the explosive claim that Scotland was "slapped about mercilessly" by the British and American governments, who he accuses of "double dealing"

'Salmond himself says the identification evidence which helped convict Megrahi is "open to question" and berates the "total cynicism" of those who attacked the Scottish Government over the decision to send the Libyan home on compassionate grounds because he had terminal prostate cancer. He says the UK Government wanted Megrahi sent home to secure an oil deal.'

http://www.thenational.scot/news/15692113.MacAskill_tells_Salmond_show_that_US_and_UK_were_double_dealing_on_Megrahi_release/

Robert Forrester

On behalf of the Committee of Justice for Megrahi

Scottish Fire and Rescue Service Response

10 November 2017

The following is a response to the letter from the petitioners of PE1511 – 31 August 2017.

The creation of the Scottish Fire and Rescue Service (SFRS) has been good for Scotland and is acknowledged as the public sector reform success story. We continue to meet the expectations of reform with improved outcomes whilst protecting frontline services; more equitable access to specialist resources and the full national capacity of the UK's largest fire and rescue service; and strengthened connections between the SFRS and local communities. We have done so whilst meeting the requirements of the financial memorandum of understanding with the delivery of total gross recurring financial savings of £55.3million up to 2019/20, and on track to exceed expected savings of £328million by 2027/28.

In creating the national service, the SFRS adopted Audit Scotland's guidance to merging public bodies, which indicates four main areas of savings - staffing synergies, asset and contract rationalisation, streamlined processes and shared support services. The delivery of efficiencies has been planned and co-ordinated through the SFRS Service Transformation Programme, supported by regular independent Gateway Reviews. We have removed duplication and created the right operational and administrative infrastructure (eg single payroll, single HR systems) for the future. We recognise that change is not easy but our achievements in four short years are a credit to every member of the SFRS, as well as our staff representative bodies, which together have been instrumental in the very genesis of the Service. We recognise that we still have work to do, but the benefits we are delivering to the people of Scotland outweigh these challenges. Throughout the reform period, the SFRS has responded to every emergency call and have ensured we always have the right resources in the right place at the right time.

Turning to specifics within the petitioner's submission:

- 1. The SFRS is now 42 months old and much of the warnings given to the Scottish Government prior to the creation of the centralised service have come to fruition. The Service has not made the savings promised to the Scottish public and is heading towards a financial overspend crisis. It is worth reminding ourselves of the warnings given to Kenny MacAskill, the former Cabinet Secretary for Justice, as he consulted on the creation of a Single Service for Scotland.**

We would draw the petitioner's attention to the following:

[Audit Scotland Report, May 2015](#)

[Deloitte "Scottish Fire and Rescue Service annual audit plan 2016/17 \(Audit and Risk Committee 29 March 2017\)](#)

- 2. Warnings were issued that a Single Service centrally funded would become liable for Tax to HM Revenue and Customs.**

This is a matter for the Scottish Government.

- 3. The proposed new Fire Board was not representative of the diverse communities across Scotland and would not be capable of providing effective governance and local accountability required, nor would it be effective in managing and controlling the Service. Additional statements from the letter: The Fire Authority is made up of paid volunteers none of whom have practical knowledge or understanding of the Fire Service. None of the Authority members are locally elected or representative of the highly diverse communities they represent. Repeatedly they have failed in managing the Service effectively and have been found wanting in holding private behind closed doors meetings.**

The highly diverse, significantly experienced and clearly representative composition of the Scottish Fire and Rescue Service Board can be reviewed [here](#).

The Board operates to an open and transparent ethos and adheres to the SFRS Governance and Accountability Framework. All decisions made by the Board are available [here](#).

The parameters in which Board proceedings may be held in private and in which documents need not be published is set out in schedule 1A to the Fire (Scotland) Act 2005, as amended by the Police and Fire Reform (Scotland) Act 2012.

- 4. The proposed centralisation of Control Centre's would mean a major loss of local knowledge and Command and Control. The proposed reliance on technology to replace local knowledge would not be reliable and robust enough to ensure a secure control and operational management of mobilising or operations command.**

We would draw the petitioner's attention to the recent HM Fire Service Inspectorate Report "[The Scottish Fire and Rescue Service Operations Control Room in Dundee, and Service Delivery and Support in Highland, Western Isles, Orkney Islands and Shetland Islands](#)".

- 5. The major loss of senior and middle management across Scotland would result in a system where the remaining managers would have a far too large span of control. This would lead to Sharp End Failures and a breakdown of command and management across all areas of the Service.**

We would draw the petitioner's attention to the following reports which counter this statement:

HM Fire Service Inspectorate service delivery inspection reports:

- [HM Fire Service Inspectorate Local Area Inspection Scottish Borders](#)
- [HM Fire Service Inspectorate Local Area Inspection South Ayrshire](#)
- [HM Fire Service Inspectorate Local Area Inspection West Lothian](#)
- [HM Fire Service Inspectorate Local Area Inspection Western Isles](#)

HM Fire Service Inspectorate Report:

- [The Scottish Fire and Rescue Service Operations Control Room in Dundee, and Service Delivery and Support in Highland, Western Isles, Orkney Islands and Shetland Islands.](#)

6. The centralisation would inevitably lead to a one size fits all management which would lead to inappropriate decisions, equipment and procedures being forced on areas where they are not practical or suitable.

