

POLICE AND FIRE REFORM (SCOTLAND) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT - OVERVIEW

3. The purpose of the Act is to create a single police service and a single fire and rescue service. The Act sets out the governance arrangements and framework for the new services. In addition, it provides:

- a modern purpose for the police service and updated oath for constables. For fire, the Scottish Government intends that a new purpose will be included in a new fire and rescue framework;
- a statutory framework for the delivery of police and fire and rescue services and appropriate scrutiny and oversight arrangements; and
- arrangements for the transfer of existing officers and staff to both services.

4. The Act also places the arrangements for independent custody visiting in Scotland on a statutory footing. It ensures that independent custody visiting in Scotland complies with the Optional Protocol to the Convention against Torture.

5. To facilitate the establishment of single services the Act abolishes the existing unitary police and fire authorities (Fife and Dumfries and Galloway) and the 6 joint police and joint fire and rescue boards which are established by amalgamation schemes made under the provisions of the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005 by bringing together a number of local authorities (who are individual police and fire and rescue authorities under the enabling legislation) to form joint boards.

6. The Act is in 3 parts. Part 1 deals with police, and has 17 Chapters and 100 sections. Part 2 deals with fire and rescue, and has 23 sections and Part 3 deals with general provisions with 7 sections. The Act also includes 8 schedules setting out the detailed arrangements in relation to a number of areas covered by the Act.

Part 1: Police Reform

7. **Part 1** largely replaces the legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, and puts in place a new modernised framework for policing. The Act also repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland to rename it and extend the provisions in that Chapter to provide for more robust scrutiny of policing. Specifically, it makes provision for:

- The establishment and way of working of the Scottish Police Authority (SPA), responsible for the governance, oversight and maintenance of the Police Service, for holding the chief constable to account, and for providing forensic services. The Act will also give the Scottish Ministers power to direct the SPA, but not the chief constable (**Chapters 1 and 3 and schedule 1**);
- The responsibilities of the chief constable for the direction and control and day to day administration of the Police Service of Scotland (the Police Service), the allocation and deployment of resources received from the SPA, and ensuring adequate arrangements for the policing of each local authority area. The Act also makes clear that the chief constable must account to the SPA (**Chapter 2**);
- An updated oath, a restatement and reframing of the functions and duties of constables, and provision for the terms and conditions of service of constables and police cadets, as well as that of police staff, police custody and security offices and constables from another jurisdiction on temporary service with the Police Service (**Chapter 2 and schedule 2**). In addition, the Act gives the Scottish Ministers power to make regulations on a range of issues concerning the governance, administration and conditions of service of constables and police cadets (**Chapter 8**);
- A statement of the policing principles to which the Scottish Ministers, SPA and the chief constable must have regard when setting the strategic direction for the service and commanding constables, as well as detailed arrangements for the strategic police plan and annual police plan. (**Chapter 4**);
- A statutory duty on the SPA and the chief constable to make arrangements which secure best value for the SPA and the Police Service (**Chapter 5**);
- Reporting on and examining policing matters, including placing specific obligations on the SPA to produce an annual report. It also provides for the preparation and submission of accounts and arrangements for audit, and enables the Auditor General for Scotland to initiate examinations into the delivery of best value (**Chapter 6**);
- The chief constable to make arrangements for local policing, including establishing a new formal statutory relationship with each local authority and designating a local commander for each local authority area (**Chapter 7**);
- Arrangements for police appeals tribunals in disciplinary cases where the processes of review or appeal have been exhausted (**Chapter 9 and schedule 3**);
- A new independent investigatory capacity outside the Police Service (the Police Investigations and Review Commissioner (PIRC)) to deal with the investigation of the

most serious cases involving the police and where it is in the public interest to have an independent investigation (**Chapter 10**);

- Inspection of the SPA and the Police Service by HMICS, which will retain its existing powers and also be able to examine the delivery of best value. It also requires the Scottish Ministers to lay HMICS inspection or inquiry reports before the Scottish Parliament (**Chapter 11**);
- A requirement on the SPA and the Police Service, and on HMICS, the Auditor General and PIRC to work together (**Chapter 12**);
- The Scottish Ministers to pay a grant directly to the Scottish Police Authority (**Chapter 14**). The SPA will also be able to charge for goods and services provided by the SPA or Police Service (**Chapter 13**);
- A number of offences committed against or in relation to the police (**Chapter 15**);
- Independent Custody Visiting (**Chapter 16**); and
- The transfer of officers, staff and assets from the existing unitary authorities, joint boards and SPSA to the new service, with transitional arrangements for the period before the Police Service is established (**Chapter 17** and **schedules 4 and 5**).

Part 2: Fire Reform

8. **Part 2** amends the Fire (Scotland) Act 2005 to establish the Scottish Fire and Rescue Service (SFRS) and transfers to it fire-fighting, fire safety and other functions under that Act. Specifically, it makes provision for:

- The establishment and way of working of SFRS, responsible for the delivery of fire and rescue functions, and for employing the Chief Officer, fire-fighters and other staff. The Act also gives the Scottish Ministers power to direct SFRS (**sections 101 and 118**);
- Fire and rescue functions in the Fire (Scotland) Act 2005 to be the responsibility of SFRS, and for SFRS to carry out those functions (**sections 102-112**);
- SFRS to have a specific statutory duty to make arrangements which secure best value (**section 113**);
- SFRS to produce, publish and review a strategic plan (**section 114**);
- SFRS to make arrangements for local fire and rescue services, including establishing a formal statutory relationship with each local authority and designating a Local Senior Officer for each local authority area (**section 115**);
- Monitoring and scrutiny of fire and rescue matters, including placing a specific duty on SFRS to produce an annual report, to prepare and submit for audit accounts and to provide information to the Scottish Ministers (**sections 116, 101 (inserting paragraph 17 of schedule 1A into the Fire (Scotland) Act 2005), and 117**);
- Inspection of SFRS by newly established Inspectors of the Scottish Fire and Rescue Service. It also provides for reports by the Chief Inspector to SFRS, the Scottish Ministers and the Scottish Parliament, and requires the Inspectors and Auditor General to work together (**section 119**); and

- The transfer of fire-fighters and other staff and assets from the existing unitary authorities, joint boards and the Scottish Ministers to the new service, with transitional arrangements for the period before SFRS takes up its functions (**section 121** and **schedule 6**).

Part 3: General

9. **Part 3** makes a number of general provisions relating to subordinate legislation, minor and consequential amendments to other legislation and commencement.

THE ACT – SECTION BY SECTION

PART 1 – POLICE REFORM

CHAPTER 1 - THE SCOTTISH POLICE AUTHORITY

10. **Section 1** provides for the establishment of a new corporate body, the Scottish Police Authority (SPA) or, in Gaelic, Ùghdarras Poilis na h-Alba.

11. **Schedule 1** to the Act, which is introduced by **section 1**, establishes the SPA as independent from the Crown, and makes provision regarding its constitution, membership, remuneration and location. **Paragraphs 2 – 5** provide that the SPA will consist of a chairing member and between 10 and 14 other members, though that number may be varied by order made by the Scottish Ministers which would be subject to negative procedure in the Scottish Parliament. Members must be appointed by Ministers on the basis of skills and expertise relevant to the functions of the SPA. All appointments will be regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”). The Scottish Ministers are to be responsible for appointing the chairing member of the SPA, and members of the SPA may elect one of their number to act as deputy to the chairing member. These paragraphs also set out the length of term members and the chairing member can serve; that Ministers can remove members under certain circumstances; and a list of people disqualified from membership of the SPA.

12. **Paragraphs 6 – 8** of schedule 1 make provision for the SPA to appoint staff and to second police officers from police services across the United Kingdom to assist in carrying out its functions. They also make provision regarding the terms and conditions on which the SPA’s staff are employed.

13. **Paragraph 9** of schedule 1 sets out the rules regarding the establishment of committees and sub-committees by the SPA. **Paragraph 10** sets out the rules regarding the SPA’s procedures. **Paragraph 11** places a duty on the SPA (including its committees and sub-committees) to meet in public and to publish agendas, papers and reports of its proceedings. **Sub-paragraphs (2) and (4)** give discretion to the SPA to decide not to do so, with **sub-paragraph (5)** obliging it to publish a statement setting out the circumstances in which it will exercise that discretion.

14. **Paragraphs 12 and 13** set out rules regarding delegation of functions (although the SPA will still retain responsibility for the performance of those functions and remain able to perform them), and location of SPA and Police Service office headquarters (which are subject to the approval of the Scottish Ministers).

15. **Part 2 of schedule 1** makes consequential amendments flowing from the establishment of the SPA as a new Scottish public body.

16. **Section 2** sets out that the SPA's main functions are: to maintain the Police Service of Scotland (the Police Service); to promote the policing principles; to promote and support continuous improvement in the policing of Scotland, and to keep that policing under review and hold the chief constable to account for it. In particular, the SPA must hold the chief constable to account for carrying out the duties set out in **section 17**. The SPA also has any additional functions conferred on it by this, or any other, enactment. The SPA must try to carry out all of its functions in a way that is proportionate, accountable and transparent and consistent with best practice.

17. In relation to its function of maintaining the Police Service, **Section 3** provides that the SPA has a specific obligation to pay constables pay, allowances and expenses, in accordance with the regulations made under **section 48** of the Act. It also gives the SPA a broad power to provide and maintain anything necessary or desirable for carrying out police functions. The chief constable must be provided with details of how the SPA intends to allocate the expected available financial resources before the beginning of each financial year.

18. **Section 4** allows the SPA to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The powers to borrow money, purchase land compulsorily and form or promote companies are subject to Ministerial consent and, in relation to borrowing money and forming or promoting companies, the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of case.

19. **Section 5** places an obligation on the SPA to comply with any direction given by the Scottish Ministers. The Scottish Ministers may not give directions in relation to specific policing operations. The Ministerial direction must be published and laid before the Scottish Parliament. Ministers will also have powers to vary or revoke such directions, which must be published and laid in the same way.

CHAPTER 2 – THE POLICE SERVICE OF SCOTLAND

20. This Chapter makes provision in relation to the Police Service of Scotland. **Section 6** establishes the Police Service of Scotland or, in Gaelic, Seirbheis Phoilis na h-Alba as a constabulary comprising a constable holding the office of chief constable, one or more constables holding the office of deputy chief constable, one or more constables holding the office of assistant chief constable, and individuals holding the office of constable. The remaining provisions in Chapter 2 make detailed provision for the appointment and terms

of office of constables of the Service, (including the ranks a constable may hold) and for the jurisdiction, powers, duties and other functions of those constables. Provision is also made for offences which may be committed by constables of the Police Service and for liability for their unlawful conduct.

