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Justice Committee Comataidh a' Cheartais

Report on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 - The Police Service of Scotland



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

Background to the 2012 Act

1. On 29 June 2011, the Christie Commission on the future delivery of public services, chaired by Dr Campbell Christie, published its report on the [Future Delivery of Public Services](#). It recommended that public services become more efficient by reducing duplication and sharing services wherever possible and that a comprehensive public service reform process be initiated. In response, the newly-elected SNP Scottish Government set out plans in its Programme for Government for “legislation to establish single national services for police and fire & rescue.”¹
2. In July 2011, the Scottish Government issued a draft Outline Business Case (OBC) to stakeholders for comment on reform of the police and fire and rescue services. These had been developed by professional leads from each service with input from experts and stakeholders.
3. The OBC assessed three options for the reform of the police service in Scotland. The first was to retain the eight forces, with enhanced national delivery; the second was for a regional force model; and the third was a single service model.
4. It also assessed three options for the fire and rescue services in Scotland. The first was to retain eight services with greater collaboration; the second was for a regional service structure; and the third was a single structure. The Justice Committee’s post-legislative scrutiny report relating to the fire and rescue service has been published separately.
5. On 8 September 2011, as outlined above, the Scottish Government announced its intention to abolish the eight police forces and fire and rescue services and to replace them with two single national services. The Scottish Government also published a further consultation paper, *Keeping Scotland Safe and Strong: A consultation on Reforming Police and Fire and Rescue Services in Scotland*. This set out detailed proposals of how the new single Scottish services would work in practice, and sought views on these proposals and the detailed legislative provisions that the Scottish Government would be required to bring forward to Parliament.
6. The Scottish Government introduced the [Police and Fire Reform \(Scotland\) Bill](#) in the Scottish Parliament on 16 January 2012. The Bill sought to abolish the existing eight police forces and eight fire brigades, along with the joint boards and unitary authorities that maintained them, the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA).
7. These were to be replaced with a single national police service – the Police Service of Scotland (the Police Service), together with a new governing board – the Scottish Police Authority (SPA), and a single fire and rescue service - the Scottish Fire and Rescue Service (SFRS). The SFRS would also be responsible for the governance and administration of fire and rescue services across Scotland.
8. The [Policy Memorandum](#) that accompanied the Bill indicated that it sought to deliver the following three policy aims:

1. To protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services.
 2. To create more equal access to specialist support and national capacity – like murder investigation teams and firearms teams – where and when they are needed.
 3. To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships.
9. The Policy Memorandum also set out the framework for the new services and the governance arrangements of the Scottish police and Scottish fire and rescue services. It provided:
- A clear, modern purpose and principles for the police service and an updated oath for constables. For the fire and rescue service the purpose was to be included in the new Fire and Rescue Framework;
 - A clear statutory framework for national governance including clear roles and responsibilities for the Scottish Ministers, the proposed Scottish Police Authority, the Scottish Fire and Rescue Service Board, and the Chief Officers of both services;
 - Clear powers for local authorities in relation to the provision of fire and rescue services and the policing of their area;
 - Appropriate scrutiny and oversight arrangements;
 - Clear funding arrangements; and
 - Clear arrangements for the transfer of existing officers and staff and the appointment of new officers and staff to both services.
10. The Bill was passed on 27 June 2012, receiving Royal Assent on 7 August 2012, and became the [Police and Fire Reform \(Scotland\) Act 2012](#).

The case for reform of the police service

11. One of the major drivers of reform of the police service was the reduction in the Scottish block grant, which the Scottish Government estimated would reduce by £3.3 billion in real terms between 2012 and 2016. As with most of the public sector, the police service budget was set to reduce. Police funding was predicted to fall by about 10% in real terms over this period.
12. Reform of the police service therefore was, in the Scottish Government's view, an economic imperative. In this context, the Government consistently stated that maintaining eight police forces was unsustainable and that without structural reform smaller forces, in particular, would be vulnerable to cuts in front-line services.
13. Financial considerations, however, were not the only drivers of reform. Police forces were facing increasing levels of demand for their services and police officers were undertaking a wide range of community activities. These were far removed from their "traditional" policing role to guard, patrol and watch to prevent the commission of offences, preserve order and to protect life and property.
14. Another driver of reform was to improve the governance and accountability of the police service. In May 2011, Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) produced a discussion paper on the [Governance and Accountability of Policing in Scotland](#). The paper described the development of the system of police governance over the previous 50 years and highlighted what it called the "...weaknesses in police governance and accountability which have perpetuated since the 1962 Royal Commission and which, it is contended, must be redressed in supporting any future model of policing in Scotland".²
15. The paper concluded that the systemic weaknesses in the governance arrangements for Scottish policing which had been identified by the 1962 Royal Commission had not been sufficiently addressed in the Police (Scotland) Act 1967. As a consequence, a plethora of bodies had emerged in an attempt to correct these weaknesses and there was now a "complex landscape" of internal and external organisations, with overlapping and sometimes unclear areas of responsibility. The discussion paper stated that this had led to confusion, inefficiency, and a lack of democratic accountability.
16. The Scottish Government indicated that the new governance arrangements proposed in the Police and Fire Reform (Scotland) Bill would respond to the weaknesses identified in the discussion paper.

Issues raised during the passage of the legislation

17. The main purpose of the Police and Fire Reform (Scotland) Bill was to create single police and fire and rescue services for Scotland, together with new governance and funding arrangements, and to abolish the existing eight territorial police forces and eight fire brigades along with their governing bodies. It also sought to abolish the Scottish Police Services Authority and the Scottish Crime and Drugs Enforcement Agency, to place independent custody visiting onto a statutory footing and to reconstitute the Police Complaints Commissioner for Scotland as the Police Investigation and Review Commissioner (PIRC) with new investigatory powers.
18. The Bill, as introduced, consisted of 3 parts and 7 schedules. Part 1, the most substantial part of the Bill, was concerned with police reform and comprised 17 chapters, whilst Part 2 was concerned with the reform of the fire and rescue service.
19. The Scottish Parliament's session 4 Justice Committee recommended a number of changes to the Bill in its [stage 1 report](#) and a number of amendments were agreed to at stages 2 and 3 of the Bill's passage. This included a duty on the Scottish Parliament to make arrangements for keeping the operation of the 2012 Act under review and to publish reports on this.
20. Issues raised during the [stage 3 debate](#) on 27 June 2012 included:
 - That a full business case needed to be produced, with details of the proposed financial savings.
 - A concern that police officers may be taken off the front line to cover the duties of police staff.
 - Local authorities should be given some control and substantive input into local plans.
 - That the police service would not be exempt from paying VAT.
 - The role of the Cabinet Secretary for Justice in approving the Members and Chair of the SPA Board.
21. The Bill was agreed to by division. The Scottish National Party and the Scottish Labour Party voted for the Bill. The Scottish Green Party and the Scottish Liberal Democrats voted against the Bill, and the Scottish Conservative and Unionist Party abstained.

Committee consideration of the 2012 Act

Written and oral evidence

22. On 1 April 2018, five years after Police Scotland and the Scottish Fire and Rescue Service began operating, the Justice Committee issued a [call for written evidence](#) to scrutinise whether the policy objectives of the 2012 Act had been delivered, and if not, the reasons for this. The Committee agreed to consider the whole of the 2012 Act, including the oversight and scrutiny bodies detailed within it: the Scottish Police Authority, Her Majesty's Inspectorate of Constabulary in Scotland and the Police Investigations and Review Commissioner (PIRC). It also agreed to consider how the legislation is being enacted, if there are any unintended consequences, and to identify any improvements that could be made.
23. The Committee received 70 responses (including supplementary submissions), of which 2 were published anonymously.ⁱ
24. The Committee took public evidence on the Act at six meetings between September and November 2018. A list of witnesses for those meetings is set out in **Annex A**.
25. The Committee is grateful to all those who took the time to provide oral and written evidence to assist it with its post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012.
26. The Committee also undertook a visit to Norway to understand the reform of the Norwegian Police Service and to learn any lessons.
27. The Committee would like to thank Mr Knut Morten Johansen, State Secretary for the Minister of Justice, Public Security and Immigration, Ms. Unni Gunnes, Director General and Camille Landsverk, Deputy Director of the Police Department and their staff, and Deputy Chief of Police Eva Sjøholt-Sandvik from the National Police Directorate and members of her staff for taking the time to meet with them and share their experiences of police reform.
28. The Norwegian Police Service had some lead in time prior to reform. This enabled them to phase the reforms and focus initially on the needs of staff and officers and the tools necessary for them to carry out their roles, prior to focussing on governance and structures. Although it has gone through a similar process of reform, the Norwegian Police Service does not have the same structure as Police Scotland.

ⁱ Anonymity is granted by the Convener of the Justice Committee on a case-by-case basis.

Evaluation of the 2012 Act

29. The Scottish Government commissioned a [four-year programme](#) of evaluation of reform of the police and fire and rescue services. This was to be carried out by a consortium of research organisations led by the Scottish Institute for Policing Research (SIPR) working with Scotcen Social Research and What Works Scotland.
30. The group began its work in 2015 and has published three evaluation reports on the Police and Fire Reform (Scotland) Act 2012, with a fourth evaluation currently underway. These reports are summarised below.

Year 1

31. The Year 1 report provided an assessment of whether the three aims of reform had been met, considered lessons to be learned from the implementation of the 2012 Act, and evaluated the wider impact of reform on the justice and the wider public sector.
32. The report found that progress had been made in achieving the three objectives. It included Police Scotland's view that it was currently in the consolidating and integrating phases, with real 'transformation' of service delivery still to take place. The challenges associated with the 'transformation' phase were viewed as being at least as significant as those encountered in integrating the police service.
33. The report included three lessons to be learned: that reform involves cultural as well as structural change; that reform may be driven centrally but it is experienced locally; and that reform narratives should focus both on the need for change and how change will happen.

Year 2

34. The Year 2 report comprised four geographical case studies which examined local experiences and perceptions of the way the police service was being delivered to local communities. Although the four case studies were drawn from four very different areas of Scotland, the report indicated that the evidence presented a remarkably consistent picture.
35. The benefits identified included an improvement in accessing national capacity and specialist expertise and strong commitments to partnership working.
36. Issues identified included the police service operating with diminishing resources, work to strengthen connections with communities often being hampered by other organisational pressures, and the reductions in the budgets of other public services sometimes frustrating attempts to work more collaboratively.
37. The report recommended three areas for improvement: improved internal communication; greater clarity for local personnel about career development and training opportunities; and a renewed and refreshed commitment to localism in policing.

Year 3

38. The Year 3 evaluation produced a series of publications. There was a main report which was published in February 2018. It focussed on a thematic case study on partnership working, prevention and innovation.
39. The evaluation report was published in May 2018 and included interviews with national key informants selected from the police service, the fire and rescue service, and national bodies out-with those services, an overview of Policing 2026, a summary of evidence from 2017, and an overview of key findings from the evaluation of Dutch and Norwegian police reforms.
40. The evidence suggested that the first two policy aims of reform had largely been achieved, but that the third policy aim, whilst viewed as a high priority, is the hardest to achieve.
41. The evaluation reports identified four stages of reform: preparing, consolidating, integrating, and transforming. The Committee considered the extent to which the findings and recommendations of the research organisations had been implemented by the Police Service of Scotland and the stages of reform that it had reached for each policy intention.

An international perspective – reform of the Norwegian Police Service

42. The four-year programme of evaluation of police reform being carried out by the Scottish Institute for Policing Research (SIPR), Scotcen Social Research, What Works Scotland and others, includes undertaking research of policing in other countries.
43. The evaluation report for year 2 found that the police services in the Netherlands, Sweden and Norway, as well as in Scotland, were experiencing challenges in “achieving an appropriate balance between centralism and localism in how policing is delivered, and in how to communicate and engage with the whole workforce during periods of rapid and radical organisational change”.³
44. The Year 3 report provided an overview of key findings from the evaluation of Dutch and Norwegian police reforms.³
45. The Committee received evidence about the reform of the Norwegian Police Service and John Finnie MSP attended the International Seminar on Police and Fire Reform on 29 October 2018, which was hosted by the research group. The seminar considered strengthening local connections in an era of reform from a policing perspective, with representatives from Norway, Sweden, the Netherlands, Switzerland and Scotland presenting views of police reform in their countries.
46. To understand more about the reform of the Norwegian Police Service, the Committee visited Oslo in early December 2018, and met with representatives from the Royal Norwegian Ministry of Justice and Public Security and the National Police Directorate.
47. The Norwegian Police Service, whilst having a different organisational structure to Police Scotland, has undergone reform of a similar nature. The Committee heard about the reform process, the challenges and opportunities of reform, and the further changes necessary to achieve transformation of the Norwegian police service.
48. Reform of the Norwegian Police Service was proposed in 2014 and implemented from 2016. The driver for reform was how the police service responded to a terrorist attack in Norway in 2011. This raised issues about how the police service prepared for and managed such incidents, the culture of the police service, and its leadership. An external commission was established in 2011 to undertake an analysis of the police service. The commission’s analysis provided the basis for the police reforms.
49. The purpose of reform was to provide an improved and more modern police service, and to provide safety where people live. The anticipated benefits were an improved policing organisation, renewed and improved tools and ways of working, and strengthened governance and leadership.
50. Reform reduced the police districts in Norway from 27 to 6. This represented a significant change to policing. Reform was approached in 4 stages, starting with

improving the organisation to build the required foundation for reform, before strengthening its management and leadership, finances and governance. The basic needs of officers and staff were met before the next steps were taken. There was also input from each of the districts in identifying their functions to set standards of best practice rather than imposing changes from one area.