We would draw the petitioner's attention to the report by [Audit Scotland](#) in May 2015. This states "The merger followed good practice and the move to being a national organisation has enhanced scrutiny and challenge. There are 17 local senior officers. They have been a successful innovation and have helped in the fire and rescue service's move from local government to central government. In addition to the statutory role of the 17 local senior officers, board members have a non-statutory responsibility for liaising with the local authorities in each of the SFRS's three operational areas".

A Specialist Resources Review was conducted in 2015 which reviewed the provision and deployment of Special Resources across Scotland with a view to satisfying a principle aim of reform outlined within the Fire and Rescue Framework for Scotland 2013; to create more equal access to specialist support services and national capacity.

7. The Highlands had Community Response Units which were pertinent to the Highlands only. The SFRS repeatedly under uses these stations and has on record at Council Meetings stated that the SFRS does not really agree or understand the need for these Stations.

This statement does not reflect the position of the SFRS as documented in the Minutes of Meeting of the Lochaber Committee held in Lochaber House, High Street, Fort William on Friday, 23 June 2017, which state:

"In relation to the Community Response Units (CRU), it was queried if the types of incidents they had been called out to had been reduced since control room call handling had been removed from Highland and were call handlers aware of what types of incidents CRUs could respond to. It was advised that there were two CRUs in the Lochaber area and they were called out when required. There was no knowledge of them not being called upon as a consequence of call handling being outwith the area. Further, call handlers were aware of the CRUs appliances and their capability."

8. The Mott Macdonald Report which recommended the Single Service as an economical and viable option was fraud and was full of major inaccuracies and assumptions, such as the sale of properties in years 2 and 3 to help make savings, when many of these premises were grossly overvalued and indeed many of the properties and land were not owned but on 100 year leases for community good.

It is not appropriate for the SFRS to respond to unverified claims made against the author and contents of the Mott Macdonald Report.

9. Moral and therefore sickness levels would be an increased issue due to ineffective management due to span of control. Freelancing would become an issue due to lack of sufficient middle management.

The SFRS does not feel it is appropriate to directly respond to unverified or baseless claims.

The SFRS does, however, monitor its key performance indicators and reports on resignations, retirements and sickness absence rates to the Staff Governance Board, Employee Partnership Forum and Strategic Leadership Team on a quarterly basis. The data within these reports is analysed and remedial management actions are taken at strategic level to develop a workforce and 4 resourcing plan which takes account of succession planning. This ensures that appropriate staffing levels are maintained both in the short and long term planning cycles.

10. Since the inception of the SFRS on 1st April 2013 there has been in the former HIFRS area 5 station closures (2 Retained and 3 CRU according to the HMI's figures) and many more are on the brink of closing. This is mainly due to the inflexibility in Recruitment with the one size fits all SFRS policy. In some locations such as the island of Fetlar on Shetland the Retained Station has closed, this now has increased the attendance times dramatically as it requires the call out of a Ferry and a 35 minute one way ferry crossing as well as mobilisation of the nearest stations (Mid Yell and Baltasound) 15 miles away. There have been two FOI requests by MSP'S which have failed in the last few months. Both failures identify and effectively admit that the Single Service is failing the public, they were as follows.

Since inception in 2013, the SFRS has not closed any operational stations.

We would draw the petitioner's attention to The "[Fire Safety and Organisational Statistics Scotland 2015-16](#)"

We trust the provision of this factual evidence will address the claims made in the petitioner's letter.

Letter from the petitioners of PE1511

11 December 2017

Petition PE1511: Inverness Fire Service Control Room

The petitioners would like to thank the Justice Committee for requesting our concerns relating to the Scottish Fire and Rescue Service SFRS which were discussed at the meeting on the 5 September 2017, which were passed to the SFRS and Scottish Government for a response. The petitioners would also like to thank DCO Iain Bushell for the informative and comprehensive although selective reply, the amount of work involved is noted and appreciated. It is however disappointing that the SFRS have "provided a response which also reflected the Scottish Government's position", particularly when in question 2 below there is no response.

The petitioners are grateful for the opportunity to comment on the SFRS and Scottish Governments reply which is to be discussed at the Justice Committee meeting on the 19 December 2017.

The response from the SFRS was selective and failed to provide any response to the main request in our earlier submission regarding the two failed Freedom of Information (FOI) requests made by MSPs. Which were:

"There have been two FOI requests by MSPs which have failed in the last few months. Both Failures identify and effectively admit that the Single Service is failing the public. They were as follows.

We request on behalf of the petitioners of PE1511 and the communities of the Highlands and Islands an immediate investigation and response on the findings from the Scottish Government.

1. The first one was a request for the appliance and equipment maintenance inspection and test dates for the last couple of years

Response given to ourselves include -

Providing information was too big and difficult a task.

Vehicle maintenance and equipment test information is on "Fleet Management Computer System" with knowledge we know this information takes minutes to provide.

We believe that information on the FOI was not disclosed because it showed that island Appliances were not maintained (5 x 13wk mandatory inspection) and that no annual tests were carried out in major safety equipment over this period. This raises severe concerns of Crew and Public safety, also the Chief Fire Officer clearly didn't know or we question the fact that, as he stated to MSPs, Press and Public, that "all" routine maintenance had been undertaken.

2. The second FOI request was for call handling times, mobilising times at the Dundee Control Centre compared with the historic information from both Aberdeen and Inverness Control Centres.