Constable: appointment, ranks and terms of office

21. **Section 7** requires the SPA to appoint the chief constable of the Police Service, one or more deputy chief constables and one or more assistant chief constables. The chief constable appointment is subject to approval by the Scottish Ministers. The SPA is required to consult the chief constable before appointing a deputy or assistant chief constable. All other constables (including special constables) will be appointed by the chief constable (**Sections 8 and 9**). Special constables are not paid, but may be entitled to allowances and other periodic payments, which will be set out in regulations made under **section 48**. The main differences from the 1967 Act are that this Act provides the flexibility to have more than one deputy chief constable and Ministerial agreement is only required before the SPA appoints the chief constable rather than all senior officers.

22. **Section 10** provides that, in order to be appointed as a constable, an individual has to have made a declaration before a sheriff or justice of the peace. **Section 10(1)** sets out the new wording of the declaration. The wording of the oath can be modified by the Scottish Ministers by order, which would be subject to the affirmative procedure in the Scottish Parliament.

23. **Section 11** makes provision for constable ranks. It lists the ranks a constable may hold, and gives the Scottish Ministers a power to make regulations (which would be subject to the affirmative procedure in the Scottish Parliament) to add or remove any rank below that of chief constable. The Scottish Ministers may also make provision in the regulations which is appropriate as a consequence of the addition or removal of a rank. **Section 11(7)** lists the people the Scottish Ministers must consult before making regulations. **Section 11(2)** provides that constables appointed to the offices of chief constable, deputy chief constable or assistant chief constable under **section 7** must hold the same rank as the office to which they have been appointed. The chief constable is responsible for assigning and promoting individuals to ranks below that of assistant chief constable. A constable can only be demoted if the constable consents or it is done in accordance with the regulations made under **section 48**. **Section 12** provides that a constable holds and vacates office in accordance with those regulations, or any other enactment which makes such provision.

24. **Section 13** provides the SPA with a power to pay rewards to any constable below the rank of chief constable who it considers has performed their functions with exceptional diligence, or in an especially meritorious manner, or to any person who it deems to have contributed substantially to Scotland's policing. Such rewards are made on the recommendation of the chief constable.

25. **Section 14** provides the SPA with a power to require a chief constable, deputy chief constable or assistant chief constable to resign, or where appropriate, retire in the interests of efficiency or effectiveness of the Police Service. Before calling for this, the

SPA must: give the senior officer a written explanation of its reasons, provide the senior officer with an opportunity to make written representations, and consider any such representations made. Where a senior officer has made written representations, the SPA must provide written reasons for the decision calling for the officer to resign or retire. In the case of the chief constable, it must consult the Scottish Ministers. A senior officer called on to resign or retire in this way must do so from the date set by the SPA, or an earlier date agreed between them and the SPA.

26. **Section 15** makes provision for constables to be engaged on temporary service outwith the Police Service, with the consent of the chief constable. Constables on temporary service continue to hold the office of constable. Unless stated otherwise in regulations made by the Scottish Ministers under subsection (2) or in another enactment, they retain their functions, powers and privileges, and are under the direction and control of the chief constable in relation to performing policing functions. Under subsection (3) the Scottish Ministers can prescribe types of temporary service and make whatever further provision they consider appropriate in regulations. Following such a period of temporary service, constables are entitled to return to service in the Police Service at the rank they held previously. Their time spent on temporary service is treated as time served as a constable of the Police Service for pay purposes. These are only applicable if the constable does not become eligible for a pension, allowance or gratuity by virtue of regulations made under the Police Pensions Act 1976 during the period of temporary service. Constables can be promoted during their time on temporary service, in which case they would return to the Police Service at the promoted rank and are treated as having served in that rank from the time of promotion for pay purposes. Although this provision largely repeats the current arrangements for temporary service it seeks to make it easier for officers to serve outwith the Police Service.

27. **Section 16** allows officers from the rest of the UK and the Crown Dependencies to carry out temporary service as officers in the Police Service, provided they take the oath (**section 10**). Such individuals hold the office of constable, which entails that they are under the direction and control of the chief constable and have all the powers, privileges and functions of a constable of the Police Service. This is a new provision to facilitate the inward secondment of officers from outwith Scotland for short term postings.

Chief Constable

28. **Section 17** makes it clear that the chief constable is responsible, and must account to the SPA, for the policing of Scotland. The chief constable has the following responsibilities:

- Direction and control of the Police Service;
- The day to day administration of the Police Service and the allocation and deployment of resources received from the SPA;
- Involvement in the preparation of the strategic police plan, and SPA's annual report;
- Preparing annual police plans;
- Seeking to secure continuous improvement in the policing of Scotland;

- Designation of local commanders and ensuring that adequate arrangements are in place for the policing of each local authority area; and
- To provide the SPA with information about the Police Service, policing and the state of crime.

29. When directing constables, police cadets and police staff, the chief constable must comply with any lawful instruction given by the appropriate prosecutor in relation to the investigation of offences, the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995, the Lord Justice General and the sheriff principal for the area in which functions are to be carried out. He or she must also seek to ensure that Scotland's policing is carried out with due regard to the policing principles set out at **section 32** and the recommendations made or guidance issued by the SPA on Scotland's policing, and in accordance with the strategic police priorities, any strategic police plan approved under **section 34**, and the most recent annual police plan published under **section 35**. Any recommendations or guidance made by the SPA must not be inconsistent with the strategic police priorities, the latest approved strategic police plan and any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences. This section largely brings together the current responsibilities of chief constables, updated to reflect the establishment of the Police Service and the new planning and reporting regime established in the Act. It also makes clear that the chief constable is accountable to the SPA for the policing of Scotland.

30. **Section 18** provides that the chief constable can delegate any of his or her functions to any other constable. He or she is however still responsible for the performance of those functions and remains able to perform them. The SPA is required to designate a deputy chief constable to perform the chief constable's functions if that office is vacant or if he or she is unable to perform their duties due to absence, illness or suspension. Only one deputy chief constable can be designated to take on the functions of the chief constable at any particular time. This provision does not affect any restriction on delegation of the chief constable's functions contained in any other enactment.

Functions of Constables

31. **Sections 19 to 23** set out the functions, jurisdiction and duties of constables, and make provision about command and control. **Section 19** sets out that constables will have all of the functions conferred on them by this or any other enactment or by rule of law, and all the powers and privileges of a constable throughout Scotland. It also provides that senior officers and local commanders also have all of the additional functions conferred on them by this or any other enactment or by rule of law. **Section 20** sets out constables' general duties. These are largely a restatement of the duties placed on constables under the 1967 Act, restated and reframed to better reflect the role of modern policing. When taking lawful measures to bring offenders to justice, a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.

32. **Section 21** makes clear that constables are subject to the direction and control of the chief constable in relation to the performance of their duties, as are police staff and police cadets (who may also be dismissed by the chief constable). A constable must carry

out lawful orders and punctually and promptly perform all of the duties which fall to him or her.

33. **Section 22** creates two offences which may be committed by constables: absence from duty without reasonable excuse or neglect or violation of duty (this also applies to police custody and security officers by virtue of section 28). **Section 23** provides for the offence of failing to return any relevant item to the SPA when ordered to do so, without reasonable excuse or the SPA's permission. An offence of failing to return any item on ceasing to be a constable, without reasonable excuse or the SPA's permission, is also provided. **Section 23** also creates a power for a sheriff or justice of the peace to grant a warrant for the search and removal of any relevant items. A relevant item is anything issued to a constable for the carrying out of the constable's functions, e.g. police uniform. The penalty for the offences of being absent from duty and failure to return equipment is imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale. The offence of neglect or violation of duty is subject to a maximum sentence of 2 years imprisonment or to a fine or to both if tried on indictment, or on summary conviction to imprisonment for a maximum term of 12 months or to a fine not exceeding the statutory maximum or both. This offence was triable summarily only under the 1967 Act.

Liability for Unlawful Conduct

34. **Section 24** provides for liability for unlawful conduct by constables in line with the provisions currently included in the 1967 Act. This is needed because police officers are office holders, not employees, and the usual liability arrangements whereby employers are liable for unlawful acts on the part of their employees do not apply. Specifically it provides that the chief constable will be liable for any unlawful conduct in the carrying out of their functions by (a) a constable under his or her direction and control or (b) a member of an international joint investigation team who is not a constable or member of SPA staff or police staff. The SPA must pay any damages or expenses awarded against the chief constable (or the person carrying out his or her functions if the office of chief constable is vacant) in any proceedings under this section, any expenses incurred by the chief constable and any sum required in relation to the settlement of any claim against the chief constable which has or might have given rise to such proceedings. The SPA can, if and to the extent that it thinks fit, pay any damages or expenses awarded against a constable in relation to unlawful conduct by them, any expenses incurred by them, and any sum required in connection with the settlement of any claim which has or may have given rise to such proceedings.

Police Cadets

35. **Section 25** allows the chief constable to appoint police cadets to undergo training with a view to becoming constables. Such cadets are to be treated as employees of the SPA as they are not attested officers under **section 10** of the Act and do not have the powers of a constable. They are however under the direction and control of the chief constable and are subject to regulations made under **section 48** in relation to their terms and conditions of service in line with the provisions in the 1967 Act.

Police Staff

36. **Sections 26 and 27** make provision for police staff. **Section 26** provides the SPA with a power to appoint police staff to assist in the carrying out of police functions. The chief constable has power to make such appointments on behalf of the SPA. Police staff can be employed by the SPA or provided to the SPA under contract with a third party. Under **section 27** police staff may be employed on terms and conditions determined by the SPA and the SPA may pay or make arrangements for contributing to and paying pensions of police staff.

Police Custody and Security Officers

37. **Sections 28-30 and schedule 2** set out the arrangements for police custody and security officers and for their certification, and put in place penalties for any person who knowingly provides false or misleading information in relation to certification. These provisions replicate those in the 1967 Act relating to police custody and security officers.

38. Under **section 28** the chief constable can certify a member of police staff to be authorised as a police custody and security officer. By virtue of **section 29(1)**, the chief constable can only do so if he or she is satisfied that the member of police staff is a fit and proper person to perform those functions and they have received suitable training to do so. The chief constable can suspend or revoke a certificate if it appears to him or her that the officer is not fit and proper, otherwise the certificate continues until the specified date. The powers and duties of police custody and security officers are as set out in **schedule 2**, as introduced by **section 28(3)**, and any other enactment or rule of law. They must be readily identifiable as such officers. **Section 30** makes it an offence for anyone to provide information enabling themselves or any other individual to be certified as a police custody and security officer if they know that or are reckless as to whether the information is false or misleading. The maximum sentence for anyone guilty of such an offence is a fine not exceeding level 4 on the standard scale.