51. The changes were implemented in two phases to minimise the risk of disrupting policing. The first phase was the creation of specialised units and the second was the creation of geographical units. A new ICT system was also distributed as soon as possible to assist the re-organisation process.
52. The police service has regularly negotiated with the unions throughout the reform process and continues to do so. This has led to a lot of compromises and meant that changes have taken longer to implement. However, this approach has been good for morale.
53. The Committee heard about some of the benefits of police reform in Norway. This included:
 - Improved partnership working, for example the Barnahus model.ⁱⁱ
 - An improvement in the quality of specialist investigations.
 - An improved relationship and dialogue between the National Police Directorate and local police districts.
 - Less bureaucracy.
 - An increase in trust and confidence in the police service.
54. The Committee also heard about some areas of police reform where challenges remain. These included:
 - Achieving a consistent police service across the country and consistent ways of working.
 - Giving freedom to local police commanders in how they implement centrally agreed operational goals.
 - Building capacity to address the need for more specialist roles to tackle certain crimes, for example cybercrime.
 - Communicating the additional roles undertaken by police officers to the public, who wish the police service to be more visible, for example officers providing services on-line through the use of social media.
 - Enabling consistent co-operation with other services when responding to vulnerable people, for example co-locating police, fire and ambulance services and sharing more information.

ⁱⁱ The Barnahus concept is a child-friendly, multi-disciplinary approach to taking evidence from children in a relaxed environment, rather than in court.

Governance and administration of the police service

55. In its 2011 discussion paper by HMICS on the Governance and Accountability of Policing in Scotland, the Inspectorate described the development of the system of police governance over the previous 50 years. It found that there was not a balanced system of governance and accountability, in which local and national demand were properly considered and prioritised.
56. The Inspectorate identified 7 key areas of policing to be addressed if any future model of policing in Scotland was to stand the test of time. These were to:
- define the police function;
 - balance democracy and governance;
 - balance operational independence and governance;
 - balance interests, responsibilities and capability;
 - balance the national and local;
 - simplify the governance landscape; and
 - have effective governance and scrutiny.⁴
57. The Committee considered whether the policing governance and administration provisions in the 2012 Act addressed the weaknesses identified by the Inspectorate.

The role of the Scottish Police Authority


58. Chapter 1 of the 2012 Act creates the Scottish Police Authority and outlines how it will work. It is 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 also gives the Scottish Ministers power to direct the SPA, but not the Chief Constable (Chapters 1 and 3 and schedule 1).
59. The SPA has been subject to a high level of scrutiny since its creation. Susan Deacon, Chair of the SPA, told the Committee that there had been 14 separate reviews of the SPA within the past financial year.⁵
60. The Auditor General for Scotland (AGS) has published four consecutive section 22 audit reports on the SPA.ⁱⁱⁱ This number of reports is unprecedented. The Public Audit and Post-legislative Scrutiny Committee considered each of the section 22 reports and highlighted in its written evidence to the Committee some recurring themes in relation to the SPA's governance of the police service.

ⁱⁱⁱ Section 22 reports are prepared by the Auditor General if any specific concerns or issues have been raised in the audit of one of the public bodies for which she is responsible.

61. The 2016-17 audit raised instances of unacceptably poor governance and poor use of public money as well as significant concerns about the leadership, governance and decision-making processes at the SPA. A key theme arising from the section 22 report and the subsequent evidence received by the Public Audit and Post-legislative Scrutiny Committee, was the quality of the decision making at leadership level, including the quality of the decision making and oversight provided by the SPA board.
62. In the 2016-17 audit of the SPA, the Auditor General concluded that an immediate priority for the new chair and interim chief officer of the SPA was "... ensuring that the organisation operates effectively and transparently".⁶
63. The Public Audit and Post-Legislative Scrutiny Committee noted in its written evidence that "... unless changes to leadership and governance are embedded in the structure and culture of the SPA and Police Scotland, there remains a risk of re-occurrence".⁷
64. Chief Constable Iain Livingstone told the Committee that, in the early days of reform, the governance arrangements did not operate properly. The Chief Constable explained that this was partly due to a lack stability caused by changes to senior personnel in both organisations. The Chief Constable added that he did not think the Act required to be amended, stating that, "Rather than judge the Act, I would continue with it as it is and ensure that the structures are properly implemented and understood".⁸
65. Susan Deacon, Chair of the SPA, agreed, adding that some of the issues encountered in the first few years were also due to the SPA having a lack of clarity of purpose. Ms Deacon stated that the SPA needed "clarity and a stable structure, which we can then make work well".⁸
66. In response to a question about whether its dual role was a conflict of interest for the SPA, Ms Deacon said that the role was similar to a Scottish Ministerial role supporting public services and holding them to account, saying that "I honestly do not see any conflict in that at all".⁸
67. The Cabinet Secretary told the Committee that the early issues with roles and responsibilities were not a consequence of a lack of clarity in the 2012 Act. Mr Yousaf added that he did not see any conflict in the SPA's dual role, stating that "The way in which it is now working provides it with the ability to challenge robustly while ensuring that priorities are aligned. I do not see that as a conflict".⁹
68. The Committee heard that since her appointment as Chair of the SPA on 16 November 2017, Susan Deacon has implemented a number of measures to enable the SPA to serve its dual role of maintaining the Police Service, promoting and supporting continuous improvement and holding the Chief Constable to account.^{iv}
69. Ms Deacon told the Committee that she had put in place a number of measures to ensure that the SPA's governance and scrutiny arrangements are fit for purpose.¹⁰

iv Police and Fire Reform (Scotland) Act 2012, part 1, chapter 1.

70. Ms Deacon explained that the previously low staff number had contributed to the SPA struggling to perform some of its duties effectively. To build its capacity and capability Ms Deacon has increased the SPA from 27 to 40 members, including 7 new Board members, and she intends to increase it further to 68. These changes are to enable the SPA Board and its committees to be more probing and confident in their questioning of Police Scotland.¹¹
71. In its 2017-18 Audit of the SPA, Audit Scotland found that the work to strengthen its board and committee structure, as well as increasing the executive capacity at the SPA, meant that the board now has greater capacity to focus on strategic issues and external engagement.¹²
72. Whilst improvements have been made, Ms Deacon told the Committee that there is still work to do to get to a "... place that is mutually respectful and which works for the benefit of policing in Scotland".¹⁰
73. In June 2017, HMICS published its Thematic Inspection of the Scottish Police Authority - Phase 1 Review of Openness and Transparency report. The Inspectorate prioritised this inspection in response to concerns raised by the Public Audit and Post-Legislative Scrutiny Committee and the Justice Sub-Committee on Policing regarding significant concerns raised over governance, openness and transparency and the willingness of the SPA to genuinely engage with, and respond to, concerns from stakeholders.
74. The Inspectorate found that "The scrutiny of policing must not only be effective, it must also be seen to be effective", and made a number of recommendations to improve transparency and openness within the SPA.¹³
75. The Scottish Police Authority is currently working through an improvement plan, which it approved in June 2018.⁵
76. The Cabinet Secretary suggested that key areas for consideration were the level of local scrutiny, governance and alignment, telling the Committee that:

 I am hearing loud and clear that there are lessons to be learned in and around local priorities, governance and scrutiny, and in ensuring that our national police service is aligned with those aspects.¹⁴
77. In response to a question on where policing by consent sits within the governance function, Susan Deacon, Chair of the SPA, told the Committee that it is at the heart of the ethos of delivery of policing. Ms Deacon added that the SPA needs to work at communicating changes to policing to the public.¹⁵
78. Chief Constable Iain Livingstone agreed, telling the Committee that the police service is accountable to its fellow citizens, saying that "without that consent, the bond between citizens and policing will not be as strong".¹⁵

79. **The Committee notes the issues experienced with roles, responsibilities and personalities in the early days of Police Scotland and the Scottish Police Authority and that this has improved with changes to personnel and**

working practices. However, the Committee is concerned that, despite the legislation clearly defining roles and responsibilities, past governance arrangements were unduly affected by personalities.

80. The Committee welcomes the changes being implemented by the Scottish Police Authority to address leadership, governance and accountability concerns. The Committee recommends that HMICS now evaluates these reforms to determine whether those concerns have been addressed.

81. The Committee recommends that Police Scotland and the Scottish Police Authority continue to focus on demonstrating that they have achieved the required culture change in leadership and governance, and their procedures and practices, to avoid any repeat of previous issues. The Committee notes the work underway in the SPA to address these issues and the importance that the SPA and Police Scotland attach to policing by consent.

The role of the Chief Constable

82. Chapter 2 of the Act outlines the responsibilities of the Chief Constable for the direction, control and day-to-day administration of the Police Service of Scotland. The Chief Constable is responsible for the allocation and deployment of resources received from the SPA and for ensuring adequate arrangements for the policing of each local authority area. The Chief Constable is accountable to the SPA.
83. In the 2011 HMICS discussion paper, the Inspectorate raised concerns about the absence of consensus around the meaning of the operational discretion of a chief constable. It questioned "... what effect such lack of clarity has on others' abilities to hold them democratically (or otherwise) to account".¹⁶
84. In his written submission, Dr Ali Malik refers to the implementation of decisions on operational matters and the SPA's scrutiny role. Dr Malik suggests that the SPA was reactive in its scrutiny of proposals from Police Scotland in the early days of reform. This included the use of stop and search and the introduction of armed policing. Concerns about these issues were raised by local representatives and the media, instead of the SPA.¹⁷
85. More recently concerns have been raised by stakeholders and considered by the Justice Sub-Committee on Policing about the proposed introduction of digital device triage systems (cyber kiosks) across Scotland.

86. To balance operational independence and governance within policing, the information provided by Police Scotland to the Scottish Police Authority must clearly identify where operational requirements begin and end, and the Scottish Police Authority must ensure that it has the capability and capacity to critically assess that information.

87. The Committee notes the comments that the Scottish Police Authority was "reactive in its scrutiny of proposals from Police Scotland in the early days of reform", for example with regard to stop and search and armed policing. The Committee queries whether this has been replicated more recently with the SPA's scrutiny of Police Scotland's ICT and digital device triage plans, and asks the SPA to respond on this matter.¹⁷

88. The Committee recognises that the Scottish Police Authority performs a dual role of promoting and supporting continuous improvement in policing and holding the Chief Constable to account, and invites the Cabinet Secretary to respond to how the SPA achieves this balance. The Committee notes that most of the issues raised during the Stage 3 consideration of the Bill remain live issues, such as police officers backfilling police staff roles, Police Scotland not being exempt from paying VAT, and the role of Scottish

Ministers in approving the appointment of the Chair and Board members of the Scottish Police Authority.

The role of Scottish Ministers

89. The 2012 Act includes powers for Scottish Ministers to set strategic policing priorities and give directions to the SPA.