Responses given to ourselves were and indeed we question these -

SFRS no longer record call handling times, or record mobilisation times anymore, stating that there is no requirement to do so. A bold statement from SFRS as it prevents

interrogation or comparison studies of data from the new Centralised Control Systems or mobilisations effectiveness in comparison to the previous services.

This draws attention and consideration to the fact that a single service cannot be measured against any other services provider. Previous services (8x) were KPI assessed against one another in order to provide the public with performance and quality information."

The petitioners would like to comment on the response that was given by the SFRS, in order to simplify this we have used the SFRS items and supplied a "Petitioners Comment" below each item:

Initial Comment	1. The SFRS is now 42 months old and much of the warnings given to the Scottish Government prior to the creation of the centralised service have come to fruition. The Service has not made the savings promised to the Scottish public and is heading towards a financial overspend crisis. It is worth reminding ourselves of the warnings given to Kenny MacAskill, the former Cabinet Secretary for Justice, as he consulted on the creation of a Single Service for Scotland.
SFRS Response	We would draw the petitioner's attention to the following: Audit Scotland Report, May 2015 Deloitte "Scottish Fire and Rescue Service annual audit plan 2016/17 (Audit and Risk Committee 29 March 2017)
Petitioners' response	<p>The Audit Scotland Report (21 May 2015) and Deloitte Report (22 February 2017) identify revenue savings of 16.1m (2013/2014) and 6.6m (2014/2015). However, it also identifies an estimated additional revenue spend of 36m in the first two years in SFRS setup costs. This equates to a nil save in the first two years and in fact indicates that the SFRS cost the taxpayer 13.3m (+18m in VAT) at the same time the service lost 683 staff (8963 to 8281) of which 363 (298 full time operational) were front line operational staff. This equates to very poor value for money in funding a service which has an increased cost of 41.3m providing a vastly reduced service with almost 700 less staff.</p> <p>The Capital Costs for the first two years are very difficult to identify as are the Capital set up costs in creating the SFRS prior to 2013; however, there has been a concerted effort to sell off assets and Capital receipts were 16.1m for 2013/2015, 15.2m for 2015/2016 and 15.2m for 2016/2017 which was given back to the service to help support the creation of a centralised single service. From the report it can be seen that Capital spend is estimated at 21.8m in 2014/2015, 25.3m in 2015/2016 and estimated at 91.1m estimated for 2015/2018.</p> <p>The true costs of setting up the SFRS including Capital and Revenue have never been published and it is estimated that there has been no saving to the public to date, what is known is that the SFRS has seen a total reduction in staff from 2013/2017 of 1130 (13%), which includes 882 (78%) operational front line</p>

	<p>staff. The Deloitte report indicates that the SFRS has three areas of Significant Risk, which are Core Expenditure Recourse Limits, Valuation of Property Assets and Management Override of Controls. These reports predict a 42m deficit by 2019/2020 or according to the Deloitte report 47.2m by 2019/2020 and indeed in the CFO's Futures document he has reported in the press that the SFRS is "unsustainable beyond April 2018", this could hardly be called a financial success and we do agree with the CFO.</p>
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Initial Comment	2. Warnings were issued that a Single Service centrally funded would become liable for Tax to HM Revenue and Customs.
SFRS Response	This is a matter for the Scottish Government.
Petitioners' response	The VAT issue has been partially resolved by the Treasury and the SFRS is to be exempt from 2018/2019, this has meant that an additional VAT overspend was applicable since 2013/2018 and that 40m has been spent which has been a direct payment from central government.

Initial Comment	3. The proposed new Fire Board was not representative of the diverse communities across Scotland and would not be capable of providing effective governance and local accountability required, nor would it be effective in managing and controlling the Service. Additional statements from the letter: The Fire Authority is made up of paid volunteers none of whom have practical knowledge or understanding of the Fire Service. None of the Authority members are locally elected or representative of the highly diverse communities they represent. Repeatedly they have failed in managing the Service effectively and have been found wanting in holding private behind closed doors meetings.
SFRS Response	<p>The highly diverse, significantly experienced and clearly representative composition of the Scottish Fire and Rescue Service Board can be reviewed here.</p> <p>The Board operates to an open and transparent ethos and adheres to the SFRS Governance and Accountability Framework. All decisions made by the Board are available here.</p> <p>The parameters in which Board proceedings may be held in private and in which documents need not be published is set out in schedule 1A to the Fire (Scotland) Act 2005, as amended by the Police and Fire Reform (Scotland) Act 2012.</p>
Petitioners' response	The Scottish Fire and Rescue Board (SFRSB) has seen the Governance of the SFRS managed by 12 individuals who have applied for the position as Board Members, this has replaced some 200+ diversely represented publicly elected members from all local authorities in Scotland which used to provide Governance over the 8 Regional Services. The current SFRSB members are neither representative nor elected and according