CHAPTER 3 – FORENSIC SERVICES

39. This Chapter places a duty on the SPA to provide forensic services to the Police Service, the Police Investigations and Review Commissioner, and the Lord Advocate and procurators fiscal.

CHAPTER 4 – PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

40. **Chapter 4** sets out the policing principles and new arrangements for setting priorities, objectives and planning. **Section 32** sets out the policing principles. The first principle, set out in **section 32(a)**, is that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland. **Section 32(b)** states that the second principle is that the Police Service, working with others as appropriate, should seek to achieve that purpose by carrying out its functions in a way that (i) engages with, and is accessible to, local communities and (ii) promotes measures to prevent crime, harm and disorder.

41. **Section 33** allows the Scottish Ministers to determine strategic priorities for the SPA in relation to Scotland's policing or to the carrying out of the SPA's functions. **Sections 33(3)** and **33(4)** provide, respectively, that, before doing so, the Scottish Ministers must consult the SPA, the chief constable, persons whom they consider represent local authorities and any other persons they consider appropriate; and that they must have regard to the policing principles when determining strategic priorities. The Scottish Ministers are required to publish the strategic police priorities and lay a copy of them before the Scottish Parliament.

42. **Section 34** obliges the SPA to prepare a strategic police plan setting out the main objectives for the SPA and for Scotland's policing. That plan must be approved by the Scottish Ministers. It must: explain why each objective has been selected; describe what the SPA thinks it or the Police Service should do in order to achieve them; where reasonably practicable identify the outcomes against which they can be measured; and include any other material relating to the SPA or Police Service considered appropriate.

43. **Sections 34(3)** and **34(5)** set out the process for consulting on the draft plan, and list those who must be consulted on it (local authorities, the inspectors of constabulary and any others the SPA considers likely to have an interest in the plan). Under **section 34(4)** the SPA must involve the chief constable in the preparation of the strategic police plan, and the chief constable has an obligation to provide such assistance the SPA may reasonably require in this regard. The SPA must invite consultees to respond within a set period and must have regard to comments received. Once that process has been completed, the plan must be submitted to Ministers for approval. Once it has been approved, it must be published and laid before the Scottish Parliament. The plan must be reviewed at least once every 3 years or where there has been a significant revision to the strategic police priorities. The modified plan following that review should follow the same process of consultation, approval and publication as the original.

44. **Section 35** obliges the chief constable to prepare an annual police plan. The plan is to set out the proposed arrangements for the policing of Scotland in each year, and how the arrangements are expected to contribute towards the achievement of the main objectives for the policing of Scotland as set out in the strategic police plan. It should also include any other information, connected with policing, which the chief constable considers appropriate. The chief constable must send the SPA a copy of the draft plan for comment, publish the annual plan before the start of the year to which it relates and lay a copy of it before the Scottish Parliament.

45. **Section 36** specifies that, in carrying out their respective functions in relation to the formulation and publication of the strategic police plan and each annual police plan, the SPA and chief constable must have regard to the policing principles; must have regard to, and ensure that the plan is consistent with, the strategic police priorities; and ensure the annual plan is consistent with the most recently approved strategic police plan.

CHAPTER 5 - BEST VALUE

46. **Section 37** places a statutory duty on the SPA and the chief constable to make arrangements which secure best value for the SPA and Police Service respectively. This replaces the current duty of best value on police authorities and joint boards under Section 1 of the Local Government in Scotland Act 2003 and places a duty on the chief constable for the first time. Best value is defined as meaning a continuous improvement in the performance of their respective functions. **Section 38** provides that, in carrying out their duties in regard to best value, they must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties in **sections 37(1)** and **37(2)**, including, in particular, guidance on how to make, and what is to be included in, the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult the SPA, the chief constable and anyone else they consider appropriate. Where there is conflict between (a) and (b), the SPA and chief constable should have regard only to (a).

47. In making arrangements to secure best value, the SPA and chief constable are required to balance the quality of carrying out their functions, the cost of doing so, and the cost to persons of any service provided by the SPA or chief constable on a wholly or partly chargeable basis. In maintaining that balance, they must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (as set out in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46)). Both the SPA and the chief constable are to discharge their duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of their functions, regard should be taken of the extent to which the outcomes of that performance have improved.

CHAPTER 6 – ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

48. This Chapter sets out new arrangements for reporting on and examining policing matters. **Section 39** obliges the SPA to prepare an annual report relating to the carrying out of its functions and policing as soon as practicable after the end of the reporting year. It must contain (a) an assessment of the SPA's and Police Service's performance in achieving the main objectives set out in the most recently approved strategic police plan, and (b) an assessment of the performance by the Police Service during the reporting year in implementing the arrangements set out in the annual police plan. It may also include any other matters relating to the SPA's functions and policing that the SPA considers appropriate. The SPA must publish the annual police report, provide a copy to Ministers and lay a copy before the Scottish Parliament. **Section 39** also places obligations on the chief constable to provide the SPA with a report which assesses the Police Service's performance in the policing of Scotland during that reporting year. In particular, this report must include an assessment of the Police Service's progress towards achieving the main objectives set out in the strategic police plan and implementing proposed arrangements in the annual police plan. The chief constable must also provide the SPA with other reasonable assistance in preparing the annual report.

49. The Chapter also makes provision for the preparation and submission of accounts and arrangements for audit. **Section 40** obliges the SPA to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts as soon as practicable after the end of the year ending 31 March. It also obliges the chief constable to provide whatever assistance or information the SPA requires for these purposes. The form and content of that statement of accounts is to be set by the Scottish Ministers.

50. Under **section 41** the SPA must send a copy of the statement of accounts to the Auditor General for auditing.

51. **Sections 42** and **43** deal with examinations by the Auditor General outwith the annual audit of the SPA's statement of accounts. **Section 42** provides that the Auditor General may, at any time, initiate an examination into the economy, efficiency, and effectiveness of the Police Service, and the arrangements made by the chief constable to secure best value for the Police Service (**section 37(2)**). It is for the Auditor General personally to initiate such an examination and to decide who is to carry it out, although he or she must take into account any proposals made by the Scottish Parliament. The examiner appointed by the Auditor General may consider the appropriateness of any criteria used to assess the use of resources available to the Police Service but cannot question the merits of the Police Service's policy objectives. The examiner - if the Auditor General himself is not carrying out the examination - must report to the Auditor General, who may report to the Scottish Parliament and SPA. The results can be published. Section 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 apply to any examination under this section, as they apply to examinations in relation to economy, efficiency and effectiveness generally. **Section 43** makes it clear that section 23 of that Act includes, in relation to the SPA, a reference to examinations into the arrangements made by the SPA under **section 37(1)**.

CHAPTER 7 – LOCAL POLICING

52. This Chapter sets out the arrangements for local policing, including the new relationship between the Police Service and each local authority. Under **section 44** the chief constable is under a duty to ensure that there are adequate arrangements in place for policing within each local authority area. The chief constable is required to consult the local authority and designate a constable as local commander for each local authority area, although one local commander can cover more than one local authority area.

53. **Section 45** requires local commanders to involve local authorities in setting priorities and objectives for the carrying out of police functions in the local authority area. The local commander is required to provide the local authority with any reports that it requests on the carrying out of police functions in its area; statistical information on police complaints in its area; and any other information about the policing of its area that the local authority might reasonably require. Where a local commander considers that complying with such a requirement would or might prejudice the carrying out of any operation by the Police Service, or the prosecution of offenders, the local commander may refer the matter to the chief constable. It is for the chief constable to confirm whether the referred requirement has effect and the relevant information should be provided. **Section 45** also enables the local authority to monitor and provide feedback, including

recommendations for improvement, to the local commander on the policing of the local area, and to specify policing measures that it wishes the local commander to include in the local policing plan in force for that area. This feedback may be provided with reference to any local police plan in force for the area. Under **section 46** the chief constable is placed under a statutory duty to participate in community planning, and this duty must be delegated by the chief constable to the local commander for each local authority area. However, this does not affect the chief constable's responsibility for carrying out these functions or the chief constable's ability to carry them out. This replaces the existing statutory duty on the chief constable of the police force for an area.

54. **Section 47** of the Act requires the local commander to submit a local police plan to the local authority for its approval, once the first strategic plan has been approved under **section 34**. When preparing the plan, the local commander must have regard to the strategic police plan and consult the joint central committee of the Police Federation for Scotland, persons who appear to be representative of senior officers, superintendents and police staff, and others as appropriate. Once it is approved by the local authority, the local commander must publish the plan in a form and manner specified by the SPA. The plan must set out:

- the main priorities and objectives for policing the local authority area (and, where reasonably practicable, the outcomes by reference to which achievement of the priorities and objectives can be measured);
- the reasons for selecting the priorities and objectives;
- the proposed arrangements for policing the local authority area including how those proposals will meet the stated priorities and objectives;
- how the priorities, objectives and arrangements for policing will help deliver any other relevant local outcomes identified through community planning; and
- any other information linked to policing the local area that the local commander thinks relevant.

55. The local commander must review the local police plan where a new strategic police plan is approved under **section 34**, and may prepare and submit a replacement plan to the local authority for approval. The local commander must also review the local police plan where it has not been replaced or modified within 3 years from the date it was published and, in this case, must prepare and submit a replacement plan to the local authority for approval. The plan can be modified at any time if the local commander and local authority agree to do so. Replacement and modified plans follow the same procedure for preparation, approval, publication and review as the plans which are being replaced or modified.

CHAPTER 8 – GOVERNANCE AND ADMINISTRATION OF POLICE

56. This Chapter gives the Scottish Ministers powers to make regulations for the governance, administration and conditions of service of constables and police cadets. It then sets out in more detail the areas in which regulations can be made. These provisions largely replicate the regulation making powers in the 1967 Act but have been re-ordered and provide more detail than that Act does on the areas that regulations may cover.

57. **Section 48** sets out that the Scottish Ministers must make regulations covering the governance, administration and conditions of service of constables and police cadets. **Sections 49 – 53** set out in more detail what these regulations may cover. **Section 49** provides that regulations may be made for appointment and promotions, including the eligibility and procedure for appointment and for promotion; periods of service on probation; the efficiency and effectiveness of constables and cadets; restrictions on their private lives or business interests; and resignation and retirement. Regulations may provide for appointing senior officers (i.e. at the rank of assistant chief constable or above) for fixed terms, but cannot provide for fixed term appointment to any lower rank.