Setting strategic priorities for, and giving directions to, the Scottish Police Authority

90. Section 33 of the 2012 Act enables Ministers to set the strategic police priorities for the SPA, in relation to policing in Scotland or the SPA carrying out its functions.
91. Section 5 of the 2012 Act enables Scottish Ministers to direct the SPA, which must comply with any direction (general or specific) given by the Scottish Ministers. A Ministerial direction must be published and laid before the Scottish Parliament.
92. A direction may not be given in respect of:
1. a specific operation being or to be carried out by the Police Service, or
 2. the way in which the Police Service is carrying out (or is to carry out) a specific operation
93. In its supplementary written evidence, UNISON Police Staff Scotland (UPSS) highlighted that the current arrangements impact on the credibility of Police Scotland, as it does not appear free from political interference. It stated that:
- ” It has always been very difficult to deduce precisely where ministerial advice and guidance start and instruction, direction and intervention end, between the Justice Minister, Scottish Government and the Scottish Police Authority.¹⁸
94. To ensure greater clarity about Ministerial decision making, UPSS recommend that the legislative framework be amended to reflect the Ministerial direction/technical direction reporting process between UK Government Departments and the National Audit Office.¹⁸ This new process would include the publication of Scottish Ministerial directions in a register. UPSS suggest Audit Scotland could undertake this role.^v
95. Diego Quiroz of the Scottish Human Rights Commission (SHRC) described these powers as “a significant challenge to the independence of the SPA and the integrity of the police accountability framework”.¹⁹

^v In January 2018 views were expressed that the Cabinet Secretary for Justice, Michael Matheson, had interfered with the Scottish Police Authority’s decision to reinstate Chief Constable Phil Gormley, who was on special leave while accusations of gross misconduct against him were being investigated. Questions were raised about whether the Cabinet Secretary had sought assurances from the Chair of the SPA, Andrew Flanagan, about the SPA’s decision, or whether he had given him a direction.

96. Mr Quiroz suggested that Scottish Ministers should only retain the power to set the principles and the overall objectives for policing and that the SPA should set its own priorities. Mr Quiroz also agreed with the suggestion that there should be formal protocols regarding communications between Ministers and Police Scotland and the SPA.¹⁹
97. The Cabinet Secretary told the Committee that he would keep “an open mind” about whether the 2012 Act and associated guidance needed to be amended to enable greater transparency about Ministerial involvement in policing.
98. Mr Yousaf added that “... there must be a distinction between challenging and asking questions of our stakeholders and giving direction, which others might view as interfering”.²⁰

99. The Committee notes the need for clarity and transparency on the role of Scottish Ministers in dealing with policing matters. The legislation is clear about the role of Scottish Ministers in giving a direction to the Scottish Police Authority, however the implementation of the provisions is open to interpretation.

100. The Committee recommends that the Scottish Government provides guidance for Scottish Ministers when issuing directions to the Scottish Police Authority, under section 5 of the Police and Fire Reform (Scotland) Act 2012, and invites the Cabinet Secretary to respond to the proposals made by UNISON Police Staff Scotland and the Scottish Human Rights Commission.

101. The Committee is content with the current provisions which enable Scottish Ministers to set the strategic police priorities for the Scottish Police Authority.

Appointment process for the Scottish Police Authority Chair and Board Members

102. Section 1, schedule 1 of the Act provides that Scottish Ministers are responsible for appointing the chairing member of the SPA and its Board members. All appointments are regulated under the Public Appointments Commissioner for Scotland: Code of Practice for Ministerial Appointments to Public Bodies in Scotland (“the Code”).
103. In 2017, opposition parties requested that Parliament be more involved in the appointment process for the next SPA Chair. The Cabinet Secretary for Justice at that time, Michael Matheson, agreed to include Mary Fee MSP, then Convener of the Justice Sub-Committee on Policing, on the selection panel. The panel’s role was to interview selected candidates and make a recommendation to the Cabinet

Secretary for Justice for approval. This measure was welcomed by opposition parties, as an interim solution.

104. In evidence to the Committee, Diego Quiroz of the SHRC, recommended that there should be wider engagement in the appointment process to address concerns about the influence of Scottish Ministers.²¹
105. Susan Deacon, Chair of the SPA, told the Committee that the appointment process was for the Scottish Parliament to decide.²²
106. The Cabinet Secretary for Justice indicated that he would consider any proposals to improve the appointment process, but cautioned that it was important that the appointment of the SPA Chair is not politicised, saying that "... we need to allow Parliament to have a role so that all political parties are involved in the process".²³

107. **The Committee notes and accepts that there should be wider engagement in the appointment process to address concerns about the influence of Scottish Ministers in the appointment of the Chair and Board members of the Scottish Police Authority. The Committee considers that all options should be explored to include the Scottish Parliament in the appointment process, including the two options outlined below, and requests that the Cabinet Secretary set out his views on the merits of these options.**

Option 1: Appointed by the Scottish Parliament:

- This would be a similar approach to the appointment of the Scottish Information Commissioner, who is appointed by Her Majesty the Queen, on the nomination of the Scottish Parliament, to serve for a fixed term.

Option 2: Appointed by Scottish Ministers and approved by the Scottish Parliament:

- The Scottish Fiscal Commission Act 2016 provides that appointments to the Commission will be made by Scottish Ministers, regulated by the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS), and subject to the approval of the Scottish Parliament.
- The Finance and Constitution Committee hold a formal pre-appointment hearing with the candidate nominated for appointment by the Cabinet Secretary for Finance and Constitution.
- The Parliament debates and votes on a report by the Finance and Constitution Committee on the proposed appointment.

Financial management

Projected efficiency savings

108. In addition to the policy aims of the Police and Fire Reform (Scotland) Bill, the Scottish Government argued, prior to the reforms, that there was a financial imperative driving reform, with the need to make efficiencies in the face of spending reductions.
109. A major driver of reform of the police and fire and rescue services was the Scottish Government's estimate that the block grant was to reduce over the next four years, from 2011, by £3.3 billion (or 10%) in real terms.
110. The Committee has considered the basis of the Scottish Government's estimated savings to be made by the police service, whether these were achievable, and the efficiency savings that Police Scotland has made during its first five years.
111. Like most of the public sector, the police budget was expected to reduce over this period. It was estimated that police funding would fall by about 10% in real terms over 4 years.²⁴
112. The financial memorandum that accompanied the Bill set out estimates of the costs of reform, expected savings and timescales, and the margins of uncertainty. The estimates were developed using the information in the Outline Business Case (OBC).
113. The financial memorandum estimated that the total net efficiency savings that would be achieved through the creation of a single police service would be £1.1 billion over a 15-year period, from 2011 – 2026.²⁵

Were the efficiency savings achievable?

114. The Committee heard from Ivor Marshall, from the Association of Scottish Police Superintendents (ASPS) that the estimated savings were "unrealistic"²⁶ in the projected timescale and from Calum Steele from the Scottish Police Federation (SPF) that the business case did not take "... due cognisance of the realities that we were facing" or the demands that would be placed on policing.²⁷
115. In its written submission, UNISON Police Staff Scotland stated that the supposed benefits of significant financial savings and greater efficiency came from expectations based on "over-simplistic reasoning due to the application of an Outline Business Case (OBC) and Partial Equality Impact Assessment (PEIA)".¹⁸
116. The Committee heard that the "size, scale and complexity"²⁸ of transforming the police service were not known and that therefore the costs were "underestimated".²⁸

117. **The Committee believes that the outline business case on which the financial memorandum relied for its estimation of expected efficiency savings from the creation of a single police service was not suitably robust. In our view, a full business case should have been provided.**

Savings made by Police Scotland

118. In its written submission, Police Scotland indicated that it had achieved accumulative cost savings in 2016-17 of £330m, despite significant financial constraints. They stated that this shows that the level of cumulative cost reduction is likely to exceed the financial appraisal included in the reform business case by 2026.²⁹
119. Chief Constable Iain Livingstone told the Committee that reducing police budgets would have made it difficult to maintain the existing policing structure, saying that:
- ” Year on year, about £200 million in real costs has been taken from the annual budget. That is in excess of the revenue cost of two or three of the previous forces.”³⁰
120. In its written submission, Police Scotland indicate that despite the savings made, it has faced significant additional cost pressures from pay awards and progression over the last five years. It therefore expects to have an overall operating deficit in 2018-19 of £35.7m.²⁹
121. The SPA approved a 3 Year Financial Plan and 10 Year Financial Strategy at its meeting of 2 May 2018. The 3-year plan described how the SPA and Police Scotland would eliminate its deficit by 1 April 2020. The [financial plan](#) relies on achieving efficiency savings by streamlining processes, implementing the Policing 2026 10-year strategy, and reducing bureaucracy.
122. The [Policing 2026 strategy](#) is to be delivered in three phases from 2017 to 2020. The 3-year implementation plan indicates that these: are creating capacity to improve, working smarter, and connected service.

The Scottish Police Authority's 3-year financial plan and 10-year financial strategy

123. The Committee has considered the Scottish Police Authority's 3-year financial plan to reduce the policing deficit.
124. The 2017-18 audit of the SPA indicated that the 10-year financial plan forecasts that the SPA will move back into an annual deficit position after 2020-21 without significant transformation and delivery of efficiencies.³¹

125. The Auditor General expressed a concern about the ability of the SPA to balance its budget and meet longer-term strategic objectives. In particular, implementing the agreed 10-year Policing 2026 strategy, stating that:
- ” The scale, cost and complexity of the plans needed to deliver that transformational change should not be underestimated. It’s vital that the SPA and Police Scotland develop comprehensive strategies for its future workforce, estates and ICT and clarify where the funding is coming from to make them a reality.”³²
126. The 3-year financial plan does not include the full financial impact of Police Scotland’s digital, data and ICT strategy, which it estimated as being “in the region of £206m”. The outline business case subsequently estimated that the strategy would cost £298m. The financial plan also excludes costs for the potential impact from the United Kingdom’s exit from the European Union, the proposal to integrate the British Transport Police in Scotland into Police Scotland, compliance with changes to EU General Data Protection Regulations (GDPR), and Police Scotland’s Emergency Services Mobile Communications Programme (ESMCP).³³
127. In her written submission, Dr Kath Murray highlights that the long-term financial strategy does not detail “how the savings will be made, nor does it account for the still un-costed integration of British Transport Police (BTP) into Police Scotland”.³⁴
128. In its most recent audit of the SPA, Audit Scotland identified the re-planning exercise for integration of the BTP in Scotland into Police Scotland as a risk which “continues to absorb resources at the expense of wider strategic objectives”.³⁵
129. The Cabinet Secretary told the Committee that whilst uncertainty remained around the cost of Brexit and other areas for policing the SPA has projected that Police Scotland will reduce its deficit by making £1.9 billion of savings, and that the “savings target of £1.1 billion that is attached to reform is expected to be not only met but exceeded”.³⁶
130. Since its creation the single police service has been unable to reclaim VAT of £125 million paid to the UK Government. In April 2018, the UK Government decided that the single services would be able to reclaim VAT paid to the UK Government from April 2018 but that any VAT paid prior to that date could not be reclaimed.

131. The Committee is concerned that the Scottish Police Authority’s 3-year financial plan to achieve efficiency savings and eliminate the policing deficit is not suitably robust. It does not contain all anticipated costs, such as the costs for the integration of the British Transport Police in Scotland into Police Scotland and Brexit. The Committee accepts that reliable costs for the latter are not yet available.

132. The Committee welcomes the Scottish Police Authority’s decision to revise the 3-year financial plan in light of anticipated Brexit costs. The Committee recommends that the SPA updates the 3-year financial plan and 10-year

strategy to accurately reflect all anticipated costs and savings and provides these to the Committee.

Reform of Police Scotland's ICT estate

Projected efficiency savings

133. A key area for projected efficiency savings and to enable more effective ways of working is the reform of Police Scotland's ICT estate. The Committee has considered Police Scotland's progress in achieving that policy aim.
134. The financial memorandum that accompanied the Bill back in 2011 indicated that the police service spent approximately £15m a year on the development of shared national applications for incident management (Command and Control), HR and custody and that additional costs of £12m, spread over years 2 to 4, had been estimated for ICT costs associated with reforms. A further provision of £11m was to be added to cover the acceleration of projects and parallel running as appropriate.
135. These estimated costs were based on the belief that a proportion of the initial ICT consolidation and rationalisation to support a single service could be achieved using existing infrastructure and systems and that there was already a significant programme of ICT convergence within the police forces.³⁷
136. In 2013, the SPA Board approved a business case for a new national ICT programme, called i6. It had two objectives: the development of national common policing processes aligned to operational priorities; and the acquisition of a modern, scalable, extensible, national ICT solution which supported those processes and priorities.
137. The full business case for the i6 programme suggested that it would cover six key policing areas and 80 per cent of core police services. Delivery of i6 was to address the organisational and operational risks associated with the existing complex, disparate and inefficient ICT estate, by replacing a multitude of ageing silo legacy systems which hindered effective sharing of information across previous force boundaries.³⁸
138. The cost of the i6 contract was £46.11 million and the business case anticipated full payback would be achieved in 2021-22. Police Scotland estimated that implementing i6 would generate potential efficiency savings of around £200 million over ten years.³⁹
139. As the design and development of i6 progressed, it became apparent that Accenture would need to develop significantly more than had been originally anticipated. As a result, there were delays and serious problems throughout the lifetime of the programme.
140. On 1 July 2016, the SPA and Accenture agreed to terminate the i6 contract. The Auditor General reported in her review of i6 that "There is an urgent need for the SPA and Police Scotland to determine what the next steps should be, and to carry out an honest assessment of how to procure, develop and deliver the much-needed police IT system".³⁹

141. The Committee heard that reform of Police Scotland's ICT systems remains a key factor to it achieving the transformation outlined in the policy intentions of the 2012 Act and meeting anticipated efficiency savings. The failure of the i6 programme has delayed some of the benefits of police reform that should have arisen from its successful implementation.