	<p>to the information provided on the SFRS website only one Board Member has stated experience or represents rural communities north of the Central Belt.</p> <p>The Audit Scotland May 2015 report indeed states "The board is starting to perform well and is committed to continue improving how it performs", this was two and a half years after the Board was set up and hardly indicative of a good situation. The report also states "One challenge confronting any board is the need to balance detailed knowledge about how an organisation works with strategic direction and challenge of how the organisation is managed. At the beginning, the level of detail requested by the board, about the operation and management of the SFRS, led to tensions with senior management", this is also not confidence building.</p>
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<p>Initial Comment</p>	<p>4. The proposed centralisation of Control Centre's would mean a major loss of local knowledge and Command and Control. The proposed reliance on technology to replace local knowledge would not be reliable and robust enough to ensure a secure control and operational management of mobilising or operations command.</p>
<p>SFRS Response</p>	<p>We would draw the petitioner's attention to the recent HM Fire Service Inspectorate Report "The Scottish Fire and Rescue Service Operations Control Room in Dundee, and Service Delivery and Support in Highland, Western Isles, Orkney Islands and Shetland Islands".</p>
<p>Petitioners' response</p>	<p>The HMI Report clearly identifies that the Dundee Control Staff are doing a great job under very difficult conditions. The Petitioners wish it formally noted that there is and has never been any suggestion that they are not doing a great job. The HMI Report also recognises the valiant efforts being undertaken by the staff and managers in the Dundee Control Centre to mitigate any faults and discrepancies as they arise. The HMI Report does however find that the Dundee Control Centre is operating with only 64% staff and of these, 50% are in Development (Training and not fully competent), which means the Dundee Control Centre is operating with just 32% fully competent staff. The HMI Report also found that the systems in the NEW Control Centre are not fully compatible or integrated, which causes inbuilt delays as multiple systems have to operate in order to deal with calls and mobilise stations and recourses. The shortage of staff and the critical shortage of trained staff which means that there is regular pressure on all staff to undertake overtime and other management contingencies, is an absolute disgrace. This astonishing situation and the blame for this lies directly with the Scottish Government and the Fire Board as they have clearly mismanaged the Governance of the centralisation from 8 to 3 Control Centres. The staff shortages</p>

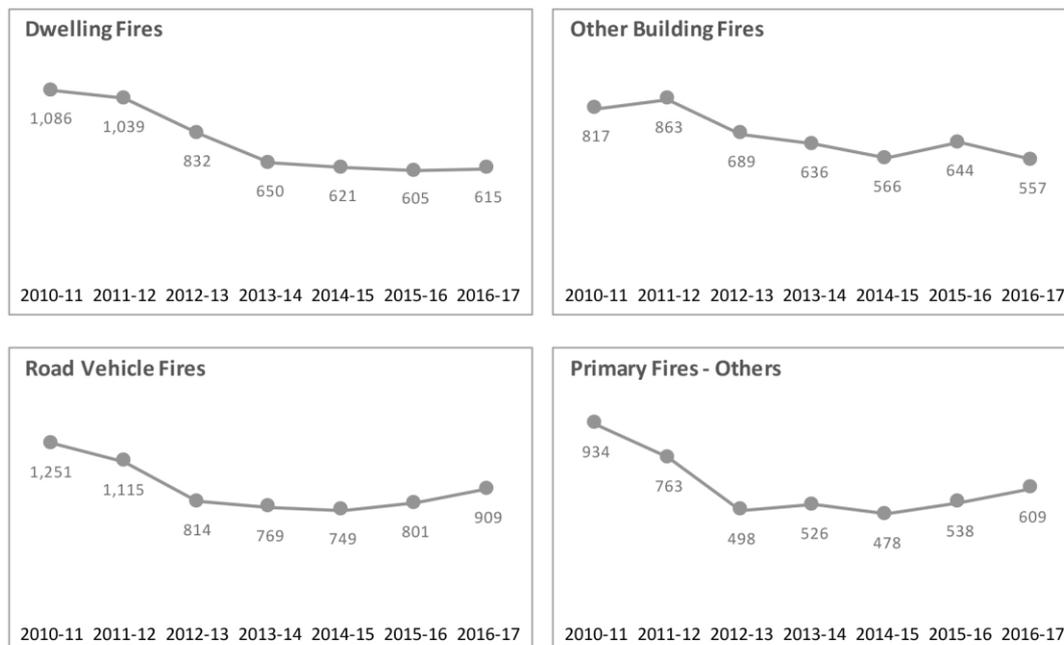
	<p>were a known problem and to blame the need to allow Inverness and Aberdeen Staff the chance to move to Dundee up until the last minute is an unacceptable excuse. Clearly the Inverness and Aberdeen Control Centres should not have been closed until the Dundee Control Centre was fully staffed with Competent personnel and the system was fully tested. The centralisation has been very badly managed and has been forced upon the SFRS and its staff in an effort to reduce costs and meet savings targets, it has had absolutely nothing to do with operational efficiency or public safety, it has had a detrimental effect on staff morale and confidence.</p> <p>The HMI Report also identifies that the three new control centres in Scotland have NO interoperability as they use different systems and it also highlights the fact that staff cannot even help in other centres due to the amount of training that would be involved. This HMI Report identifies that another new system needs to be procured, a process which can take years before the 3 control centres will be fully interoperable and give the necessary resilience required. This beggars belief as it is now certain that all three centres will have to go through extensive training AGAIN when and if the new National System is installed. The question is now why were the 8 controls moved into a temporary 3 control system when they could have all been moved over to the new system when it was fully installed and all training and testing complete. Inter-operability between the “new” centres. Good communications are the backbone to effective overall response at the largest major incidents. There will be costs of another new call handling system, as suggested by HMI Report. It looks as though the centralised controls have been badly mismanaged in order to save money at the expense of staff welfare, staff morale and public safety. The Petitioners agree with the Highland Council and Shetland Islands Council who supports the retention of local Emergency Services Control Rooms and many Councillors believe that, in the future, combined Emergency Services Control Rooms would save money, retain vital local knowledge and build public confidence.</p>
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<p>Initial Comment</p>	<p>5. The major loss of senior and middle management across Scotland would result in a system where the remaining managers would have a far too large span of control. This would lead to Sharp End Failures and a breakdown of command and management across all areas of the Service.</p>
<p>SFRS Response</p>	<p>We would draw the petitioner’s attention to the following reports which counter this statement:</p> <p>HM Fire Service Inspectorate service delivery inspection reports: HM Fire Service Inspectorate Local Area Inspection Scottish</p>