58. **Section 50** provides that regulations may be made which relate to conditions of service including: pay, allowances and expenses; public holidays and leave; the supply and return of police clothing and equipment; and, the remuneration of special constables. Such regulations may make retrospective provision about pay and allowances but cannot retrospectively reduce any pay or allowance payable to or in respect of any person. Under **section 51**, regulations may be made in relation to officer duties, including provisions about what duties are or are not to be carried out by constables or police cadets, hours of duty and the treatment as police duty of time spent attending meetings of police representative bodies.

59. **Section 52** provides that regulations must establish or provide for the establishment of procedures for handling unsatisfactory performance or behaviour. The regulations can set out standards of performance and behaviour which, if breached, might be treated as misconduct or unsatisfactory performance, as well as any other circumstances in which a constable's behaviour or performance may be treated in this way. Regulations may permit constables to be suspended from duty pending an investigation into alleged misconduct (and when suspended a constable is not permitted to carry out any police functions). The regulations may also provide for how misconduct or unsatisfactory behaviour or performance are to be dealt with, including (but not limited to) admonition, formal warning, dismissal or demotion in rank. Functions may be conferred on the Police Investigations and Review Commissioner in relation to misconduct. The regulations must provide for the SPA to determine cases which relate to standards of behaviour or performance of a senior officer.

60. **Section 53** provides that the regulations may also make provision for the compilation and retention of personal records about constables and police cadets and the taking of, retention, use and destruction of fingerprints and samples from such officers.

61. Under **section 54**, the Scottish Ministers must, before making regulations under **section 48**, consult, share a draft with, and consider representations from: the joint central committee of the Police Federation for Scotland; any bodies representing senior officers; any bodies representing superintendents; the chief constable; the SPA; and others as they see fit. When making regulations about any matter (other than pensions) contained in Section 61(1) of the Police Act 1996, which deals with the areas to be considered by the Police Negotiating Board for the UK (PNB), the draft must also be shared with the PNB.

62. **Section 55** allows for regulations made under **section 48** to provide for delegation of functions to the Scottish Ministers, the SPA, the chief constable, a local commander,

the Police Investigations and Review Commissioner or any other person and to authorise or allow any persons to delegate functions.

CHAPTER 9 – POLICE APPEALS TRIBUNALS

63. This Chapter makes provision for the continuation of police appeals tribunals, describing their role in disciplinary cases where an officer has been dismissed or demoted in rank and the processes of review or appeal set out in regulations made using powers under **Section 48** have been exhausted. This Chapter largely replicates the provisions in the 1967 Act although they have been re-ordered and updated to provide appropriate independence.

64. **Section 56** gives a constable a right of appeal to a tribunal against dismissal or demotion in rank following the conclusion of misconduct or performance proceedings. **Schedule 3** makes further provision about these tribunals, including that the Scottish Ministers can make rules relating to appeals. It provides that the tribunal must consist of three members (one of whom is to act as the chairing member) qualified to practice law in Scotland for 5 years and selected by the Lord President of the Court of Session. The Lord President must establish and maintain a panel of persons from whom these members will be appointed. The SPA must meet all the expenses of the appeal including the tribunal members' remuneration, except the appellant's expenses; however the tribunal has the power to direct the SPA to meet these costs too. The Scottish Ministers can make further rules and provision about the appeals procedure including the appeal notices, the identity of the respondent and holding private hearings.

65. **Section 57** provides that a tribunal must, before determining the appeal, consider any written or oral representations made by either the person bringing the disciplinary action to bear (the respondent) or the constable who is appealing it (the appellant). Either party can require representations to be made by oral hearing, and either party can elect to be represented by another person. **Section 58** provides that the tribunal can either confirm the decision being appealed or replace it with any less severe decision that could have been made by the person who made the decision against which the appeal was made. Any decision overturning the original decision has effect from the date of the original decision. A substituted decision has effect for the purposes of pensionable service as though it was made at the time of the decision against which the appeal was made. The tribunal has the option of treating the substituted decision in the same way for the purposes of pay. The tribunal can deal with any other matters that it deems appropriate to the case including any relevant periods where the constable was suspended from duty.

66. Under **section 59**, the chairing member of the tribunal has specific powers to require appropriate persons (including the appellant and the respondent) to provide information to aid it in its deliberations by attending and giving oral evidence at hearings or by providing relevant documents or information. It is an offence liable to a fine on summary conviction not exceeding level 2 on the standard scale to (without reasonable excuse): fail to attend hearings as required by citation; refuse or fail to answer any question at the hearing or to give the tribunal any document or information required. Knowingly or recklessly making a false statement in respect of any information required by the tribunal or deliberately altering, suppressing or destroying documents so required

also constitutes an offence subject to the same maximum penalty. There is no defence of reasonable excuse in these circumstances. However, these powers do not require information to be disclosed which the person would be entitled to withhold in civil proceedings in the Court of Session.

CHAPTER 10 – COMPLAINTS AND INVESTIGATIONS

67. This Chapter amends Part 1, Chapter 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act) to rename the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC) and to extend the PIRC's remit. **Section 60** places a number of requirements on the SPA and the chief constable in terms of dealing with relevant complaints, whose definition is the same as in the 2006 Act. Those requirements are as follows:

- the SPA and chief constable must maintain suitable arrangements for the handling of relevant complaints, and must seek the views of others on what those arrangements should be;
- the SPA must keep itself informed about how the chief constable is dealing with relevant complaints in order to satisfy itself that those arrangements are suitable; and
- the chief constable must provide the SPA with whatever information about relevant complaints it reasonably requires, and must seek to ensure that sufficient information is kept for that purpose.

68. **Section 61** renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC).

69. **Section 62** inserts section 33A into the 2006 Act, setting out the general functions of the PIRC. The PIRC is required to:

- ensure that the SPA and the chief constable make and maintain suitable arrangements for the handling and examination of complaints about police constables and staff and the reconsideration of such complaints as set out in sections 34 to 41 of the 2006 Act (section 33A(1)(a));
- when directed by a prosecutor to do so, investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence and the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (section 33A(1)(b));
- where requested by the SPA or chief constable, investigate and report on deaths, serious injuries or firearms incidents where constables and police staff are involved (section 33A(1)(c)); and
- investigate other matters relating to the Police Service or SPA that it considers are in the public interest (section 33A(1)(d)).

70. **Sections 63 to 68** insert new sections 41A to 41F into the 2006 Act which describe in more detail the PIRC's powers, duties and functions. **Section 63** inserts new section 41A of the 2006 Act which requires the Commissioner to comply with any lawful

instruction given by the prosecutor in relation to investigating and reporting alleged criminal offences or fatal accidents involving a person serving with the police. Amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to provide for the investigatory powers which the PIRC will have are set out in **paragraph 15 of schedule 7**

71. **Sections 64 and 65** insert new sections 41B and 41C of the 2006 Act which explain further the definition of deaths or serious injuries, incidents involving firearms and other weapons, and other matters in the public interest which the Commissioner may investigate using powers in new sections 33A(1)(c) and (d) of the 2006 Act. Section 41B provides that the “serious incidents” that the PIRC may investigate include deaths and serious injuries when the person was detained by and had contact with the police and that contact may have caused or contributed to their death or injury, and incidents where a person serving with the police has used a firearm or other prescribed weapon. The Scottish Ministers may by regulation prescribe other circumstances which constitute a “serious incident”. Such regulations would be subject to the negative procedure. Provision is made in subsection (2) about matters which are not serious incidents. Section 41C outlines that the PIRC may investigate matters where there is an indication that the SPA, Police Service or a person serving with the police has been involved, and the PIRC believes it is in the public interest to do so. However, the PIRC cannot use these powers to investigate: cases which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A(1); where criminal proceedings have been brought following an investigation by the Commissioner; or a matter which is being, or has been, investigated by the Commissioner in pursuance of paragraph (b)(ii) or (c) of section 33A(1) or by someone else under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

72. **Section 66** inserts section 41D which gives the Scottish Ministers powers to make, by regulations, further provisions about PIRC investigations under sections 33A(1)(c) or (d) of the 2006 Act. The Scottish Ministers must consult the PIRC, the SPA, the chief constable, persons appearing to be representatives of senior officers, persons appearing to be representatives of superintendents (including chief superintendents), the joint central committee of the Police Federation for Scotland and any other relevant people before making such regulations, which are subject to the affirmative procedure. The regulations may make provision about: the form, procedure, restrictions and time limits for investigations; the circumstances in which an investigation may be discontinued; requirements on the SPA and chief constable to refer matters to the Commissioner and to assist and co-operate with investigations; and the delegation of functions to PIRC.

73. **Section 67** inserts new section 41E of the 2006 Act which requires the Commissioner to provide a report following an investigation under paragraph (c) or (d) of new section 33A(1). That report should not enable the identity of any person other than the SPA and Police Service to be revealed unless the PIRC considers that it is necessary to do so on the grounds of public interest. The PIRC must provide a copy of it to the person who requested the investigation, the SPA and any other person the PIRC considers appropriate. If it considers it appropriate to do so, the PIRC must publish the report in such a manner as it considers appropriate.

74. **Section 68** inserts new section 41F into the 2006 Act allowing the Court of Session to investigate whether an individual, who is obstructing the PIRC in carrying out a complaint handling review or investigation, should be treated as though they are a person who has committed a contempt of court in relation to the Court of Session.

75. **Section 69** inserts new section 42A into the 2006 Act to put in place arrangements for the handling of complaints against the PIRC and to seek the views of others as to what those arrangements should be. **Section 70** also inserts new section 46A into the 2006 Act so that certain statements made by the PIRC have absolute privilege from defamation, as defined in the Defamation Act 1996. Statements made to the PIRC, in relation to an investigation, also have absolute privilege and statements made to the PIRC in relation to a complaint or complaint handling review are privileged unless made with malice.

CHAPTER 11 – HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

76. This Chapter describes the role, powers and functions of Her Majesty’s inspectors of constabulary in Scotland (HMICS), which will retain its existing powers and take on an additional power to examine the delivery of best value. **Section 71** continues the existence of HMICS. Her Majesty can by Order in Council appoint and dismiss such number of inspectors as determined by the Scottish Ministers. The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary, and set levels of remuneration or allowances. The Scottish Ministers may appoint and set terms and conditions for assistant inspectors under **section 72**. **Subsection (2)** provides that constables engaged on service as assistant inspectors are under the direction and control of the inspectors of constabulary. **Subsection (3)** provides that Scottish Ministers are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an assistant inspector of constabulary in relation to the exercise of that constable’s functions. Under **section 73**, inspectors can appoint staff officers to assist them, and set their terms and conditions of employment. **Subsection (2)** provides that a constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary. **Subsection (3)** provides that the inspectors are liable in reparation in respect of any unlawful conduct on the part of a constable engaged as an inspector of constabulary in relation to the exercise of the constable’s functions.