Were the ICT changes achievable?

142. In its written submission, Police Scotland indicated that the lack of time available to plan ahead for integration meant that a significant amount of activity was planned and delivered post-transition. It explained that the "continued reliance on legacy ICT systems and the collapse of the i6 programme delayed Police Scotland's ability to fully achieve the structural benefits of reform".²⁹
143. Professor Nick Fyfe, Scottish Institute for Policing Research, told the Committee that other countries who had reformed their police service, such as Norway, started their reforms by considering the needs of front-line police officers, rather than commence a reform programme by focussing on structures and governance. This included the information technology requirements to work efficiently. Professor Fyfe stated that until Police Scotland's ICT issues are resolved other benefits are much more difficult to achieve.²⁸
144. Chief Superintendent Ivor Marshall, President of the Association of Scottish Police Superintendents (ASPS) added that whilst ICT is an essential element, investment in all equipment, such as "cars, radios, telephones, tablets" etc was required to enable police officers to work more effectively and efficiently".⁴⁰
145. In its written submission, HMICS stated that "the full benefits of police reform will not be evidenced until national ICT systems are in place", adding that "Stronger ICT governance and assurance is therefore a requirement of any revised SPA committee structure and governance framework".⁴¹
146. These views were echoed by the Auditor General who told the Committee that the failure of the i6 project had set policing back a number of years and that "we will not get the full benefits" of reform until the ICT is modernised and transformed.⁴²
147. The Auditor General added that the challenge that the SPA provides to the new ICT strategy is "an important part of managing the risks" to policing.⁴³
148. Dr Kath Murray highlighted in her written submission that the pace of reform and the failure of the i6 programme had impacted on the national data available and that whilst investment in IT is an integral part of the Policing 2026 strategy "progress on ICT lags behind and is not yet fully quantified".³⁴
149. In its written submission, Audit Scotland warned that "The failure of the i6 programme and the need for investment in ICT represents a significant risk for the implementation of Policing 2026 and the realisation of the vision".⁴⁴

150. Chief Constable Iain Livingstone told the Committee that Police Scotland is still in the process of bringing together a host of legacy structures and systems. CC Livingstone explained that "... we moved to a single structure first and then inherited the multitude of different systems and approaches that existed. That has made the challenge harder".⁴⁵
151. In evidence to the Committee the Auditor General indicated that she was not in a position to provide an assurance that Police Scotland currently has sufficient IT, programme management and strategic capacity and capability.⁴⁶

Police Scotland's digital, data and ICT strategy

152. On 27 September 2018, the SPA Board approved Police Scotland's data, digital and ICT strategy (DDICT), based on a strategic outline business case. The strategy spans a ten-year period and requires additional funding of £298m. This consists of £244 million of additional capital expenditure and £54 million of revenue expenditure.
153. The draft 2019-20 budget proposes to increase the police capital budget by £12 million or 52%. According to the Scottish Government, the additional capital investment is expected to be directed towards ICT modernisation priorities identified in the DDICT strategy. The remainder of the budget, £23 million, is to cover a range of capital expenditure, to be prioritised by the SPA. This is to be directed towards investment in new assets, asset maintenance and asset replacement.
154. The full business case, which is to detail the timing and phasing of specific investments, has still to be provided to the SPA. It will be influenced by the levels of funding available.
155. The Auditor General and the Chief Inspector both assured the Committee that they plan to scrutinise the progress of the implementation of the strategy.⁴³
156. In Audit Scotland's 2017-18 audit of the SPA, it indicated that the strategy and strategic outline business case, approved by the SPA, represented a key part of the transformation of policing in Scotland and the delivery of Policing 2026. However, the Auditor General concluded that clarity about the £298m funding required to implement the strategy is a risk to both the timing of its implementation and the future financial sustainability of the SPA.⁴⁷
157. The Cabinet Secretary confirmed that investing in Police Scotland's ICT systems to achieve efficiency savings forms part of the SPA's deficit reduction plan. Mr Yousaf indicated that he was currently considering the robustness of Police Scotland's estimated cost of £298m to update its ICT estate.⁴⁸
158. The Scottish Government's [draft 2019-20 budget](#) was published on 12 December 2018. It indicates that the police capital allocation is to increase by £12m, to £35m. Police Scotland indicated in its written submission to the Justice Sub-Committee on Policing that ICT specific element of the funding request for 2019-20 was £88.9m.

159. The Justice Sub-Committee on Policing received evidence from the SPA and Police Scotland that the proposed budget will only partially fund the ICT strategy and that, as a result, key elements will need to be prioritised. Police Scotland and the SPA stated that “We estimate a proportionate capital grant for an organisation of the size and scope of policing would be in the order of £90m per year, and the draft capital settlement of £39.6 million clearly falls well short of that position”.⁴⁹
160. In its written evidence to the Sub-Committee, the Scottish Police Federation stated that the draft budget capital allocations “come nowhere near being able to deliver on the DDICT proposals and that fleet and buildings risk further decline over the forthcoming 12 months”. Adding that this has implications for Police Scotland achieving the anticipated productivity gains from the strategy, outlined in its 3-year financial plan.⁵⁰
161. In evidence to the Justice Sub-Committee on Policing, the Chief Constable, Iain Livingstone, explained that investing in people, without the necessary capital investment Police Scotland requires is a false investment, as it is crucial that police officers and staff are provided with the right equipment for policing in the 21st century. Police Scotland estimated that they required £88.9 million over the next financial year, whereas the draft budget proposes £12 million.
162. The Chief Constable added that the current situation is not sustainable, saying that:
- ” We are not looking for state-of-the-art or cutting-edge ICT; we are looking for tried and tested ICT that any organisation would expect to function with. We are not even working in an analogue age; we are still working with pen and paper in many areas, and that is not sustainable.”⁵¹

163. It is clear to the Committee that the financial memorandum under-estimated the cost and complexity of reforming Police Scotland’s ICT estate. In our view, a lack of reform in this area is impacting on the productivity of police officers and staff. This lack of reform remains a significant risk to Police Scotland realising the efficiency and effectiveness policy intentions of the 2012 Act and full transformation.

164. The Committee is concerned that the Auditor General was unable to provide an assurance that Police Scotland currently has sufficient IT, programme management and strategic capacity and capability and that Police Scotland and the SPA view the draft budget settlement for 2019-20 as insufficient to fully implement the ICT strategy.

165. Police Scotland’s digital, data and ICT strategy is the single largest public-sector ICT project in Scotland. It is essential that the SPA demonstrates robust scrutiny of its implementation. The Justice Sub-Committee on Policing is to implement an oversight regime to monitor the spend and delivery of the strategy.

Policy intention: To protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services

166. The Committee has considered whether each of the three main policy intentions of the 2012 Act had been met.

167. The first aim is to protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services.

168. The policy memorandum that accompanied the Bill indicated that:

” A single service model will drive out duplication, ensure consistency, and rationalise existing systems and structures. Efficiencies will be realised through economies of scale; expertise, capability and budgets will be pooled at a national level then targeted to meet local need. ⁵²

Protecting and improving local services and stopping the duplication of support services

169. Police Scotland indicated in its written evidence that, despite financial pressures, front-line policing services and performance levels have largely been protected and maintained, stating that:

” The frontline has been protected as result of the 2012 Act, with most police officers in local policing, based within our communities and supported by national, specialist resources ... Everyone in Scotland now has access to an improved level of service and protection, balanced between equal access to specialist national resources and local policing that meets the needs of our geographically diverse communities, whether they be remote, rural, urban or island. ²⁹

170. As part of the reform process Police Scotland reduced the number of its call centres and closed or relocated a number of its police stations. The Committee received evidence that some local authorities were concerned about the impact of the closure of police call centres in their areas.

171. Evidence from COSLA indicated that its members feel that national priorities overrode local processes and that budget savings have been achieved by cutting local resources, rather than through the economies and efficiencies that were anticipated by the creation of a single police service. ⁵³

172. Orkney Islands Council stated in its written evidence that it remained concerned about closure of local call handling centres and the prospect of emergency call arrangements being co-ordinated through geographically distant arrangements. ⁵⁴
173. Aberdeenshire Council raised a similar concern, stating it in its submission that it had expressed concerns that the merger might result in a loss of local knowledge and flexibility to adapt and respond to local issues. These concerns had been realised in relation to the challenges the new control centre structure had faced. ⁵⁵
174. In its written evidence, East Ayrshire Council indicated that the creation of the single service had removed much duplication in how support services are delivered. However, it expressed frustration at the Council's "limited opportunity to scrutinise the development and implementation of national policing decisions" which impact on local communities, such as the integration of command and control centres. ⁵⁶
175. Dumfries and Galloway Council raised a concern in its evidence about the centralisation of national support services reducing the workforce in its area. ⁵⁷
176. Susan Deacon, Chair of the SPA, told the Committee that the SPA and Police Scotland had to improve how it communicated what is going on "Otherwise, the public often feel that they might be losing something when in fact something else is being provided in its place in order to keep them safe". ⁵⁸
177. The centralisation of support services, as well as the creation of specialist units and the national delivery of police services has reduced the duplication of police support services. This has contributed to the significant financial savings made by Police Scotland and enabled it to continue to provide front-line services.
178. The creation of the single service has also given Police Scotland the ability to work collaboratively and in partnership with a variety of stakeholders to improve the services that it provides.
179. The Committee heard examples which demonstrated a strong commitment to partnership and collaborative working, such as the missing persons framework, the mental health strategy, the suicide prevention strategy, ⁵⁹ and the Scotland-wide referral protocols which allow all victims of recorded crime to be safely and securely referred to Victim Support Scotland. ⁶⁰
180. The Committee heard that the lack of national ICT systems hindered the ability of Police Scotland to reduce its duplication of services. In its written submission the Association of Scottish Police Superintendents stated that "... there remains considerable work to be done to transform Corporate Services functions and ICT Support functions, which are often the source of duplication between central HQ functions and territorial or specialist departmental Divisions". ⁶¹
181. This issue is covered in more detail in the section on access to specialist services and national capacity.

Maintaining front line services

Police staff

182. An area for savings highlighted in the financial memorandum that accompanied the Bill was the reduction in the number of police staff. It estimated that the rationalisation of support functions was likely to result in voluntary redundancies of police staff of 3% over the first 5 years.⁶²
183. Concerns were raised during the passage of the Bill that a disproportionate level of redundancies in civilian staff could result in police officers having to fill the void, with implications for front-line service delivery.⁶³
184. In its written submission to the Committee, UNISON Scotland indicated that civilian staff posts have been reduced by over 2,000 and officers are backfilling many of these posts:
- ” More than 2,000 police staff posts have gone, with no proper equalities impact assessment ... there has been the expensive use of police officers to backfill many of the civilian posts, including for Police Custody and Security Officers.”⁶⁴
185. Dr Kath Murray indicated in her submission that staff roles were reduced by nearly 40% between 2010 and 2018, and that the “... lack of data on the proportion of officers in frontline policing and support roles precluded meaningful scrutiny of the policy consequences”.³⁴
186. UNISON recommend that, as part of Policing 2026, a fully researched evaluation be undertaken to establish the number of officers and staff required to police Scotland.⁶⁴

Police officers

187. The policy memorandum that accompanied the Bill referred to 1,000 additional police officers, which was to meet the Scottish Government’s commitment to maintain police officer numbers at 17,234.⁶⁵
188. This commitment, along with a no compulsory redundancy policy for police staff, placed limitations on the SPA and Police Scotland’s ability to meet the predicted savings.
189. Chief Superintendent Ivor Marshall, President of the Association of Scottish Police Superintendents (ASPS), told the Committee that concerns about the impact of maintaining police officer numbers on achieving the expected savings have persisted. CS Marshall added that another unintended consequence was that “officers were taken away from their mainstream roles to fill support roles”.⁶⁶
190. In its 10-year strategy, *Policing 2026*, Police Scotland indicate its intention to change its workforce size and composition to provide the right balance of resources and capacity across the organisation.