	<p>Borders</p> <p>HM Fire Service Inspectorate Local Area Inspection South Ayrshire</p> <p>HM Fire Service Inspectorate Local Area Inspection West Lothian</p> <p>HM Fire Service Inspectorate Local Area Inspection Western Isles</p> <p>HM Fire Service Inspectorate Report:</p> <p>The Scottish Fire and Rescue Service Operations Control Room in Dundee, and Service Delivery and Support in Highland, Western Isles, Orkney Islands and Shetland Islands.</p>
<p>Petitioners' response</p>	<p>The HMI Reports provided have all got a recurring theme regarding Appliance and Equipment Maintenance failures and shortages. They also identify a failure to provide adequate middle management support to stations across the whole country. This was warned about and has come to fruition.</p> <p>It should be noted that the middle managers are deemed to be doing the best they can, but are being let down by the support to them and the support they can provide due to lack of suitably qualified middle managers. These structure and span of control failures have led to the creation in 2015 of 6 new Deputy Assistant Chief Officers, 2 years into the new structure it had to have an injection of 6 new principal managers, hardly good planning.</p> <p>The Report identifies Hot Fire Training failures and indicates a lack of facilities following the closure of these facilities across Scotland. It also identifies a lack of resources and inflexible training system and recording system. The training system and method of recording is a problem across Scotland particularly where broadband and IT facilities are sparse, the Stations all complain and the HMI Report acknowledges that Station Personnel have not got the time, availability or facilities to comply with the inflexibility of a system which was designed for full time personnel.</p> <p>The most astonishing situation is the reason for the FOI regarding Island Appliance Maintenance which was not undertaken on 5 occasions over an 18 month period. This was largely due to the inflexibility of the systems and procedures imposed on maintenance staff who all came from 8 different terms and conditions. A clear indication that the Service Structure is too large and diverse to be managed by a single service.</p>

<p>Initial Comment</p>	<p>6. The centralisation would inevitably lead to a one size fits all management which would lead to inappropriate decisions, equipment and procedures being forced on areas where they</p>
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	are not practical or suitable.
SFRS Response	<p>We would draw the petitioner's attention to the report by Audit Scotland in May 2015. This state's "The merger followed good practice and the move to being a national organisation has enhanced scrutiny and challenge. There are 17 local senior officers. They have been a successful innovation and have helped in the fire and rescue service's move from local government to central government. In addition to the statutory role of the 17 local senior officers, board members have a non-statutory responsibility for liaising with the local authorities in each of the SFRS's three operational areas".</p> <p>A Specialist Resources Review was conducted in 2015 which reviewed the provision and deployment of Special Resources across Scotland with a view to satisfying a principle aim of reform outlined within the Fire and Rescue Framework for Scotland 2013; to create more equal access to specialist support services and national capacity.</p>
Petitioners' response	<p>The Audit Scotland Report also identifies that the SFRS Structure was not coping and 2 years into creation, 6 new Senior Management Posts at Deputy Assistant Chief Officer rank had to be created as officers were unable to effectively control the service. This alone indicates our concerns are real and well founded, as the SFRS Structure approved by the Scottish Government was not fit for purpose and that the span of control was far too great for the Structure proposed. The HMI Reports for the Western Isles and Borders both identify failures in Structure and lack of Senior and Middle Management Officer Support for Stations and Communities.</p> <p>The SFRS has indicated in its enclosed 2016/2017 Statistical returns that the service has effectively undone all the good work which the previous 8 services had achieved regarding call reduction, Community Fire Safety and Legislative Fire Safety. I have copied the SFRS Statistical graphs for ease of reading they show that the steady and rapid decline in Accidental Incidents has levelled off and indeed in most cases it has risen since 2013/2014 when the SFRS took over from the 8 Legacy Regional Services.</p>



The SFRS Statistics for Deliberate Incidents, Fatalities and Injuries show a similar levelling and rise and make very poor reading. This Statistical Information is a damning indictment to the SFRS and the Scottish Governments decision to centralise the Fire and Rescue Service in Scotland against the recommendation of the Fire Service Management at the time. This tragic Statistics would suggest that the SFRS are failing badly in Community Safety and legislative Fire Safety when compared to the previous 8 services and point to our concerns that the SFRS as a single service has not the capacity and management to achieve the results that the 8 services did. The 8 Legacy Services had the management capability and capacity to drive the initiatives and policies that were locally driven and locally focused to meet the local needs of the Communities they serve. The SFRS has not got the experienced staff necessary or the local connectivity to deliver locally driven and locally agreed policies as they are driven by a centralistic management with too few middle managers to achieve meaningful gains. These statistics graphically identify that the public in Scotland are less safe under the SFRS than they were before.