77. **Section 74** provides that the Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the SPA or Police Service. The inspectors of constabulary may make such other inquiries as they think fit about the state, efficiency and effectiveness of the SPA and the Police Service, and the arrangements made by the SPA and the chief constable under their duty to secure best value. Under **section 75**, the inspectors of constabulary must prepare and publish a plan setting out their priorities for inquiries, and information on how inquiries will be carried out in a proportionate, accountable and transparent way. The plan must be reviewed and may, from time to time, be revised. Appropriate persons must be consulted when the plan, or revised plan, is being prepared.

78. Under **section 76** the inspectors of constabulary are given general powers to do anything considered necessary or expedient in carrying out their functions, and may

delegate these functions to any assistant inspector or staff officer, although they will still retain responsibility for the performance of those functions and remain able to perform them. **Section 77** provides that the SPA and chief constable must assist and cooperate with the inspectors of constabulary.

79. **Section 78** provides that as soon as possible after reporting to the Scottish Ministers, the inspectors of constabulary must give a copy of the report to the SPA and, where the report relates to the Police Service, to the chief constable, and publish it. The Scottish Ministers must lay the report before the Scottish Parliament. **Section 79** provides that where the inspectors of constabulary have completed an inquiry commenced on their own initiative about the efficiency and effectiveness of the SPA or the Police Service or the arrangements made by the SPA and the chief constable under their duty to secure best value, the report must be given to the SPA and, if the report relates to the Police Service, to the chief constable. The inspectors of constabulary must also lay a copy of the report before Parliament, provide a copy to Scottish Ministers and publish it. Under **section 80**, the SPA and the chief constable must have regard to the inspectors' reports, and take appropriate measures in relation to them, when carrying out their functions. Under **section 81**, where such a report states that the inspectors of constabulary do not consider that the SPA or Police Service are efficient or effective, or will cease to be efficient or effective unless remedial action is taken, or that they are not achieving best value, the Scottish Ministers can direct the SPA to take remedial measures. The SPA must comply with any such direction.

80. The inspectors of constabulary are required under **section 82** to prepare and submit an annual report to the Scottish Ministers and the SPA, to publish it and lay it before parliament.

CHAPTER 12 – CO-OPERATION, EXCHANGE OF INFORMATION, ETC

81. This Chapter describes the new arrangements for interaction and co-operation between the SPA and Police Service, and the inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner.

82. **Section 83** provides that the SPA and chief constable can make arrangements under which the SPA and Police Service provide assistance to each other. This includes the ability for members of the SPA's staff to provide assistance to the Police Service and members of police staff and constables to provide assistance to the SPA.

83. **Section 84** places a duty on the SPA to comply with any requirement made by the Scottish Ministers to provide reports, statistics or other information to them on any matter connected with the SPA, Police Service and the state of crime. The chief constable must do the same in relation to the Police Service for any request made by the SPA. The chief constable can however refer to the Scottish Ministers any such requirement made by the SPA if he or she considers that compliance would or could prejudice the carrying out of a police operation or the prosecution of offenders. If this happens, the requirement will only have effect if it is confirmed by the Scottish Ministers. The chief constable can also be required by the Lord Justice General or a sheriff principal (in relation to policing in the

sheriff principal's jurisdiction) to provide such reports relating to policing as may reasonably be required.

84. **Section 84(8)** places a duty on the chief constable to try to ensure that sufficient information about the state of crime is kept to enable compliance with any such request. **Section 84(9)** also places a duty on the clerk of any court with criminal jurisdiction to provide any information they have to the chief constable to enable him or her to meet that obligation.

85. **Section 85** places a duty on the inspectors of constabulary, Auditor General and Police Investigations and Review Commissioner to work together in order to improve the carrying out of their functions. In particular, arrangements must be made to ensure the effective exchange of information between them about the SPA and Police Service and to prevent any unnecessary duplication of effort. This requirement does not apply where a matter requires urgent action. In complying with this duty, the inspectors and the PIRC must comply with any direction or guidance given by the Scottish Ministers. Such directions or guidance may relate to all functions of the inspectors and the PIRC, or only to specified functions, and may be varied or revoked by the Scottish Ministers.

CHAPTER 13 – PROVISION OF GOODS AND SERVICES

86. This Chapter sets out new arrangements to allow the SPA to charge for certain services provided by the Police Service or the SPA. Under **section 86**, the SPA can authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services. **Subsection (9)** defines police services as services in connection with the maintenance of order or the protection of persons or property from harm which are provided on or in relation to land owned or occupied by the person who requests the services. An authorisation may be of a general or specific nature and may in particular set out a scale of charges (**subsection (2)**). This section also allows the Scottish Ministers to issue a code about charging for police services that the SPA must comply with. The Police Service has to ensure all money received from charging is paid to the SPA. No charge may be made in respect of the carrying out of police functions otherwise than in accordance with an authorisation under this section, unless it is authorised by another enactment or rule of law (**subsection (8)**). Under **subsection (7)** the SPA is only allowed to charge for the cost of the service provided although **subsection (3)** makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service.

87. Under **section 87** the SPA may provide goods and services to any other public body or office holder. It may also provide goods and services of a type described in an order made by the Scottish Ministers to other persons or types of persons described in such an order (**subsection (1)**). The SPA may, with the consent of the chief constable, make similar arrangements for the provision of goods and services by the Police Service (**subsection (3)**). **Subsection (5)** allows the SPA to charge for any goods and services it provides, or which it authorises the chief constable to provide, including any costs it incurs, or expects to incur, indirectly as a result of the provision of those goods and services. **Subsection (6)** makes clear this can include any indirect costs, for example management and administration costs, as well as the direct cost of providing the service.

However, **subsection (7)** prevents the SPA from charging for forensic services it is required to provide to the Police Service, Lord Advocate and procurators fiscal and the PIRC. Goods and services may be provided by the SPA for such purposes as it considers appropriate and consistent with the proper carrying out of its functions (**subsection (2)**) and by the Police Service for such purposes as the SPA considers to be appropriate and consistent with the proper carrying out of police functions. The goods and services which may be provided include, but are not limited to:

- information technology systems and equipment;
- the inspection, testing and maintenance or repair of vehicles; and
- any other type of corporate support service provided by the SPA or Police Service in connection with the carrying out of SPA or police functions.

CHAPTER 14 – GRANTS

88. This Chapter provides for the payment of grants and replaces the current arrangement whereby funding of the police is shared between the Scottish Ministers and local authorities. **Section 88** allows the Scottish Ministers to make grants to the SPA. Such grants may be subject to conditions. **Section 89** allows grants or financial assistance to be made to other persons for the purposes of providing services to or otherwise assisting or supporting the SPA or the Police Service in the carrying out of the SPA's functions or police functions. A grant or financial assistance may only be given under this section where it would be necessary or expedient for promoting the efficiency or effectiveness of, or securing best value for, the SPA or the Police Service, and is subject to any conditions specified by the Scottish Ministers.

CHAPTER 15 - OFFENCES

89. This Chapter re-enacts in a modern form the specific offences in the 1967 Act in relation to impeding a member of the police from carrying out their duties. **Section 90** makes it an offence to assault a person serving with the Police Service, a member of a police force mentioned in **subsection (7)** who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. It is also an offence to resist, obstruct or hinder them. **Section 91** provides for an offence of aiding escape from or removing a person from the custody of a constable of the Police Service, a police custody and security officer, a constable of a police force mentioned in **section 90(7)** who is executing a warrant or acting under powers conferred on that person in Scotland by any enactment, or a member of an international joint investigation team. Both offences have penalties of imprisonment for up to twelve months and/or a fine not exceeding the statutory maximum on summary conviction, which is unchanged from the 1967 Act.

90. **Section 92** makes it an offence for someone who is not a police constable to impersonate a constable with intent to deceive or to do anything calculated to suggest that they are a constable. It is also an offence to possess articles of police clothing without the permission of the SPA (**subsection (2)**). A person has a defence to a charge under **section 92(2)** if he or she can prove that the articles of clothing were obtained lawfully and were in the person's possession for a lawful purpose. **Subsection (4)** makes it an offence for a

person who is not a constable to wear, without the permission of the SPA, an article of police uniform which so nearly resembles that of a constable as to be calculated to deceive. The penalty on summary conviction of an offence under this section is imprisonment of up to three months or a fine not exceeding level 4 on the standard scale which is unchanged from the 1967 Act.

CHAPTER 16 – INDEPENDENT CUSTODY VISITING

91. This Chapter places the arrangements for independent custody visiting in Scotland on a statutory footing for the first time, ensuring that it is compliant with the United Nations Optional Protocol to the Convention Against Torture (OPCAT). **Section 93** sets out the purpose of the provisions in Chapter 16, namely pursuance of the objective of OPCAT. **Section 94** places a duty on the SPA to make arrangements to ensure that independent custody visitors can visit detainees and access information relevant to and monitor their treatment and conditions of detention. **Subsection (2)** provides that it must do that by providing for the appointment of independent custody visitors (ICVs), who are independent of both the SPA and chief constable, by authorising ICVs to do anything they require to enable them to visit detainees and monitor their treatment and conditions of detention, and by providing for the reporting of visits. **Subsection (3)** sets out specific action which ICVs may be authorised to take, including accessing any place of detention without notice, examining records relating to the detention of people there, meeting them and such other persons as they consider relevant to discuss the treatment and conditions of detainees, and inspecting those conditions. Access to a detainee can only be refused if an officer of inspector rank or above considers grounds for refusal of access contained in a Ministerial determination have been satisfied and any other procedural requirements set by the SPA have been met (**subsection (4)**). The SPA is required to keep these arrangements under review and to prepare and publish any reports required by the Scottish Ministers.

92. Ministers may issue guidance about independent custody visiting, to which the SPA, independent custody visitors and police must have regard. Before issuing such guidance, or making a determination about when access to detainees should be denied, the Scottish Ministers must consult with the SPA, the chief constable, ICVs or a representative body, and any others they consider appropriate. Such guidance or determinations must be laid before the Scottish Parliament.