191. The first phase of Policing 2026 is focused on creating capacity and assumes a reduction of 300 police officers by 2020-21 and returning officers from back office duties to front-line duties.
192. Calum Steele of the Scottish Police Federation cautioned that the planned reduction of 300 police officers does not acknowledge that Police Scotland currently struggles to meet all of the demands placed upon it.⁶⁷
193. Adding that the impact of the reduction in police officer numbers should be considered, as:
- ” Police officers in all areas of the service are working ridiculously long hours. We have stripped out ranks and supervision, which introduces its own risks”.⁶⁸
194. Professor Nick Fyfe told the Committee that an important question to ask is “what size and shape of workforce does Scotland need?”.⁶⁹
195. The Cabinet Secretary confirmed that the Scottish Government is no longer committed to retaining police officer numbers at 17,234. Mr Yousaf described the reduction in police staff as “inevitable”, but added “However, the latest statistics show that more officers are being taken out of those backfilled posts and returned to the front line”.⁷⁰
196. In a joint submission to the Justice Sub-Committee on Policing, Police Scotland and the SPA indicated that it would not be appropriate to reduce, in the first half of the financial year, the service by 300 officers. The Chief Constable also confirmed his intention to bring forward the recruitment of 120 officers in this financial year. This is to ensure that capacity and resilience is in place to prepare against a range of contingencies associated with Brexit. At the SPA Board meeting of 29 January 2019, the Chief Constable confirmed that Police Scotland is planning for up to 400 officers to be deployed to deal with the consequences of Brexit. The SPA agreed to write to the Scottish Government to quantify the funding required to appoint those officers.⁷¹
197. Police Scotland also confirmed in a submission to the Justice Sub-Committee on Policing that it is to carry out analysis of demand data in early 2019 to inform appropriate resource allocation models.²⁹

198. **In the Committee’s view, the creation of a single police service has partially met the objective of protecting and improving local services despite financial cuts, by stopping duplication of the support services in place during the previous arrangements, and not cutting front line services. Police Scotland has successfully reduced duplication of its support services and maintained the police service, despite significant financial constraints. However, the Committee received conflicting views about whether local services have been improved and front line services maintained.**

199. **The Committee notes that communication of policing changes by Police Scotland and the Scottish Police Authority with the local authorities remains an issue which requires to be addressed and asks the Cabinet Secretary for Justice to comment.**

200. **The Committee notes that it is for the Chief Constable to determine the number of police officers and staff that Police Scotland require and notes the Chief Constable's view that 400 officers are required to deal with the consequences of Brexit. However, the Committee is concerned that, five years on from reform, police officers continue to 'backfill' police staff posts, although it is unclear the precise extent to which this happens. The Committee notes the lack of data in this area and the need for sufficient information to be made available to the Scottish Parliament to enable it to scrutinise operational efficiency.**

201. **The Committee welcomes the demand analysis exercise that Police Scotland is undertaking to inform resource allocation models. The Committee recommends that it includes anticipated Brexit demands.**

Understanding demand

202. One of the reasons given for the need for reform was to address the increasing levels of demand on the police service.
203. In its written evidence Police Scotland indicated that despite increased demand it has achieved significant savings, without any overall negative impact on front-line services, stating that:
- ” Since 1 April 2013, Police Scotland has dealt with more than eight million incidents, and securely policed major political, sporting and cultural events and the visits of VIPs, with low impact on community policing or other services across the country. Examples include the Commonwealth Games, the Ryder Cup and Open Championships, and the annual Edinburgh Festival. ²⁹
204. The 10-year strategy seeks to understand the wide range of services that the police service provides through its demand workstream.
205. The Committee heard that this demand analysis needed to be accelerated. HM Chief Inspector of Constabulary, Gill Imery, indicated that an accurate analysis of policing demand is key to understanding how many police officers are required and how those posts should be distributed across Scotland. However, she expressed “some concern about the pace of that work”. ⁷²

206. Ivor Marshall of ASPS said this work needed to be accelerated as it should inform “the resources that will be required to address that demand”, including specialist resources at a national level and also the resources required for local divisions.⁷³
207. In evidence to the Committee, Susan Deacon referred to statistics that indicated that around 80% of calls to the police are not connected to crime, but are to do with assisting vulnerable people. Ms Deacon confirmed that a key area of work for the SPA is to ensure that the police service is working effectively with other service providers to ensure that people receive the right response and support.⁷⁴
208. The Cabinet Secretary for Justice told the Committee that it is for the Chief Constable to decide how police officers are to be deployed, however, he added that the number of demands being placed upon police officers cannot be ignored. Mr Yousaf explained that the re-balancing exercise to bring more officers into the national capability would have a local impact in keeping communities safe and tackling specific issues locally.⁷⁵
209. Adding that, any reduction in police officer numbers would be overseen by HMICS “to ensure that there is enhanced operational capability and no detriment to the service as a result”.⁷⁶
210. In a written submission to the Justice Sub-Committee on Policing, the Scottish Police Federation indicated that the draft 2019-20 budget provides funding for 16,834 police officers.⁷⁷

- 211. The Committee welcomes the demand workstream in the 10-year strategy for policing to address the increasing levels of demand. The Committee believes that understanding demand is pivotal to informing a sustainable operating model and agrees that this work should be prioritised to inform decisions on the optimum number of police resources required.**

Policy intention: To create more equal access to specialist support and national capacity – like murder investigation teams and firearms teams – where and when they are needed

212. The policy memorandum that accompanied the Bill indicated that the establishment of a single police service was the best way to create more equal access to specialist support and national capacity, where and when they are needed. This included capacity to respond to adverse weather conditions or terrorist threats and policing specialist support such as murder investigation teams, firearms teams and tackling e-crime.⁷⁸

Access to specialist support

213. Police Scotland indicated in its submission that prior to the introduction of the 2012 Act, access to specialist resources across the legacy forces was inconsistent. Police Scotland stated that there is now more consistent access to specialist resources across Scotland and that this policy intention has been met.²⁹
214. The Committee heard that specialisms were multidisciplinary and could include firearms, public order and major investigation teams.
215. Calum Steele of the SPF and Ivor Marshall of the ASPS confirmed that scrutiny and input to the provision of specialist services had improved. Ivor Marshall added there is the opportunity to bid for counter terrorism and other specialist resources in a better way.⁷⁹

Impact on local policing

216. Calum Steele added that whilst equal access to specialist services was difficult to measure, the specialisms had been well resourced. Adding that those resources might require to be balanced against the resources provided for front-line services.⁸⁰
217. The Year 1 report on the Evaluation of Police and Fire Reform stated that this objective was the one in which greatest progress could be demonstrated. However, it highlighted that there were on-going challenges about the impact of the creation of specialist units on local policing.⁸¹
218. The Year 2 evaluation report found that local police officers were positive about the achievements in relation to improvements in accessing national capacity and specialist expertise.³

219. However, local officers raised also some concerns about the impact of the creation of specialist teams on local policing. These included some officers being redeployed away from the local area and not being replaced, the impact on skills retention and career progression, and the centralised location of the specialist teams and their ability to respond quickly to local incidents.³
220. Professor Nick Fyfe told the Committee that the creation of specialist teams had created “a two-tier system”.⁸²
221. Ivor Marshall agreed, adding that the removal of some senior posts to central locations meant that there was a reduction in opportunities for those in higher ranks to remain in more rural parts of Scotland.⁸³
222. Calum Steele of the SPF told the Committee that whilst national and specialist resources may be provided consistently, they are not being provided by local police, and that as a result local policing had suffered, stating that:
- ” We have to return to first principles. It is all very well talking about national and specialist services, but to a large extent they have been delivered to the detriment of local services or services that would traditionally have been considered to be local policing activities.”⁸⁴
223. Calum Steele added that the moving local police officers to specialist areas was impacting on policing, stating that:
- ” The price of that has been human. Police officers in all areas of the service are working ridiculously long hours. We have stripped out ranks and supervision, which introduces its own risks.”⁸⁴
224. Chief Superintendent Thomson of Police Scotland explained to the Committee that he can access national resources to support his local police resource, such as roads policing and can request access to specialist resources, such as the use of a helicopter to search for a missing person. However, he added that there is pressure on specialist resources, saying “There is always going to be a challenge with regard to where the priority lies for those resources”.⁸⁵
225. Yvonne Beresford explained that West Lothian Council is informed when Police Scotland bids for further officers or access to specialist resources, but is not included in the decision-making process.⁸⁶

226. **The Committee believes that the creation of a single police service has achieved the policy objective of providing more equal access to specialist support, most notably improving Police Scotland’s approach to the investigation of sexual crimes and domestic abuse. However, the Committee would be concerned if this has led to any unintended consequences, such as officers from local areas being redeployed and not replaced.**

227. The Committee asks the Cabinet Secretary for Justice to respond to this issue.

228. The Committee recommends that Police Scotland and the Scottish Police Authority address the concerns expressed by officers about the impact of the creation of specialist services on local policing and also review the information that is provided to local authorities to enable them to understand the specialist support available to them.

Improving national capacity

229. In its written evidence to the Committee Police Scotland provided the following examples of how national capacity has improved policing:

- Better capability at a national level to respond to organised crime and counter terrorism;
- National structures for custody; criminal justice; and contact, command and control services;
- Improved multi-agency response to critical and major incidents supported by a single police Command and Control system;
- More firearms officers on duty across the country;
- A national approach to policing the major road networks;
- National units to tackle child abuse, human trafficking, rape and domestic abuse;
- The Major Investigation Team carries out specialist investigations across Scotland, improving detection rates and lowering the impact on local policing;
- The £73 million Scottish Crime Campus at Gartcosh has state of the art forensics capacity and houses DNA 24, the most advanced DNA profiling facility in Europe; and
- Expertise in digital forensics and cybercrime prevention is being introduced in locations across the country.²⁹

230. The Committee heard that the creation of the single police service has enabled the creation of national units that have improved its ability to investigate and solve certain crimes. Most notably rape and sexual crimes.

Rape, sexual offences and domestic violence investigations

231. In written its evidence, Rape Crisis Scotland indicated that the creation of a single police force and the national rape task force had “transformed” the way that rape

and other sexual crimes are investigated in Scotland. Sandy Brindley told the Committee that the single structure enabled "... any learnings from complaints to be integrated into practice much more easily than would have been the case when there were distinct forces across Scotland". Ms Brindley added that this could be improved further if "... issues with attitudes, training and culture" within policing were addressed.⁸⁷

232. In its written evidence, Scottish Women's Aid (SWA) indicated that Police Scotland's response to reported domestic abuse had improved, dramatically in some places. However, Scottish Women's Aid raised concerns about policing practices still varying significantly across Scotland and a loss of local knowledge and connections. The SWA asked for greater consultation and involvement with Police Scotland at a local level and earlier engagement ahead of any proposed changes.⁸⁸
233. The Coalition for Racial Equality and Rights (CRER) stated in its written evidence that, in some ways, collaboration between Police Scotland and the third sector had weakened since restructuring. In particular, the loss of Community Liaison Officers, who had built up good relationships with those in the BME community. It asked that this role be reinstated.⁸⁹
234. Chief Superintendent Thomson, Police Scotland, told the Committee that having one consistent way of doing business is a strength. CS Thomson explained that it has enabled better interaction with the voluntary sector and other partners in tackling domestic abuse,⁹⁰ and Councillor Whitham said that it had enabled East Ayrshire Council to embed tackling violence against women at a local level as a strategic priority within its community planning partnerships.⁹¹
235. Susan Deacon, Chair of the SPA, highlighted that communities receive the same high standard of policing right across the country in the investigation of domestic abuse.⁹²

Murder investigations

236. Ivor Marshall told the Committee that the policy intention to build capability and capacity across policing to respond to major and changing threats to national security and to counterterrorism and other strategic issues had been met.⁹³
237. Chief Constable Iain Livingstone explained that the single service enabled Police Scotland to improve its approach to investigating unexplained deaths, accidental deaths, and suicides. The Chief Constable told the Committee that Police Scotland had investigated and solved 318 out of the 320 murders committed since its establishment, adding that:
- ” When I share that statistic with colleagues internationally, they are struck by its significance. We have been able to do that because we now have the capability to respond thoroughly to any death, wherever it occurs in Scotland.⁹³
238. Mr Yousaf described the changes to police investigations and other areas as “a dramatic improvement”. The Cabinet Secretary confirmed that there is now more

national expertise and an effective response in tackling issues such as terrorism, child protection, major investigations and human trafficking. Mr Yousaf told the Committee that strengthening national capabilities provides benefits to local policing, as they can access that expertise.⁹⁴