Initial Comment	7. The Highlands had Community Response Units which were pertinent to the Highlands only. The SFRS repeatedly under uses these stations and has on record at Council Meetings stated that the SFRS does not really agree or understand the need for these Stations.
SFRS Response	This statement does not reflect the position of the SFRS as documented in the Minutes of Meeting of the Lochaber Committee held in Lochaber House, High Street, Fort William on Friday, 23 June 2017, which state:

	<p>“In relation to the Community Response Units (CRU), it was queried if the types of incidents they had been called out to had been reduced since control room call handling had been removed from Highland and were call handlers aware of what types of incidents CRUs could respond to. It was advised that there were two CRUs in the Lochaber area and they were called out when required. There was no knowledge of them not being called upon as a consequence of call handling being out with the area. Further, call handlers were aware of the CRUs appliances and their capability.”</p>
<p>Petitioners’ response</p>	<p>The Communities and Partnership Committee Meeting in 9th February in Inverness showed how out of touch senior SFRS managers are with the requirements of Rural Communities.</p> <p>The ACO at the meeting mentions that CRUs are a Highland thing which is not what they are used to in Glasgow or Strathclyde, where he worked. The ACO then tries to support the non-mobilisation of CRUs as they have a reduced equipment level which could make it unsafe to mobilise them to certain incidents. A Highland Council Councillor with many years as a senior police officer, then indicated that with an RTC (which CRUs are trained and equipped to respond to), it does not matter what service attends and what equipment they have, the priority in rural communities is to get the nearest blue light resource to the scene as soon as possible, where they can secure the scene stabilise the casualties, reassure casualties and very importantly give the other services attending vital meaningful up to date on scene information. The Councillor then elaborates on an incident he attended in a very remote area of the Highland's when a tour bus left the road and ended up on its roof, he described the actions taken by the 4 crew member Fire Volunteers who attended 15 minutes before any other blue light service, as fantastic. They provided life critical first aid to the 36 casualties and also reported critical information to responding crews, which meant that the gravity of the incident was clearly understood. This is a critical part to Rural Community Safety and demonstrates dramatically why the SFRS was a bad idea and an increasingly failed project, the Senior Management and Fire Board clearly have no idea of how to provide this critical service across rural areas.</p>

<p>Initial Comment</p>	<p>8. The Mott Macdonald Report which recommended the Single Service as an economical and viable option was fraud and was full of major inaccuracies and assumptions, such as the sale of properties in years 2 and 3 to help make savings, when many of these premises were grossly overvalued and indeed many of the properties and land were not owned but on 100 year leases for community good.</p>
<p>SFRS Response</p>	<p>It is not appropriate for the SFRS to respond to unverified claims</p>

	made against the author and contents of the Mott Macdonald Report.
Petitioners' response	Our original comment did include verifiable information Regarding the Old Sumburgh Fire Station being given a Value for resale when the SFRS doesn't own the land it was given for community benefit on a 100 year lease. The other premises was the Inverness HQ Building being given a value when it has insufficient parking to allow it to be sold as a usable premises. These were two specifics from a report which was completely full of inaccuracies and inflated asset values.

Initial Comment	9. Morale and therefore sickness levels would be an increased issue due to ineffective management due to span of control. Freelancing would become an issue due to lack of sufficient middle management.
SFRS Response	<p>The SFRS does not feel it is appropriate to directly respond to unverified or baseless claims.</p> <p>The SFRS does, however, monitor its key performance indicators and reports on resignations, retirements and sickness absence rates to the Staff Governance Board, Employee Partnership Forum and Strategic Leadership Team on a quarterly basis. The data within these reports is analysed and remedial management actions are taken at strategic level to develop a workforce and resourcing plan which takes account of succession planning. This ensures that appropriate staffing levels are maintained both in the short and long term planning cycles.</p>
Petitioners' response	<p>BBC 12 October 2017:</p> <p>"The number of fire and rescue staff recorded as being off with stress has increased five-fold in three years.</p> <p>Figures indicated absence with stress has increased from 27 in the year after the single service was created, to 137 last year.</p> <p>The reorganisation of the service had been "traumatic" for staff, according to the Fire Brigades Union (FBU).</p> <p>The Scottish Fire and Rescue Service (SFRS) said the increase reflects a change in how figures are recorded.</p> <p>Statistics on the number of staff recorded as being off with stress were obtained after a freedom of information request.</p> <p>FBU Scotland claimed problems with stress increased following the reorganisation of the service from eight brigades to one.</p> <p>It said about a thousand posts have been lost, placing strain on those remaining."</p> <p>The FBU's position on this is clear and we share their concerns.</p>