93. Under **section 95** the SPA must also make arrangements to allow members of the Subcommittee on the Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or punishment (SPT) established under OPCAT to visit detainees, to access information relevant to their detention and to monitor their treatment and the conditions they are held in. It also describes the arrangements that may be made (**subsection (3)**) and provides that access may only be refused where the Scottish Ministers have notified the SPA that there are urgent and compelling grounds of public safety, natural disaster or serious disorder that temporarily prevent the carrying out of a visit (**subsection (4)**). The SPA must keep the arrangements under review and it and its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits (**subsections 5 and 6**).

94. **Section 96** sets out the definitions of the terms used in Chapter 16.

CHAPTER 17 – MISCELLANEOUS AND GENERAL

95. This Chapter makes a number of miscellaneous provisions.
96. **Section 97** provides for the dissolution of the Police Advisory Board for Scotland.
97. **Section 98** makes transitional and transitory provision to ensure that the new SPA and chief constable have all the information they need to prepare for and launch the new services by requiring the current police authorities and joint boards, chief constables and the Scottish Police Services Authority to provide information and assistance to the SPA and new chief constable. There is a reasonable requirement test in relation to such information and assistance.
98. **Section 98** also introduces schedule 4, which makes specific provision for the period before the Police Service is established. During this period, senior officers have powers to take appropriate action in anticipation of the establishment of the Police Service or the coming into force of this Act. The chief constable is accountable to the SPA, and the SPA has powers in relation to pay and providing and maintaining anything necessary or desirable connected with the functions of senior officers.
99. **Section 98** also introduces **schedule 5** which sets out the arrangements for the transfer of officers and staff working in the 8 police forces, SPSA and SCDEA to the new Police Service of Scotland and for the transfer of the assets and liabilities currently held by the joint boards, unitary authorities, SPSA and chief constables. It also makes a number of transitional and transitory provisions to assist in the transition to the new service. **Paragraph 1** defines terms used in this schedule, and **paragraph 2** sets out that the appointed day is the day the new Police Service is established or such other day as Ministers may appoint. There is no parliamentary procedure attached to this.
100. **Paragraphs 3 – 10** cover arrangements for the transfer of police officers. **Paragraph 3** makes clear that any person who is a constable immediately before the appointed day holds the office of constable on and after that day, is treated as having made the declaration under **section 10**, and is to be treated as having been appointed in accordance with the provisions of the Act as a constable of the Police Service. Officers transfer at their current rank, except where they are on temporary promotion in which case they transfer at their substantive rank although the temporary promotion remains in place. Any specific contractual terms, for example fixed term contracts, continue to have effect as if they were made by the Police Service. Under **paragraph 4**, those appointed under **section 7** and who hold the office of chief constable, deputy chief constable or assistant chief constable, immediately before the appointed day, are to serve as a constable of the Police Service on and after the appointed day.
101. **Paragraph 5** sets out the arrangements that are to apply to senior officers who are not appointed to positions in the Police Service but who exercise their right to transfer. **Paragraph 6** makes clear that any constable of a Scottish police force transfers to serve as a constable of the Police Service, and **paragraph 7** covers the arrangements for constables serving in SCDEA or SPSA immediately before the appointed day. **Paragraph 8** sets out the arrangements for individuals who are on temporary service immediately before the

appointed day. In all cases the arrangements continue as if they had been made by the Police Service. Where the temporary service is to a Scottish force, the individual transfers to serve with the Police Service until the arrangement comes to an end. Where an officer of a Scottish force is on temporary service with another organisation, the temporary service continues and the officer has a right to return to the Police Service at the end of the temporary service. **Paragraph 9** makes clear that anything done by or in relation to the police authority, chief constable or any other constable (and equivalents for SPSA and SCDEA) in respect of a constable who transfers to the Police Service continues to have effect after transfer.

102. **Paragraph 10** provides safeguards for officers who transfer to the new service. An officer must not be assigned to duties which would necessitate the officer moving home to a place outwith what was the area of the police force that has ceased to exist. Where a constable is engaged on service outwith their home force area on the date of transfer this safeguard only applies on his return to his “home” force area. The safeguard ceases to apply where the constable is or becomes a senior officer, is promoted to a higher rank or the officer consents to the lifting of the limitation.

103. **Paragraphs 11 – 16** cover the arrangements for the transfer of staff and others. Under **paragraph 11**, a police employee is defined as a person employed by a joint board as a civilian, a member of staff at SPSA or an employee of a local authority who is included in a staff transfer scheme made under **paragraph 12**. It further provides that a police employee’s contract of employment has effect on or after the appointed day as if originally made between the employee and the SPA. It is for the SPA to determine whether the individual is to be regarded as a member of police staff under **section 26** who is under the direction and control of the chief constable or as a member of the SPA’s staff under **paragraph 6 of schedule 1**. **Paragraph 11** also makes a number of further provisions concerning staff to be transferred. **Sub-paragraphs (4) and (5)** establish that contract rights and obligations transfer from the former employer to the SPA on the transfer date. **Sub-paragraph (6)** provides that staff may inform the SPA in advance of the appointed day that they do not wish to transfer, in which case their contract is terminated on the appointed day. This termination will not be treated as a dismissal. **Sub-paragraphs (8) and (9)** provide that the right of an employee to terminate their contract of employment as a result of a substantial detrimental change in working conditions is not affected, but the change of employer does not in itself give rise to a right of termination.

104. **Paragraph 12** makes provision for a staff transfer scheme for staff employed in the unitary police authorities who are to be treated as police employees for the purposes of **paragraph 11**. **Paragraph 13** covers staff who are appointed under a contract for services. **Paragraph 14** covers police cadets and **paragraph 15** makes additional provision for Police Custody and Security Officers who will have transferred to the SPA under **paragraph 11**. **Paragraph 16** makes clear that any individual who is an inspector of constabulary, an assistant inspector of constabulary or a staff officer to the inspector of constabulary on the date **section 71** comes into force remains in post.

105. **Paragraphs 17 – 19** cover property transfers. **Paragraph 17** allows Ministers to make a police property transfer scheme. This is a scheme making provision for the transfer to the SPA or chief constable of property, rights, liabilities and obligations of Ministers, a

local authority, a joint police board, the SPSA or a chief constable of a police force. **Paragraph 18** allows Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a joint board. Scottish Ministers must be provided with information or assistance reasonably required for the transfer schemes under **paragraphs 17 and 18**. **Paragraph 19** makes general provision in relation to schemes made under **paragraphs 17 and 18**. **Paragraph 20** makes it clear that any liabilities of a chief constable or the Director General of the SCDEA will, on and after the appointed day, be treated as liabilities of the chief constable of the Police Service.

106. **Section 99** provides a list of definitions of terms used in Part 1 of the Act. **Section 100** deals with the issue of Crown application, providing in particular that the Crown may not be made criminally liable for a contravention of a provision of the Act (but that the Court of Session may make a declarator in respect of any such unlawful act or omission) and that the power of compulsory purchase in **section 4(2)(d)** does not apply to Crown land.

PART 2 – FIRE REFORM

SECTION 101 – THE SCOTTISH FIRE AND RESCUE SERVICE

107. **Section 101** introduces a new section 1A into the Fire (Scotland) Act 2005 (the 2005 Act) to provide for the establishment of a new statutory body corporate, the Scottish Fire and Rescue Service (SFRS) or, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba to replace the current 2 unitary authorities and 6 joint fire and rescue boards which are abolished by Part 2 of schedule 8 to the Act. SFRS has the functions conferred on it by the 2005 Act, as amended by this Act and other legislation, and the functions conferred on it by any other enactment.

108. **Section 101** also inserts **schedule 1A** into the 2005 Act, which sets out the SFRS's governance and finance arrangements, general powers and accounting requirements. **Paragraph 1 of schedule 1A** provides that SFRS is independent from the Crown. **Paragraph 2** provides that SFRS will consist of a chairing member and between 10 and 14 other members, although the maximum and minimum number of members can be varied by the Scottish Ministers through secondary legislation subject to negative procedure in the Scottish Parliament. Members of SFRS will be appointed by the Scottish Ministers on the basis of relevant skills and expertise to govern the fire and rescue service. Members of SFRS may elect a member to act as Deputy Chair. The schedule sets out that members are appointed for a maximum period of 4 years on terms and conditions determined by the Scottish Ministers (**paragraph 4**); that Ministers can remove members in certain circumstances (**paragraph 5**); and provides a list of people disqualified from membership of SFRS (**paragraph 3**). The list of persons disqualified from membership may be modified by the Scottish Ministers through secondary legislation, subject to the negative procedure. **Paragraph 6** provides for the payment of remuneration, allowances and expenses to members as may be determined by the Scottish Ministers.

109. **Paragraph 7** requires SFRS to employ a Chief Officer and **paragraph 8** provides that SFRS may employ other staff. The first Chief Officer is to be appointed by the Scottish Ministers with subsequent appointments made by SFRS subject to the agreement of the Scottish Ministers.

110. **Paragraphs 9 – 10** set out the rules regarding the establishment of committees and procedure of SFRS.

111. **Paragraph 11** places a duty on the SFRS (including its committees and sub-committees) to meet in public and to publish agendas, papers and reports of its proceedings. Sub-paragraphs (2) and (4) give discretion to the SFRS to decide not to do so, and sub-paragraph (5) obliges it to publish a statement setting out the circumstances in which it will exercise that discretion.

112. **Paragraph 12** imposes an obligation on SFRS members to try to act consistently with the principles of good governance and in an accountable and transparent manner, when acting in their capacity as members. **Paragraph 13** sets out SFRS's general powers and allows SFRS to do anything it considers appropriate for carrying out its functions. This includes specific power to: enter into contracts; borrow money; acquire and dispose of land and other property; accept gifts of money and gifts or loans of other property; form or promote companies; and compulsorily purchase land. The power to borrow money, form or promote companies and to purchase land compulsorily is subject to Ministerial consent, and in relation to borrowing money and forming or promoting companies the Scottish Ministers can set any conditions they consider appropriate, and their agreement can be given in relation to a particular case or class of case. **Paragraph 14** makes provision for the delegation of functions to the Chief Officer and other SFRS staff and any committees established by SFRS although the SFRS will still retain responsibility for the performance of those functions and remain able to perform them. **Paragraph 15** requires the Scottish Ministers' approval for the location of the administrative headquarters used by SFRS board members and the Chief Officer. **Paragraph 16** allows the Scottish Ministers to provide grants to SFRS. **Paragraph 17** makes provision for the preparation and submission of accounts and arrangements for audit. It places a duty on SFRS to keep proper accounts and records in relation to the accounts, and to prepare a statement of accounts for each financial year as soon as possible after the 31 March. The Scottish Ministers have a power to direct the form and content of that statement of accounts, as well as the accounting methods and principles to be applied. SFRS must send a copy of the statement of accounts to the Auditor General for auditing.