239. **The Committee believes that the policy intention to create more equal access to national capacity has been met and is a success story for policing in Scotland. People across Scotland are now able to access specialist resources and are provided with a consistent and high-level of service. The single service has transformed the way it investigates rape and other sexual crimes, improved its approach to investigating murders and unexplained deaths, and its response to dealing with national threats.**

Policy intention: To strengthen the connection between services and communities, by creating a new formal relationship with each of the 32 local authorities, involving many more local councillors and better integrating with community planning partnerships

Level of engagement by Police Scotland

- 240. The Year 1 evaluation report found that local scrutiny arrangements had improved but were of variable quality. It found that there were concerns about the scope of local committees to discuss and challenge decisions taken at a national level that impacted locally.
- 241. The Committee heard that local scrutiny bodies have not been involved early enough in decisions made by Police Scotland and the SPA prior to their implementation.
- 242. Ivor Marshall of ASPS told the Committee that “The voice of local scrutiny boards in affecting national policies has not been heard as strongly as it could and should have been”. ⁹⁵
- 243. Councillor Elena Whitham, Interim Spokesperson for the Convention of Scottish Local Authorities wellbeing board and deputy leader of East Ayrshire Council, said that it was imperative that local police forums are involved at the policy creation stage, stating that “At the moment, decisions that have local implications are made at a national level without local input”. ⁹⁶
- 244. In response to a question about whether local authorities have adequate opportunities to feed into Police Scotland’s national policies, so that local priorities and experiences are reflected, Ms Beresford of West Lothian Council said “I am not aware of any particular consultation that reflects that”. ⁹⁷
- 245. Whilst Councillor Vettraino from Fife Council responded that “I do not know whether I have the opportunity to feed into the national strategy ... There is no formal chain of communication to allow me to input”. ⁸⁶
- 246. The Committee received evidence of national decisions which had been implemented with little or no involvement from local representatives.
- 247. In its written evidence, the Safe Glasgow Group described the relationship between local scrutiny arrangements and national ones as “unclear” and referred to an

ongoing issue with the nationally implemented policy change to managing public processions through the use of Temporary Traffic Regulation Orders (TTRO's).⁹⁸

248. In its written evidence, Orkney Islands Council indicated that the decision to remove police funded traffic wardens across Scotland is an on-going and significant issue for Orkney.⁵⁴
249. Mike Callaghan of COSLA told the Committee that genuine early engagement would mean that there were no surprises for local communities when policing changes in their area were introduced.⁹⁹
250. Chief Superintendent Thomson, Police Scotland said that the police service must improve at engagement and whilst it had learned from the mistakes it had made, he added that "We have definitely not yet got to where we need to be".¹⁰⁰
251. Chief Constable Iain Livingstone acknowledged that Police Scotland did not engage effectively with police officers, support staff and elected members during the early days of reform and that this had to do with the implementation of national policy decisions without an understanding of how these decisions would be perceived or a demonstration of robust governance. The Chief Constable said that these lessons had been learned and that when Police Scotland now considers implementing change there is better communication and proper governance and structures put in place.¹⁰¹
252. The Cabinet Secretary indicated that the COSLA Police Scrutiny Conveners Forum, which meets twice year, could play a key role in addressing the concerns expressed by some local authorities about a disconnect between a focus on national capabilities and local priorities.¹⁰²
253. The CoSLA Police Scrutiny Conveners Forum was established in 2016 to respond to a concern shared by CoSLA and the Chair of the Scottish Police Authority in 2016 that local scrutiny bodies did not feel they were sufficiently listened to regarding local policing and were unable to input into national policy issues. It aims to enhance the ability of elected members to have a defined role in the governance and scrutiny of policing in Scotland. It also aims to provide a mechanism for local elected members to provide input into national policy issues and broader policing matters that have an impact on local communities. It meets about twice a year.

254. In the Committee's view, there were clearly issues with Police Scotland engaging effectively with local authorities in the early days of reform. While this has improved, the level of engagement is not of a consistently high quality across all local authorities. The Committee therefore welcomes the commitment by the Chief Constable of Police Scotland to include local scrutiny bodies earlier in the decision-making process.

255. To achieve the policy aim of local authorities shaping the police service design and delivery in their areas, Police Scotland must ensure from the outset that the new approach enables effective engagement and influence.

Local authorities should also review their role and consider whether they can learn from approaches adopted in other areas to improve their involvement and scrutiny.

Level of engagement by the Scottish Police Authority

256. The Committee heard that the level of engagement between the SPA and local authorities could be improved.
257. Calum Steele told the Committee that whilst the 2012 Act had legislated for local scrutiny of police services, the local authorities seemed to be undertaking less scrutiny than before. He suggested that the SPA and local authorities work together to improve “the relationship that is needed to ensure that local scrutiny exists”.¹⁰³
258. Chief Superintendent Thomson, Police Scotland, echoed this view, saying that the issue of “how local authorities can influence the SPA and the gap in that respect” had been raised for a number of years, and that the situation could be improved.¹⁰⁴
259. Ivor Marshall told the Committee that an unintended consequence of the centralisation of policing was that it made it had more difficult for local voices to be heard.¹⁰⁵
260. Professor Nick Fyfe, Scottish Institute for Policing Research (SIPR), said that the focus should now move from centralisation to localism and that the SPA should strengthen its relationships with Police Scotland and local bodies, so that there is consideration of: “how local scrutiny committees have a voice nationally”.¹⁰⁶
261. In its written evidence, HMICS noted the removal of the liaison role for specific SPA Board members with the 32 local scrutiny bodies. The Chief Inspector supported: “consideration of how links between the SPA and local authorities could be re-established in future”.⁴¹
262. The Chief Inspector told the Committee that “... the key to the success of reform lies at a local level” adding that “Policing by consent is pivotal to everything”.¹⁰⁷
263. The Auditor General told the Committee that whilst the local policing provisions within the 2012 Act did not require to be amended, work should be undertaken to determine how the 2012 Act and the Community Empowerment (Scotland) Act 2015 were being applied, stating that:

” My sense is that, with the local scrutiny committees, we have the right mechanism, but we know that they are very variable in practice. I think that it is important for the SPA to engage in looking at how they are working across the 32 local authority areas and, by doing so, to get much more of a sense of the extent to which the principles that were set out in the Community Empowerment (Scotland) Act 2015 are being followed and dialogue is taking place with local communities and their representatives, and of the scope that exists to flex local policing while maintaining, protecting and investing in the national capacity, where that is required. From my perspective, that is the unanswered question about the reform process so far. ¹⁰⁸

264. Susan Deacon, Chair of the SPA, suggested that the SPA should improve how it communicates and make changes to its culture and practices, so that it is providing information to local authorities in advance of policing issues being discussed, saying that:

” There should be clear visibility around what key decisions will be coming up at different times. There should be active communication with local authorities and other stakeholders about when the policy decisions and so on will come up. There must also be advance notice of major changes in policing. ¹⁰⁹

265. The Committee notes the views that the local scrutiny mechanisms do not require to be amended. The Committee welcomes the commitment from Susan Deacon to improve the culture and practices within the Scottish Police Authority and how it communicates with local authorities.

266. Whilst the Act provides for more involvement from local authorities in policing decisions, the Committee believes that the policy intention has not been met consistently across the 32 local authorities. The Committee recommends that the Scottish Police Authority undertake an analysis of how local scrutiny committees are working, including the level and type of information provided by Police Scotland to local authorities, to determine whether the policy intentions of the 2012 Act and the Community Empowerment (Scotland) Act 2015 are being met.

267. The Committee notes that whilst the 2012 Act legislates for local scrutiny of police services, an unintended consequence of the centralisation of services is that local authorities seem to be undertaking less scrutiny than before.

268. The Committee recommends that the Scottish Police Authority consider how to strengthen its links with local authorities, including re-instating the liaison role for specific SPA Board members with the 32 local scrutiny bodies.

269. **The Committee recommends that CoSLA undertake an analysis of how local authorities are scrutinising local policing decisions in their areas and consider how to address the Auditor General's concerns that the level of scrutiny is variable.**

Local police plans

270. The new formal role for local authorities is built around the joint development of a local police plan setting out the shared priorities and outcomes to which the police service is to be directed.
271. 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. The local commander has a duty to involve the local authority in setting priorities and objectives and to provide information and reports to the local authority, to enable it to effectively scrutinise and monitor performance and local service delivery.
272. Each local authority has powers to agree the local police plan, scrutinise and monitor performance, seek reports and information from the local commander, and provide advice and recommendations on local policing.
273. Section 45 of the Act requires local commanders to provide local authorities with information that it might reasonably require to assist it in setting policing priorities and objectives and scrutinising policing in its area. It is for the Chief Constable to confirm whether the relevant information should be provided.
274. In its written evidence, HMICS stated that the ability of local scrutiny bodies to influence national decision making has been more limited, adding that scrutiny: "can be affected by the quality of information provided to the local scrutiny body by the police".⁴¹
275. Questions were raised in evidence about the role of local authorities and scrutiny bodies in considering how resources are prioritised and applied.⁹⁸
276. Yvonne Beresford of West Lothian Council told the Committee that Police Scotland's decision not to provide it with the number of police officers allocated to its area inhibits its ability to scrutinise policing for its local authority area. Ms Beresford added that "There is a feeling across West Lothian Council that it would be beneficial to have more transparency about the scale of the resources that are available in our local area and to understand the demands, the numbers and the flexibility that Police Scotland has within J division".¹¹⁰
277. The Auditor General told the Committee that to enable local scrutiny committees to carry out their function Police Scotland require to be more transparent about what resources are available, saying that "It is now a question of making a reality of making that information available and genuinely entering into a discussion about it".¹¹¹

278. The Committee notes that local authorities now have more input to local policing decisions in their areas. To meet the policy objective of enabling local authorities to effectively scrutinise and monitor performance and local service delivery, Police Scotland must review and, where necessary, improve the level and type of information that it shares.

279. The Committee heard that the local police plans and the introduction of the Community Empowerment (Scotland) Act 2015 has helped positive working relationships and successful partnership working between Police Scotland, local authorities and others to develop. Examples of partnership working included reducing re-offending in West Lothian and co-locating services in the north-east of Scotland.

280. Chief Superintendent Thomson of Police Scotland told the Committee that the introduction of the Community Empowerment (Scotland) Act 2015 could improve partnership working further, saying that “Through integration and the alignment of the policing plan with local outcome improvements, we will truly make a difference”.¹¹²

281. In its written submission HMICS stated that local scrutiny bodies are responsible for approving the local police plan, however the Inspector noted that “the Act is silent as to the consequences should approval be withheld”.⁴¹

282. The Committee recommends that the Scottish Government introduce a resolution process in the event that a local authority does not approve the local police plan.

Local police commanders

283. Section 17 of the Act provides for a local police commander to be designated for each local authority area. They are to be the first point of senior contact for the local authority and other partners locally and the lead officer for the services in community planning.

284. The Committee considered whether this role was working as the legislation intended.

Autonomy

285. The Committee heard that in areas where there was less turnover in the position of the local police commander, strong relationships had developed, and the role worked well. Some witnesses suggested that the role could be improved by local police commanders being given greater autonomy in implementing national decisions locally and more control over how they allocated budgets and resources.

286. Councillor Elena Whitham, East Ayrshire Council, stated that greater empowerment and adequate resources would enable local commanders to “... make decisions to

help them and their community planning partners to deliver services on the ground at a local level". ¹¹³

287. Mike Callaghan of COSLA agreed, adding that resources could be deployed in line with local priorities if there was less centralisation of police systems and processes. ¹¹³

288. Ivor Marshall of the ASPS told the Committee that local commanders lack of budgetary autonomy frustrated partnership working, community planning and community empowerment. ¹¹⁴

289. Whilst Calum Steele of the SPF indicated that part of the issue was that local authorities no longer had budgetary responsibility for managing police resources in their areas. Mr Steele suggested that COSLA should be given the authority to appoint people to the SPA Board, to enable local authorities to influence financial decisions that will impact on local communities. ¹¹⁵

290. Chief Constable Iain Livingstone confirmed that he would like to see greater local scrutiny of policing by local elected members and others, and confirmed his intention to increase the delegation and autonomy of the local area commanders, stating that:

” I would like, as best I can, to devolve greater financial autonomy so that local commanders can find creative solutions with local partners. I have already commenced that by increasing the level of financial autonomy to local commanders for them to deploy.