Initial Comment	<p>10. Since the inception of the SFRS on 1st April 2013 there has been in the former HIFRS area 5 station closures (2 Retained and 3 CRU according to the HMI's figures) and many more are on the brink of closing. This is mainly due to the inflexibility in Recruitment with the one size fits all SFRS policy. In some locations such as the island of Fetlar on Shetland the Retained Station has closed, this now has increased the attendance times dramatically as it requires the call out of a Ferry and a 35 minute one way ferry crossing as well as mobilisation of the nearest stations (Mid Yell and Baltasound) 15 miles away. There have been two FOI requests by MSP'S which have failed in the last few months. Both failures identify and effectively admit that the Single Service is failing the public, they were as follows.</p>
SFRS Response	<p>Since inception in 2013, the SFRS has not closed any operational stations.</p> <p>We would draw the petitioner's attention to The "Fire Safety and Organisational Statistics Scotland 2015-16"</p>
Petitioners' response	<p>Scottish Government Information:</p> <p>"Fire Stations Fire stations in Scotland have been classified in the following manner:</p> <ul style="list-style-type: none"> • Wholetime • Retained Duty System (RDS) • Volunteer and • Day. <p>The classification relates to the primary staffing of these stations. For example, if Wholetime and RDS crew the same station is will be recorded as Wholetime.</p> <p>Number of Fire Stations On the 31 March 2013 there were 359 fire stations in Scotland. Of these, 74 were primarily wholetime crewed, 238 RDS, 43 Volunteer and 4 Day crewed.</p> <p>Strathclyde FRS had the highest number of stations with 110, followed by Highland and Islands with 102. These FRSs cover the biggest two geographical areas in Scotland.</p> <p>Highlands and Islands stations decreased from 115 to 102 during 2012-13, 10 of these stations were volunteer and 3 were RDS.</p> <p>The majority of stations in Scotland are RDS crewed (66%), then Wholetime (21%), Volunteer (12%) and finally Day (1%) (Chart 1).</p> <p>Of the 74 Wholetime stations, the majority are in Strathclyde</p>

	<p>(51%) followed by Lothian and Borders (18%). "</p> <p>SFRS Statistics:</p> <p>"2.2 Fire Stations On 31st March 2017 there were 356 SFRS fire stations in Scotland. This is unchanged from 2016.</p> <p>The profile of fire stations is also unchanged from 2016 with two thirds of all stations primarily RDS crewed (240), 21 per cent Wholetime (74 stations) and 12 per cent Volunteer (42 stations)."</p> <p>The SFRS statement that there have been no Fire Station Closures since Inception in 2013 is clearly incorrect. There have been 3 Fire Station Closures and in the year leading up to the SFRS 2012/2013 the Highlands and Islands Fire and Rescue Service closed 13 Fire Stations under the Management of the Scottish Fire and Rescue Service as they had no Chief Fire Officer due to long term sickness. The SFRS have effectively closed 16 Fire Stations, the station in Fetlar mentioned in our comments is still on the SFRS Statistics however according to the HMI report it has 1 crew member. The situation in Fetlar and other such remote Islands such as the closed Out Skerries and Foula has been engineered by the inflexible fitness and training requirements required by the Single Service, together with the need to have a minimum of 4 crew members and the need for these remote locations to have a Breathing Apparatus capability. Thankfully the HMI is now questioning this policy and rigidity and recommending a more flexible and practical solution which could see many of these closed stations reopened in the near future.</p>
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No reply to the FOIs as previously mentioned at the start of our representation

The Petitioners would like to again thank the Justice Committee for upholding the Petitions PE1511 and PE1510 and allowing us to comment on the selective response from the SFRS and Scottish Government. We would ask that the SFRS and Scottish Government be required to answer the Justice Committee's request fully, particularly regarding the two FOI requests. It is clear to us that the Single Scottish Fire and Police Services are failing the Communities of Scotland on many levels. Ultimately we feel a full review of the Single Fire and Police Services is needed and a better more Locally Responsive and Governed Service provided that fits the needs and properly protects the Local Communities across all of Scotland.

Annexe E

Background Information to Petition 1633: Private Criminal Prosecution in Scotland

In England and Wales there is no need to seek permission before a private criminal prosecution can be commenced in court. There appears to be no evidence that this facility creates major difficulties for the courts in other parts of the UK, and there is no evidence that solicitors and advocates could not more than adequately perform this function in regard to private criminal prosecutions. In fact, many criminal defence firms already have former depute fiscals in their employment, and there is always the ability to instruct counsel, who have acted as advocate deputes for the crown in the past. It could be suggested that giving this facility might actually reduce the pressure on the public purse.

By making the right to bring a private criminal prosecution more straightforward, this would allow for certain organisations, companies, and individuals to use the criminal law where it might be the most appropriate remedy, for the exact same principles that apply when the crown decides to prosecute. Some examples are private prosecutions for fraud, theft or for wilful neglect in public office, where there appears to have been no prosecutions for over 20 years, as well as other offences. There would be safeguards, in that solicitors and advocates will not commence proceedings if there are no prospects of success, as they also owe a duty to the court, as well as their clients.

As matters currently stand if the Health and Safety Executive (HSE) decides that it will not provide a report to the Crown in Scotland on an accident at work, legally there is nothing anyone in Scotland can do. The Lord Advocate in Scotland can direct Police Scotland to carry out an investigation, but has no powers to direct the HSE to carry out an investigation as they are a reserved body. Without a report the Crown cannot prosecute, so in effect there is no remedy for the victim. This anomaly would be cured by this petition and would ensure access to justice by giving the facility for a private criminal prosecution in the event that the HSE declined to provide a report. With the ability to bring a private criminal prosecution in a more straightforward manner, then employees, trade unions, or other interested parties could decide, where appropriate, to seek a criminal sanction, for example, in instances where perhaps a company had ceased trading, but there had been an accident.