SECTIONS 102-110 – FUNCTIONS

113. **Sections 102 – 110** amend Chapters 2 and 3 of Part 2 of the 2005 Act and Chapter 2 of Part 3 of that Act, replacing references in that Act to “relevant authority” (unitary authority or joint fire and rescue boards) with references to the Scottish Fire and Rescue Service. Functions and responsibilities in the amended sections which were previously with joint boards and unitary authorities will now rest with SFRS. This includes the following areas: promotion of fire safety; fire safety enforcement; responding to fires, road traffic accidents and other emergencies and eventualities; provision of other services; provision of centres for education and training; and charging. In relation to the promotion

of fire safety, **section 102** will enable SFRS to run national publicity campaigns, which were previously done by the Scottish Ministers. **Section 103** also transfers responsibility for the enforcement of fire safety in certain Crown and other premises from the Chief Inspector of Fire and Rescue Authorities to SFRS and amends section 67 of the 2005 Act so that where the enforcing authority is SFRS a matter may be referred by either party for determination of a dispute by the Chief Inspector. **Section 106** allows additional functions in relation to other emergencies to be conferred on SFRS by order (for example prior to the Act there were additional functions placed on the unitary authorities and joint boards by the Fire (Additional Function) Scotland Order 2005).

SECTIONS 111-120 – FURTHER AMENDMENTS OF 2005 ACT

114. **Sections 111 and 112** amend sections 35 and 36 of the 2005 Act - power to obtain assistance in carrying out functions and arrangements for carrying out of functions by others - replacing references in those sections to “relevant authority” (unitary authority or joint fire and rescue board) with SFRS. The amended sections now provide that functions can only be delegated and assistance provided in this way if the Chief Officer considers that the persons from whom assistance will be provided or to whom the functions will be delegated have the relevant knowledge, skills and experience to do so. In addition, under section 36, the function of extinguishing fires may only be delegated to fire-fighters.

115. **Section 113** inserts new sections 39 A – C into the 2005 Act to place a statutory duty on SFRS to make arrangements which secure best value. This replaces the current duty of best value imposed on fire and rescue authorities and joint boards by section 1 of the Local Government in Scotland Act 2003. Best value is defined as meaning a continuous improvement in the performance of SFRS’s functions. In terms of new section 39B, in carrying out its duties in relation to best value, SFRS must have regard to: (a) any relevant guidance issued by the Scottish Ministers; and (b) anything regarded as proper arrangements for the purposes of securing best value. Relevant guidance is defined as meaning guidance on carrying out the duties imposed in new section 39A, including, in particular, guidance on how to make and what is to be included in the arrangements to secure best value, and guidance as to how to implement the duty to make such arrangements. Before issuing such guidance, the Scottish Ministers must consult SFRS and anyone else they consider appropriate. Where there is conflict between (a) and (b), SFRS must have regard only to (a).

116. In making arrangements to secure best value, new section 39A provides that SFRS is required to balance the quality of the performance of its functions, the cost of doing so, and the cost to persons of any service provided by SFRS on a wholly or partly chargeable basis. In maintaining that balance, SFRS must have regard to efficiency, effectiveness, economy and the need to meet equal opportunities requirements (within the meaning of Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c. 46)). SFRS is to discharge its duties in a way which contributes to the achievement of sustainable development. When measuring the improvement of the performance of SFRS’s functions, regard should be taken of the extent to which the outcomes of that performance have improved. New section 39C confers a power on the Auditor General to examine the arrangements made by SFRS to secure best value.

117. **Section 114** amends the 2005 Act to insert new sections 41A, 41B and 41C which set out the arrangements for planning for SFRS. New section 41A places a duty on SFRS to prepare a strategic plan. The plan must set out how SFRS proposes to carry out its functions during a 3 year planning period, set out outcomes against which performance can be measured, and include such other information as SFRS considers appropriate (including information relating to other planning periods beyond the following 3 years).

118. Under section 41A SFRS must make arrangements to obtain views, on what the strategic plan should contain, from persons who are likely to be interested in how it carries out its functions. When preparing the plan, SFRS must have regard to the framework document (see section 40 of the 2005 Act), send the draft plan to persons specified in subsection(5), invite comments from these persons and have regard to any comments received. SFRS must submit the plan to Scottish Ministers for approval and use best endeavours to secure approval of the plan (with or without modifications) before the start of the planning period. The date for the start of the first planning period will be set by the Scottish Ministers by Order, subject to the negative procedure. Once the plan has been approved, it must be published and laid before the Scottish Parliament by SFRS. Section 41B provides for review of the strategic plan and that any new plan prepared following that review must follow the same process for obtaining views from others, approval and publication as the original. SFRS may review and prepare a new strategic plan at any time, but must prepare a new plan for each new planning period (i.e. to take effect on the expiry of the previous planning period) or if Ministers bring a new framework into effect (by virtue of s.40(4) of the 2005 Act). Therefore a review will happen at least once every 3 years. Each new plan must cover a 3 year period which, for plans prepared as a result of a review part way through the previous planning period, will commence 8 weeks after the plan is submitted to the Scottish Ministers for approval, and for plans prepared in anticipation of the expiry of the previous planning period will commence the day after that period expires. Where a strategic plan has been approved under section 41A or 41B, SFRS must have regard to that plan in carrying out its functions (by virtue of section 41C).

119. **Section 115** amends the 2005 Act to insert new sections 41D to 41K which set out the arrangements for local fire and rescue services, including the new relationship between the SFRS and each local authority. New section 41D requires SFRS to ensure that adequate arrangements are in place for the provision of fire and rescue services within each local authority area and for the involvement of the local authority in determining priorities and objectives for SFRS locally. New section 41J requires the Chief Officer to designate a Local Senior Officer for each local authority area, to whom the functions set out in sections 41E to 41H and 41K are to be delegated. The Local Senior Officer must also undertake SFRS's duty to participate in community planning. One Local Senior Officer may cover more than one local authority area.

120. New section 41E requires SFRS to prepare a local fire and rescue plan for each local authority area. The plan must set out: the main priorities and objectives for SFRS in the local authority area along with the reasons for selecting these and outcomes against which these will be measured; how it will deliver those priorities and objectives and how they will help deliver any other relevant local outcomes identified through community planning. The local fire and rescue plan can also include any other matters linked to fire and rescue services in the local area that the SFRS thinks fit. When preparing the plan, SFRS must have regard to the fire framework (see section 40 of the 2005 Act) and SFRS's

strategic plan and consult SFRS employee representatives, and others as appropriate. SFRS must submit the plan to the relevant local authority for approval and once it is agreed to, SFRS must publish it.

121. New section 41G requires SFRS to review the local fire and rescue plan every 3 years, where there has been significant revision to the fire framework, and where a new strategic plan is approved. The plan must be revised if there has been no revised plan published within the past 3 years, and may be revised following any other review. Under new section 41F the local plan may also be reviewed at any time. Any review and revision of the plan must follow the same procedure for preparation, approval and publication as the initial plan. New section 41H makes clear that SFRS must provide the local authority with any information or reports reasonably requested by the local authority about the carrying out of SFRS's functions in that local authority area. This includes providing reports relating to any local fire and rescue plan which is in force for the local authority area.

122. Under new section 41K a local authority can monitor and provide feedback to the SFRS on how it carries out its functions in the local authority's area. It may provide views and make recommendations for improvements in this respect, and feedback may refer to any local fire and rescue plan in force for its area.

123. **Section 116** amends the 2005 Act to insert new section 41L which requires SFRS to prepare and publish an annual report as soon as possible after the end of each reporting year. A copy of the report must be given to Scottish Ministers and laid before the Scottish Parliament. The report must contain an assessment of SFRS's performance during the reporting year in acting in accordance with the fire framework and in achieving the outcomes set out in the strategic plan, and any other information SFRS considers appropriate.

124. **Section 117** amends the 2005 Act to insert new section 41M, requiring SFRS to provide to the Scottish Ministers any reports, statistics and other information they request in relation to its functions. **Subsection (2)** makes clear that the information may include, for example, statistics relating to fire deaths and the outcome of other rescues. The information must be provided when and how specified by the Scottish Ministers.

125. **Section 118** amends the 2005 Act to insert new section 42A to allow the Scottish Ministers to give the SFRS a general or specific direction in relation to carrying out its functions. The Scottish Ministers must publish any directions and lay a copy before the Scottish Parliament. SFRS is required to comply with any such directions. A direction cannot be made in relation to adherence to the fire and rescue framework as the existing enforcement arrangements would apply in those circumstances.

126. **Section 119** inserts sections 43A to 43G into the 2005 Act. It describes the role, powers and functions of the Inspectors of the Scottish Fire and Rescue Service. New section 43A allows Her Majesty to appoint a Chief Inspector of the Scottish Fire and Rescue Service, and such number of other Inspectors as determined by the Scottish Ministers. The Scottish Ministers may themselves appoint Assistant Inspectors. **Section 43A(5)** makes clear that the individual who is the Chief Inspector of Fire and Rescue

Authorities on the date the provision comes into force is to be the first Chief Inspector of the SFRS. The same applies to any Inspectors or Assistant Inspectors in post on that date. It is for the Scottish Ministers to set levels of pay for all such office holders. In addition, Ministers have a power to authorise an Inspector to carry out functions of the Chief Inspector in the event of a temporary vacancy in that office, or if the Chief Inspector is temporarily unable to carry out those functions.

127. Under new section 43B an Inspector has powers to inquire into the state and efficiency of SFRS, the manner in which SFRS is carrying out its functions and whether, in doing so, it is complying with its duty to make arrangements which secure best value. The Inspectors may independently initiate such inquiries, and must do so if so directed by the Scottish Ministers. SFRS must cooperate with the Inspectors' inquiries and, in particular, must provide any information or documents relating to its functions that the Inspector may require, and must grant them access to SFRS premises or equipment as required. The power of entry is not available in relation to private dwellings, and Inspectors do not have the power to enter premises by force.