291. The Cabinet Secretary stated that the Committee's evidence indicated that there needed to be improvements made in engaging and consulting with local authorities on police matters. Mr Yousaf said that he was "heartened" by the Chief Constable's proposal to consider how to devolve aspects of policing to local authorities, adding that this showed "... that there is a willingness and scope to look at sensible measures that are brought forward to allow communities a greater say in how they are policed". ¹¹⁶

292. The Committee welcomes the approach of the new Chief Constable to increase the delegation and autonomy to local area commanders and his view that there should be greater local scrutiny of policing by local elected members. This development should assist in meeting the policy intention of enabling communities a greater say in local policing.

293. The Committee asks the Cabinet Secretary for Justice to respond to the suggestion that the Scottish Police Authority Board membership does not adequately reflect local authority perspectives and consider how this can be addressed.

Appointment of a local commander

294. Section 44 (2) of the Act gives the Chief Constable responsibility for designating a constable as a local commander, after consulting the local authority.
295. The Committee heard that this process could be improved by including local authorities in the appointment process.
296. Councillor Vettraino from Fife Council and Yvonne Beresford from West Lothian Council both agreed with the suggestion that local authorities be asked to confirm the appointment of a local police commander.⁵⁹
297. Chief Superintendent Campbell Thomson of Police Scotland thought that local authorities could be represented on the selection panels, telling the Committee that:
- ” It would be a great opportunity to invite local authority chief executives to inform such panels. That has not happened in the past, but I know that they are very much involved in selecting senior police officers. I think that that would be a step forward.⁵⁹
298. Section 44 (3) of the Act provides that a constable may be designated as local commander in relation to more than one local authority area. Should local authorities be involved in the appointment process, consideration may require to be given to amending the Act so that a local commander is designated to each local authority area.
299. **The Committee notes the proposal to include local authorities in the selection process for local commanders. However, the Committee recommends retaining the current approach whereby Police Scotland consults local authorities on the appointment of a local commander, as this approach maintains the operational independence of the Chief Constable.**

Independent custody visiting

300. Another policy aim of the 2012 Act was to place independent custody visiting onto a statutory footing.
301. The provisions in Chapter 16 of the Act are in pursuance of the objective of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). That is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.
302. The SHRC welcomed these provisions. However, it recommended that, in order to meet the objectives of OPCAT, further consideration should be given to the procedure for refusing access. The Commission raised a concern about the decision to refuse access being taken at an operational level, without any provision for authorisation or oversight.¹¹⁷
303. In its joint written submission, the UK National Preventive Mechanism (UK NPM) and HMICS confirmed that the 2012 Act had strengthened arrangements for custody visiting and provided a more consistent approach to safeguarding detainee rights across Scotland. The UK NPM and the Inspectorate asked the Committee to consider recommending the extension of the OPCAT provisions in the 2012 Act in relation to independent custody visiting to inspection of police custody as conducted by HMICS. They indicated that “This would put the OPCAT related work of HMICS in inspecting police custody on a statutory footing and make clear its purpose”.¹¹⁸
304. **The Committee asks the Cabinet Secretary to consider amending the independent custody provisions of the 2012 Act to meet the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligations.**

Police complaints and investigations

305. Chapter 10 of the 2012 Act places a number of requirements on the SPA and the chief constable in terms of dealing with relevant complaints, and also renames the Police Complaints Commissioner for Scotland as the Police Investigations and Review Commissioner (PIRC) and extends its remit. This includes ensuring 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.
306. The Committee received evidence about the police complaints handling processes from a number of people who have experience of the complaints handling process. It is clear that this is an area of policing about which people feel strongly and that there is a lack of confidence in how police complaints are being handled. The Committee would like to thank all of those who took the time to suggest improvements based on their experiences.

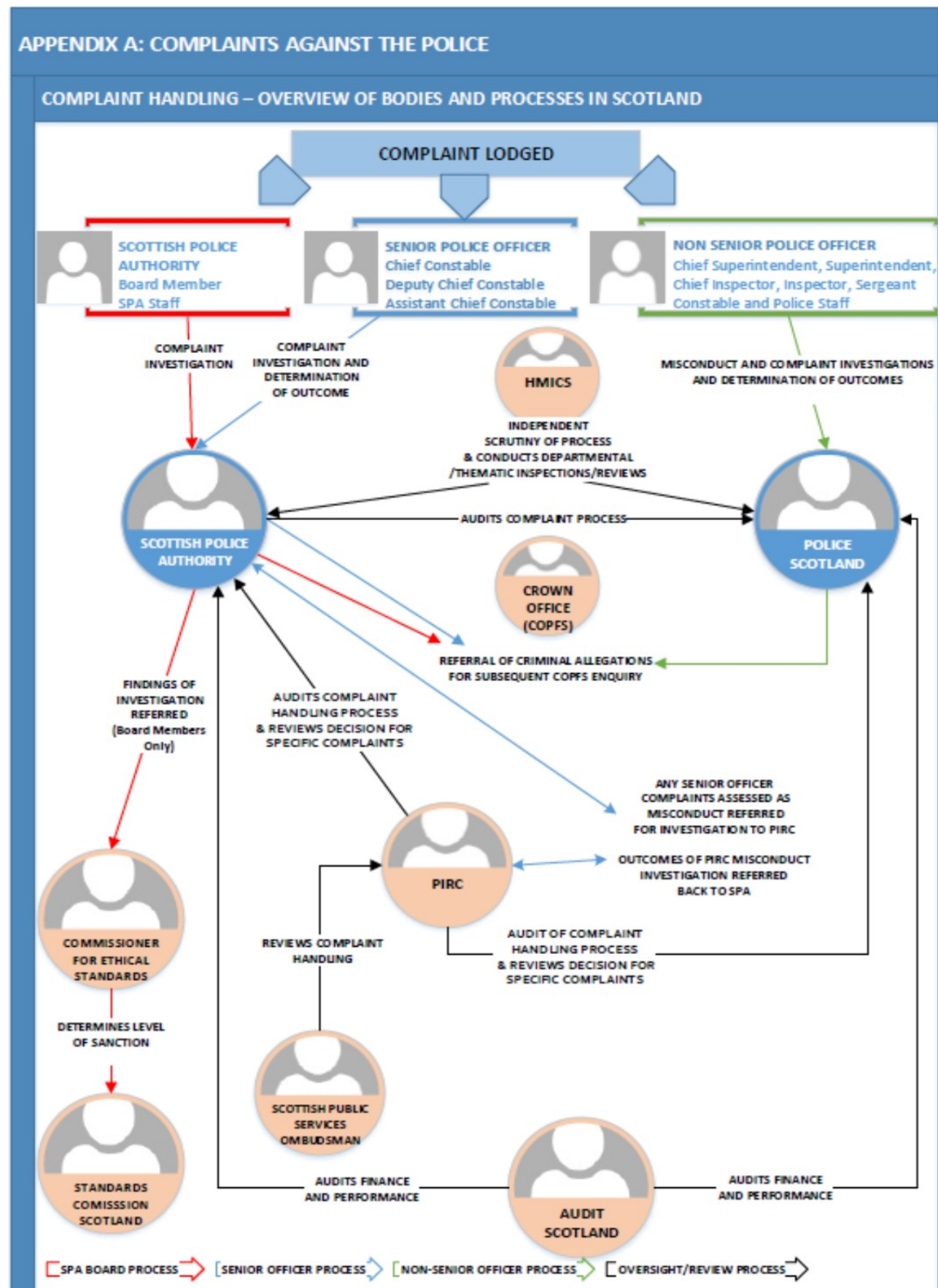
307. The Committee notes the concerns expressed in evidence to us about the complaints handling process and welcomes the decision by the Cabinet Secretary for Justice, in June 2018, to establish a wide-ranging independent review of the processes for handling complaints against the police and investigating serious incidents and alleged misconduct.

308. The review is led by the Rt Hon Dame Elish Angiolini QC. Its remit is to assess the current framework and report to the Scottish Government on the effectiveness of structures, operational responsibilities, and processes.
309. The review is expected to make recommendations for improvements to ensure that the complaints system is fair, transparent, accountable and proportionate, in order to strengthen public confidence in policing in Scotland. It is expected to take between 18 months and 2 years. It will publish an interim report in Spring 2019 on areas where imminent changes are required.
310. The evidence that the Committee received suggested a number of areas for improvement. These are highlighted below.

Complexity

311. The Committee heard that the police complaints handling processes are a complex mixture of internal and external processes, involving a number of organisations, which people find difficult to navigate. It consists of a range of processes for criminal and non-criminal complaints, conduct, grievances and whistle-blowing.
312. The infographic below provides an overview of the bodies and processes involved in police complaints handling.

Police complaints process



Source: Infographic on the police complaints handling process, provided by the Scottish Police Authority

313. Police Scotland have a responsibility to consider complaints received about officers who are of the rank of Chief Superintendent or below, whereas complaints about officers above that rank are considered by the Scottish Police Authority.
314. In written evidence to the Committee, HMICS expressed a concern about public confidence in the complaints handling system, stating that:
- ” Recent experience in Scotland raises questions about the procedures in place to deal professionally with complaints, ensuring that the duty of care towards complainers and those subject to complaint is fulfilled. ⁴¹
315. The Cabinet Secretary told the Committee that the complaints handling processes could be simplified, stating:
- ” Where there is unanimous agreement among stakeholders that a specific measure can be implemented quickly in order to fix something, there is no reason that we should not seek to do that. ¹¹⁹

The time taken to investigate complaints

316. The Committee heard that the complaints processes can take too long and that the time taken, coupled with a lack of information provided throughout the process, can have a detrimental effect on the health of the complainant and those who are the subject of a complaint.
317. Police Scotland and the SPA both have a non-statutory deadline of 56-days to investigate and conclude complaints. This deadline is often not met for a variety of reasons.
318. John McSporran of the PIRC told the Committee that there are a number of factors which inhibit complaints of all types from being investigated quickly. These include the length of time that the SPA or Police Scotland take to consider a complaint before passing it to the PIRC, the resource implications for PIRC when it has a number of competing category A investigations to be prioritised, dealing with a series of allegations over a number of months that relate to the same complaint, and identifying vexatious complaints. ¹²⁰
319. Written evidence by Anonymous 1 highlighted the time taken by the COPFS to determine whether any charges are to be brought when there is an allegation of criminality, stating that “The COPFS can often take over a year to consider a report from Police Scotland, PIRC, and other agencies”. ¹²¹
320. Commissioner Kate Frame told the Committee that regulation 5 could be amended to include defined timescales for the COPFS directed investigations. ¹²²
321. Karen Harper recommended in her written evidence that timeframes be set for Police Scotland, the SPA and the PIRC to meet throughout the complaints process, as well as a duty to respond to requests for information timeously and with complete information. Ms Harper suggested that this duty should include a set time period for complaints to be acknowledged, within which officers who are the subject of lodged

complaints are to be informed, and within which witnesses are interviewed following receipt of a complaint.¹²³

322. There can be a disproportionate impact on the police service when investigations into complaints about senior officers are not concluded quickly. In response to a question about whether these complaints should be prioritised, Gill Imery, HMICS, agreed that they should saying, “The more quickly such an issue can be addressed and concluded one way or another, the better”.¹²⁴

323. The Committee notes that Police Scotland and the Scottish Police Authority both have a non-statutory deadlines of 56 days to investigate and conclude complaints, which is often not met. The reasons given for this include:

- the length of time that the SPA or Police Scotland take to consider a complaint before passing it to the PIRC;
- the resource implications for the PIRC when it has a number of competing category A investigations to be prioritised;
- dealing with a succession of allegations over a number of months that relate to the same officer;
- identifying vexatious complaints; and
- the time taken by the COPFS to determine whether any charges are to be brought when there is an allegation of criminality.