There is another potential justification in support of this petition, and it is this. If there is any suggestion that the involvement of the Lord Advocate in directing reporting agencies might impact on their independence, then there has to be a safeguard by giving the right to bring a private criminal prosecution without the Lord Advocate giving permission. The HSE director in Scotland, Mike Cross has suggested that giving the Lord Advocate the power to direct the HSE to carry out an investigation should not be granted, as it might "undermine HSE's independence". Does this mean that Police Scotland as a reporting agency might not be independent when they are directed to produce a report for the Crown? In my opinion, the HSE position is patently absurd, however, in all fairness, Mr Cross might actually have evidence to support the statement. If true, it could cast doubt on the ability of Police Scotland to be independent in certain situations, and therefore provide further support for the need of the removal of the involvement of the Lord Advocate in the existing process.

Letter from the petitioner of PE1633**13 December 2017**

The purpose of this petition is to address the lack of access to justice in situations where the statutory authorities either decline to prosecute, or fail to provide a report which will allow consideration of a prosecution.

The main instigator of my initial petition to the public petitions committee was in regard to situations where a reporting agency, primarily the Health and Safety Executive (HSE), or a Scottish local authority health and safety department declined to produce a report as a result of a policy decision on accidents at work whilst participating in a sporting event.

The Health and Safety at Work Act 1974 does not differentiate between employees taking part in sporting events and any other employee in the workplace. For example football players, rugby players, jockeys are all at their work, and should therefore be entitled to the same protection as any other employees, or self-employed workers.

Because the HSE have adopted a different approach in their guidance to sporting entertainment events from normal workplace environments, and in my opinion, applied the law incorrectly, situations have developed where the workers (participants) have a lesser degree of protection than they should be entitled to.

Two immediate examples that might have been investigated earlier, had this not been the current HSE policy, are the potential for brain injuries in football, and jockeys riding dehydrated which may increase the risk of accidents, osteoporosis, or mental health issues.

If sensible risk assessments were carried out in order to prevent injury, so far as reasonably practicable, then the football authorities might have been required to address the situation earlier, rather than waiting for Alan Shearer to highlight the problem on national TV. Equally risk assessments on the impact of the handicapping by weight might lead to a safer alternative in horseracing, such as a staggered start to replace the adding of weight, which ironically enough, is trying to artificially simulate a distance handicap.

Another area of concern is the guidance by the HSE that participation accidents in sporting events, no matter how serious, do not need to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). The view of the HSE is that only equipment and management related accidents should be reported, but not "participation" accidents. However if there is no impartial investigation, then it will never be known what the actual cause of the accident is. The benefit of RIDDOR is that it should allow the local authorities to monitor accidents. For example if there are continually reported serious accidents, then they can consider if there is too great a frequency, and decide to investigate what the actual causes of the accidents are. I think that it is spectacularly naive to think that a sporting body will refer itself for a potential prosecution of its own accord.

The decision to relax the RIDDOR requirements creates the absurd situation where a participation related accident of an employee or self-employed worker which leads to a very serious non-fatal injury is not investigated, but the exact same accident under the same exact circumstances that leads to a fatality, is automatically investigated with a report to the Crown Office Procurator Fiscal Service (COPFS). There does seem to be an inconsistency in the law in this instance.

Why a private criminal prosecution?

In Scotland, as you will be aware, the COPFS can only consider a prosecution if they get a report, so if the HSE or a local authority refuse to investigate an accident, then there is no possibility of the COPFS being involved. This has resulted in a lack of access to justice for people in Scotland in certain situations. By creating the same right, with similar safeguards as they have in England and Wales, there is no reason, other than outdated tradition, to stop the law of Scotland evolving in a sensible and appropriate manner.

I think that it is worthwhile making the point that whilst the COPFS seek to address most of the reported matters, it should be borne in mind that the COPFS do not get every decision correct, and they are not perfect. If they did, then there would be very few successful defences in criminal prosecution. In most instances a decision whether or not to prosecute is simply the opinion of an individual, and it may be that there is a valid alternative view, which should be considered.

It should also be remembered that the COPFS will sometimes prosecute as a matter of policy, possibly when the case might not be as strong as they would like. I believe that this committee has heard evidence of instances where this has happened. To suggest that they never, ever, prosecute cases which might not be as strong as they would like, is not correct in my view. If the COPFS can take this approach then why is it not appropriate for a member of the public to have the same right?

Alternatively if a lack of resources means that a policy decision is made not to prosecute offences that might have been prosecuted in other circumstances, the victims should not lose out on access to justice, if it is simply a matter of budget cuts.

If an initial decision is taken not to prosecute then the current system is against any challenge. In my experience government departments very rarely ever admit that they have made a mistake, and I feel that there must be a temptation to protect the department in situations where a decision has been made that is subsequently challenged. I wonder on how many occasions a decision not to prosecute is reversed by the COPFS.

The COPFS will sometimes take the view that a prosecution is not in the public interest, even though there is no prospect of a civil remedy having any real effect, but equally the COPFS will sometimes prosecute for what many people might think is a trivial matter.

It seems clear therefore that the decision to carry out a prosecution will vary in different circumstances.

When the suggestion was recommended by Lord Carloway that corroboration should be removed, other jurisdictions were as utilised as examples to support the argument. It

seems that it is entirely appropriate to look towards English law as an example of how private criminal prosecutions can be introduced into Scots law, in a sensible and controlled manner, thereby offering protection to anyone who has been abandoned by the COPFS and the reporting agencies.

Finally, I think that it would be helpful to seek the views of the Law Society, particularly from criminal defence solicitors who should be in an ideal position to explain if they would be capable of carry out this function on behalf of clients, and also the views of the Faculty of Advocates whose members who have acted as crown counsel and also as counsel for defenders.