128. Under new sections 43C and 43D, the Chief Inspector is required to produce a report of any inquiry completed under section 43B and must in all cases give the report to SFRS. If the inquiry is under section 43B(1) the Chief Inspector must give the Scottish Ministers such information in relation to the inquiry as they may request, and, where it relates to the state and efficiency of SFRS or its compliance with its duties in relation to best value, the Chief Inspector must give the report of the inquiry to the Scottish Ministers and lay it before the Scottish Parliament. If the inquiry relates to SFRS's carrying out of its functions, the Chief Inspector has discretion to provide a copy of the report to the Scottish Ministers. If the inquiry has been directed by the Scottish Ministers under s.43B(2), the Chief Inspector must give them a report of the inquiry and any other information relating to the inquiry that the Scottish Ministers request. The Chief Inspector must also then give a copy to SFRS. The Scottish Ministers must lay a copy of the report before the Scottish Parliament. New section 43E makes clear that SFRS must have regard to any reports it receives from the Chief Inspector when carrying out its functions, and must take such measures as it considers appropriate following receipt of the report, e.g. to implement any recommendations made by the Chief Inspector.

129. New section 43F puts in place a requirement for the Chief Inspector of the Scottish Fire and Rescue Service to prepare a plan setting out priority areas for inquiry by the Inspectors and how such inquiries will be carried out. He or she is required to keep the plan under review and may revise it periodically. The Chief Inspector is required to consult on, and publish, the plan and any revised plan. New section 43G requires the Inspectors and the Auditor General to co-operate and co-ordinate activity in relation to their functions relating to SFRS.

130. **Section 120** amends section 51 of the 2005 Act, to allow SFRS to employ special constables (who have been appointed under **section 9 in Part 1 of this Act**).

SECTIONS 121-123– GENERAL

131. **Section 121** introduces **schedule 6**, which makes provision about the transfer of staff, property, rights, liabilities and obligations to SFRS and to local authorities where appropriate. **Paragraph 1** of **schedule 6** defines terms used in the schedule, including defining the “appointed day” as the day the Scottish Ministers may appoint by order. There is no parliamentary procedure attached to such an order.

132. **Paragraphs 2-4** cover the arrangements for the transfer of staff and others. **Paragraph 2** covers the transfer of joint board staff. It provides that a joint board employee’s contract of employment has effect on and after the appointed day as if originally made between the employee and the SFRS. **Sub-paragraph (4)** provides that an employee may advise they do not wish to become an employee of SFRS in advance of the appointed day, in which case their contract is terminated on the appointed day. A transferring employee is not to be treated as dismissed by virtue of the operation of any of these provisions. **Sub-paragraph (6)** provides that the right of any employee to terminate their contract of employment because of a substantial detrimental change in their working conditions is not affected. **Sub-paragraph (7)** provides that no such right arises simply because of a change in the identify of the employer.

133. **Paragraph 3** gives the Scottish Ministers power to make a staff transfer scheme to transfer staff employed in the unitary fire and rescue authorities or who are members of staff of the Scottish Ministers to SFRS. **Sub-paragraph (4)** provides that such a transfer scheme may only be made in relation to persons whose employment relates to the functions of SFRS. This is because only those employees who are carrying out fire and rescue functions should transfer to the SFRS. It is necessary therefore to identify those employees who are to transfer in a transfer scheme. **Paragraph 4** makes further provisions in relation to transfers under **paragraph 3**. It provides that the contract of employment for the person who is transferring has effect on or after the transfer day as if originally made between the employee and the SFRS. **Sub-paragraph (5)** provides that if an employee advises that they do not wish to become an employee of SFRS in advance of the transfer day, their contract is terminated on the day before the intended transfer day. A person is not to be treated as dismissed by virtue of the operation of any of these provisions. **Sub-paragraph (7)** provides that the right of any employee to terminate their contract of employment because of a substantial detrimental change in their working conditions is not affected. **Sub-paragraph (8)** provides that no such right arises simply because of a change in the identify of the employer. **Sub-paragraph (9)** places an obligation on the Scottish Ministers before making a staff transfer scheme to consult any local authority or other person who is affected by the making of that scheme.

134. **Paragraphs 5 – 7** cover property transfers. **Paragraph 5** allows the Scottish Ministers to make an SFRS property transfer scheme. This is a scheme making provision for the transfer to the SFRS of property, rights, liabilities and obligations of Ministers, a local authority or a joint fire and rescue board. **Paragraph 6** allows the Scottish Ministers to make a local authority transfer scheme to make provision for the transfer to a local authority of property, rights, liabilities and obligations of a joint board. Scottish Ministers must be provided with such information or assistance by local authorities and joint fire and rescue boards, as may reasonably be required in relation to transfer schemes under **paragraphs 5 and 6**. **Paragraph 7** makes general provisions in relation to schemes made

under **paragraphs 5 and 6**, and **paragraph 8** makes general provision in relation to both staff and property transfer schemes.

135. **Section 122** is a transitory provision, requiring the current fire and rescue authorities and joint boards to provide information and assistance to the SFRS. There is a reasonable requirement test in relation to such information and assistance. It also allows for membership of the SFRS until the coming into force of **section 101(1)** in relation to new section 1A(2) of the 2005 Act. i.e. when SFRS has substantive functions conferred on it.

136. **Section 123** defines the meaning of “the 2005 Act” as the Fire (Scotland) Act 2005.

PART 3 – GENERAL

137. **Part 3** of the Act makes a number of general provisions common to **Parts 1 and 2** of the Act. **Section 124** requires the Scottish Parliament to make arrangements for keeping under review the operation of the Act, and to publish reports accordingly. **Section 125** sets out the arrangements for subordinate legislation under **Parts 1 and 2**. **Sections 126 and 127** allow the Scottish Ministers to make ancillary and transitional provisions by order to give full effect to the Act. **Section 128** inserts **schedules 7 and 8** which makes minor and consequential amendments and repeals to other legislation as a consequence of the provisions of this Act. The majority of the changes fall into the following categories:

- changing references in legislation to the current 8 police forces or chief constables to refer to the Police Service of Scotland and its chief constable;
- changing references to Police Authorities and Joint Police Boards to refer to the SPA;
- removing references to the SPSA and SCDEA;
- changing references to fire authorities and joint fire boards to refer to the SFRS; and
- making changes to legislation relevant to public bodies, to reflect the establishment of the SFRS and the changes made to the PIRC, Inspectors of Constabulary and Inspectors of the SFRS. (The equivalent changes in respect of the SPA are made in **Schedule 1**.)

138. A number of more significant changes are highlighted below:

- **Paragraph 1** of Schedule 7 makes a minor amendment to sections 32A and 42 of the Police (Scotland) Act 1967. These provisions, which relate to grant expenditure on national security and an offence of causing disaffection, cannot be repealed and re-enacted in this Act as they are reserved to the UK Government;
- **Paragraph 15** makes amendments to the Regulation of Investigatory Powers (Scotland) Act 2000 to ensure the authorisation of intrusive surveillance works effectively in a single service and also to give the PIRC the necessary surveillance powers it requires to carry out covert investigations if required. Similar changes are made to the Police Act 1997 in relation to interference with property or wireless telegraphy;

- **Paragraph 33** makes a number of amendments to Chapter 2 of the Police Public Order and Criminal Justice (Scotland) Act 2006 to reflect the single service and the SPA. The amendments also insert provisions allowing the PIRC to appoint staff officers and to designate any member of staff to take charge of, or assist with, investigations. Two order making powers are included in the amendments: one allowing the Scottish Ministers to apply any provision of the Police and Fire Reform (Scotland) Act or other enactments relating to constables to PIRC staff; and the other allowing the Scottish Ministers to apply any enactment relating to investigation of offences by constables to investigations carried out by PIRC’s designated staff;
- **Paragraph 68** makes a number of minor amendments to the Fire (Scotland) Act 2005 to replace references to “a relevant authority” with the SFRS. **Sub-paragraphs (15) and (16)** relate to the fire framework, and require Scottish Ministers to consult SFRS, representatives of employees of SFRS, representatives of local authorities and such other persons as they consider appropriate when preparing the framework document.
- An entry in **Part 1 of schedule 8** repeals the definition of “constable” from the Interpretation and Legislative Reform (Scotland) Act 2010, as well as other police terms which are no longer required. The effect of this is that, in future Scottish legislation, “constable” will include officers of any police force operating in Scotland, such as British Transport Police, unless otherwise defined.

139. **Section 129** deals with commencement of the provisions in the Act, including that certain sections of the Act are to be commenced the day after Royal Assent, to facilitate the early appointment of the Chairs of the SPA and SFRS and senior officers.

140. **Section 130** provides that the short title of the Act is the Police and Fire (Reform) Scotland Act 2012.

PARLIAMENTARY HISTORY

141. The table below sets out, for each Stage of the Scottish Parliament proceedings on the Bill for this Act, the dates on which the proceedings at that Stage took place, with references to the Official Report of those proceedings, and the dates on which Committee reports and other papers relating to the Bill were published. The table includes links to the reports and papers.

Proceedings and Reports	Reference
Introduction	
Bill as introduced, 17 January 2012	http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/Bill_as_introduced.pdf
SPICe Briefing on Bill (as introduced)	http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_12-14.pdf

Proceedings and Reports	Reference
Stage 1	
<i>(a) Subordinate Legislation Committee</i>	
Meeting 28 February 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7206&mode=pdf
Meeting 8 May 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7287&mode=pdf
<i>(b) Finance Committee</i>	
Meeting 18 January 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6847&mode=pdf
<i>(c) Justice Committee</i>	
Stage 1 Report	http://www.scottish.parliament.uk/S4_JusticeCommittee/Reports/jur-12-04w.pdf
<i>(d) Local Government and Regeneration Committee</i>	
Meeting 18 January 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6716&mode=pdf
Meeting 8 February 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7154&mode=pdf
<i>(3) Consideration by the Parliament</i>	
Stage 1 debate, 10 May 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7018&mode=pdf
Stage 2	
<i>(a) Justice Committee</i>	
Meeting 29 May 2012	
Meeting 12 June 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7072&mode=pdf
<i>(b) Subordinate Legislation Committee</i>	
Meeting 19 June 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7088&mode=pdf

*These notes relate to the Police and Fire Reform (Scotland) Act 2012 (asp 8)
which received Royal Assent on 7 August 2012*

Proceedings and Reports	Reference
Bill as amended at Stage 2	http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8as4-amend.pdf
SPICe Briefing on Bill (Parliamentary Consideration prior to Stage 3)	http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/SB_12-44.pdf
Stage 3	
Stage 3 debate, 27 June 2012	http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=7106&mode=pdf
Bill as passed	http://www.scottish.parliament.uk/S4_Bills/Police%20and%20Fire%20Reform%20(Scotland)%20Bill/b8bs4-aspassed.pdf
Royal Assent, 7 August 2012	http://www.legislation.gov.uk/asp/2012/8/contents/enacted

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