- 324. The Committee recommends introducing a set time for Police Scotland and the Scottish Police Authority to acknowledge receipt of complaints, to inform officers who are the subject of complaints, and for witnesses to be interviewed following receipt of a complaint. The Committee further considers that complaints against chief officers should be prioritised.**

Transparency

Police Scotland’s discretion to refer complaints

325. Police Scotland initially assess a complaint to determine how it is to be categorised. This decision determines the complaints process that it will follow.
326. Susan Deacon, Chair of the SPA, told the Committee that the senior conduct regulations could be clearer about the categorisation of complaints, stating that “... there are particular definitions in the regulations as to what constitutes misconduct and gross misconduct, which are open to lots of interpretation”.¹²⁵
327. Evidence received from those who have experienced the police complaints process indicated that they do not feel that they are provided with enough information to

effectively pursue their complaints. Karen Harper in her written evidence, suggests that this could be improved by the policing bodies having a duty to provide complainants with regular updates on the progress of their complaints and the procedures being followed ¹²³, and provided with a named contact. ¹²⁶

328. If a complainant is dissatisfied with Police Scotland's investigation or the outcome, they can refer the matter to the PIRC.
329. The Commissioner, Kate Frame, and John McSporran, Head of Investigations, expressed a concern about the level of discretion that Police Scotland has to categorise and investigate complaints in the first instance. Specifically:
- Police Scotland's initial recording of non-criminal complaints, as it has inappropriately used front-line resolution for serious complaints.
 - How Police Scotland is interpreting serious incidents, as the PIRC has recently seen some evidence of serious criminal allegations being inappropriately recorded. The PIRC is only alerted to this occurring if complainants request a complaint handling review of their case.
 - Police Scotland's approach to investigating on-duty and off-duty criminality. ¹²⁷
330. In supplementary written evidence, Police Scotland explained that as complaints are categorised on a case-by-case basis "... there will be occasions where there is a difference of opinion in terms of complaint categorisation". ¹²⁸
331. Ms Frame also raised a concern about the discretion given to Police Scotland in determining what constitutes a serious incident in the 2006 Act and whether to refer to the PIRC for an investigation. Ms Frame recommends that the term "serious incident" within the regulations be amended to "a potential breach of articles 2 and 3 of the European convention on human rights". ¹²⁹
332. In supplementary written evidence, the Commissioner states that the PIRC can only undertake an independent investigation of a serious incident, regardless of whether or not someone has been injured, if Police Scotland define it as a serious injury and refer it to the PIRC. The Commissioner provided an example which illustrated this point. ¹³⁰
333. The SHRC raised a similar concern that the regulations afford the Chief Constable or the SPA discretion as to whether or not to refer circumstances of baton use to the PIRC for independent investigation. ¹¹⁷ In evidence to the Committee, Diego Quiroz explained that baton use triggers article 3 ECHR requirements and therefore referral should be mandatory. ¹³¹
334. He also told the Committee that the PIRC has discretion to decide whether to investigate a serious incident. Mr Quiroz indicated that it would be more transparent for the Commissioner to provide reasons for decisions not to investigate. ¹³²

335. The Committee acknowledges the view expressed to us that the senior conduct regulations could be clearer about the categorisation of

complaints, particularly the definitions for what constitutes misconduct and gross misconduct, which are open to interpretation.

336. The Committee notes the concerns expressed about the level of discretion that Police Scotland has to categorise and investigate complaints in the first instance and that some serious complaints have been inappropriately recorded. It has been suggested that the term 'serious incident' within the regulations be amended to a potential breach of articles 2 and 3 of the European Convention on Human Rights. The Committee considers that this is an issue that should be addressed.

337. The Committee notes the concern expressed to us in evidence regarding baton use where the regulations afford the Chief Constable or the Scottish Police Authority discretion as to whether or not to refer circumstances of baton use to the PIRC for independent investigation, as baton use triggers article 3 ECHR requirements.^{vi} The Committee asks Police Scotland and the Cabinet Secretary for Justice to comment on the proposal that referral should be mandatory when baton use relates to a serious incident.

338. The Committee further notes that the PIRC has discretion to decide whether to investigate a serious incident and agrees that it would be more transparent for the Commissioner to provide reasons for decisions not to investigate and asks the Cabinet Secretary to respond to this point.

Investigation of criminal complaints

339. Commissioner Kate Frame told the Committee that initially the PIRC experienced: "considerable resistance" in relation to referring matters to it, adding that "... there is still a bulk of issues that we are not seeing and which only come to us through the route of the complainers taking the matter to the review process".¹³³

340. John McSporran, of the PIRC, stated that Police Scotland have discretion to decide whether a complaint is a criminal allegation or not, and whether it should be referred

^{vi} The Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 place an obligation on Police Scotland to make the Police Investigations and Review Commissioner (PIRC) aware of 'serious incidents'. There are mandatory factors which are classified as 'serious incidents' such as death or serious injury in police custody or following police contact, the use of police firearms, including the discharge of a Taser or PAVA spray. The use of a police baton does not necessarily result in an automatic referral. Serious injury is not defined in the aforementioned legislation and is assessed using the definition determined by the Scottish Crime Recording Standards (SCRS) of 'serious assault'.

to the COPFS for independent investigation. Mr McSporran said that there have been instances where this has not happened and an internal investigation was carried out by Police Scotland instead, telling the Committee that “The more serious complaints need to be subject to scrutiny and effective decisions on where they should be investigated”.¹³⁴

341. In supplementary written evidence the Commissioner referred to an occasion where an internal investigation had taken place inappropriately, due to “... inappropriate recording of a complaint and significant inadequacies by Police Scotland in how the complaint was dealt with”.¹³⁵
342. Assistant Chief Constable Alan Speirs of Police Scotland indicated in supplementary written evidence that the complaint handling review process carried out by the PIRC for the complaint referred to demonstrated that the process is transparent as the complaint facilitated further enquiry.¹²⁸
343. In supplementary written evidence, the Crown Agent, David Harvie, indicated that the COPFS had introduced measures with immediate effect to provide reassurance that Police Scotland is identifying appropriate cases of criminal allegations against police officers and reporting them to the Criminal Allegations Against the Police Division (CAAP-D) within the Crown Office.
344. These measures include the CAAP-D carrying out a retrospective review of a representative sample of complaint cases that have been characterised by Police Scotland as complaints of excessive force and/or unlawful detention. Going forward the COPFS has instructed Police Scotland to report all cases to CAAP-D where they propose to categorise the complaint as one of excessive force. These measures have been put in place to reveal whether any amendments to Police Scotland’s processes are required. If amendments are required, the COPFS has indicated that it will take them forward.
345. Improved processes are also being agreed with Police Scotland to ensure that COPFS is sighted on cases at a suitably early stage, ensuring independent direction of the investigation by specialist prosecutors within COPFS, as well as to inform discussions with the PIRC about cases that might suitably be referred to them.¹³⁶

- 346. The Committee notes the evidence provided by the PIRC regarding Police Scotland’s discretion in deciding how complaints are categorised and investigated. In particular, whether a complaint is categorised as a criminal allegation and referred to the COPFS for independent investigation. The Committee welcomes the measures introduced by the COPFS to provide reassurance that Police Scotland is identifying and reporting appropriate cases to it, and to identify if any changes to Police Scotland’s processes are required. The need for such measures indicates that this is an issue which requires to be addressed.**

Accountability and fairness

347. An issue which has impacted on confidence in the police complaints handling and investigation processes is the ability for police officers to retire or resign when complaint investigations are on-going, in some cases for a number of years, without resolution. This brings non-criminal investigations to a halt. The Committee heard that this is unsatisfactory for the complainant and for those who are the subject of complaints.
348. John McSporran of the PIRC explained that the reason for this is the interpretation of the term “person serving with the police” in the 2006 Act. The provision is interpreted as a person currently serving with the police. Mr McSporran suggested that the legislation requires clarity as the current situation “does not satisfy anybody”.¹³⁷
349. In response to a question about whether the regulations should be amended the Chief Constable responded that if Parliament decided to change the regulations that change should apply to all officers, regardless of rank. Chief Constable Livingstone added that “If one were to make such a change, it would put police officers in quite a distinct position from other professions”.¹³⁸
350. Some of the evidence received questioned the accountability of the PIRC. The Scottish Chief Police Officers Staff Association (SCPOSA) suggested that the 2012 Act does not appear to provide any accountability for the PIRC to discharge its investigative function.¹³⁹ Whilst Gill Imery, HMICS, told the Committee that some of the written evidence suggested that people are unsure about who the PIRC is accountable to.¹²⁴
351. In its written evidence, the SCPOSA raised a concern about the SPA’s interpretation of regulation 8 of the Scotland (Senior Officers) (Conduct) Regulations 2013, which details the preliminary assessment process to be followed when there is a misconduct allegation. The Association stated that the SPA’s interpretation is that it cannot carry out any preliminary inquiries before referring complaints about senior officers to the PIRC for investigation.
352. The Association stated that the SPA adopted this approach for all allegations, including anonymous allegations making unspecific and very general allegations of misconduct or gross misconduct by senior officers. It is the Association’s view that this approach has led to lengthy and public investigations of unsubstantiated complaints which have impacted negatively on senior officers, stating that:
- ” The failure of the Authority to carry out such enquiries has led to significant publicity surrounding officers, irreparable damage to professional reputations and huge upset to their families.”¹³⁹
353. Susan Deacon, Chair of the SPA, told the Committee that the current regulations place “limitations to what the SPA can do at the initial assessment stage, which therefore creates quite a low threshold for complaints to be referred to the PIRC”.¹²⁵

354. Gill Imery, HMICS, said that the SPA must strike the right balance when considering complaints, telling the Committee that “There is a balance to be struck between absolutely having confidence that any complaint or issue will be thoroughly investigated and having a means of assessing the veracity of complaints or allegations before they are in the public domain”.¹⁴⁰

355. The Committee notes that the ability of police officers to retire or resign whilst investigations are on-going into a complaint solely against them can bring non-criminal proceedings against that individual to a halt. This, in our view, is unsatisfactory for the complainant and for those who are the subject of complaints. The Committee appreciates that this is a complex area as the nature and seriousness of complaints can be wide-ranging. The Committee recommends that the Cabinet Secretary for Justice consider how to address this issue in a way which is proportionate and reflects that complexity.

356. The Committee notes the evidence that the 2012 Act is silent on who has responsibility for holding the PIRC to account. The Committee asks the Cabinet Secretary for Justice to confirm who the PIRC is accountable to and to consider whether the lines of accountability are suitably transparent.

Confidentiality, impartiality and the public interest

357. The Committee heard concerns about whether the internal complaints processes within the SPA and Police Scotland protected the confidentiality of the complainants.
358. In response to a question about how Police Scotland ensure that internal complaints are dealt with impartially Chief Superintendent Hargreaves told the Committee “... we always try to identify the most suitable method of allocation of a complaint to ensure independence and impartiality”.¹⁴¹
359. The Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 (the 2013 Regulations) provisions include the method for managing complaints and matters of misconduct in respect of senior officers.
360. Given the relatively small number of senior officers in Police Scotland the Committee is aware that the media have been able to identify those senior officers who have been the subject of complaints.
361. In its written evidence, the SCPOSA indicate that the practice of the SPA and the PIRC publishing releases on their websites at every stage of a complaint enquiry has impacted negatively on the reputation of senior officers and their ability to be subject to a fair investigation.¹³⁹
362. In its written submission, the SPA indicated that the current arrangements provide insufficient confidentiality for those who make complaints and for those about whom

complaints are made. The SPA suggested that the 2013 conduct regulations be amended and that consideration be given to their interpretation and application. ¹⁴²

363. In evidence to the Committee, Lindsey McNeill and Kate Frame explained the new policies that the SPA and the PIRC respectively have implemented to address these concerns.
364. In supplementary written evidence, the SPA confirmed that for future communications about complaints about senior police officers “the SPA Complaints & Conduct Committee will consider cases on a case-by-case basis”. ¹⁴³
365. Whilst Commissioner Kate Frame confirmed that “in future we will not normally provide comment on senior officer misconduct investigations”. ¹⁴⁴
366. Diego Quiroz of the SHRC told the Committee that confidentiality and an open complaints process are equally important to ensuring accountability and public confidence. Mr Quiroz added that having ECHR obligations within the primary and secondary legislation is also a key requirement. ¹⁴⁵

367. **The Committee notes the evidence from the Scottish Police Authority that the conduct regulations limit the actions that it can take at the initial assessment stage, create a low threshold for complaints to be referred to the PIRC, and provide insufficient confidentiality for those who make complaints and for those about whom complaints are made. The Committee recommends that the regulations be amended to address these points raised by the SPA.**

Oversight and audit

368. The SPA considers complaints about senior officers of the rank of Assistant Chief Constable and above, complaints about the SPA, and complaints about SPA members of staff. Its recently re-established Complaints and Conduct Committee considers a regular performance report, has oversight of the complaints-handling reviews that go to the PIRC, and conducts a dip-sampling exercise across Police Scotland’s national complaints handling service on a quarterly basis.
369. Lindsey McNeill informed the Committee that the SPA is keen to look at system-wide changes to police complaints handling and that its own complaints handling processes are currently out for consultation. ¹⁴⁶
370. In its written evidence, the PIRC stated that most complaints are not subject to any independent oversight. ¹⁴⁷
371. In supplementary written evidence, Assistant Chief Constable Alan Speirs of Police Scotland indicated that the complaints system is audited. ACC Speirs referred to the SPA’s review of complaints by dip-sampling on a quarterly basis and the audit of “Heads of Complaints” undertaken by the PIRC. ²⁹

372. The Committee heard that less than 5% of people refer their complaint to the PIRC to investigate, should they be dissatisfied with the manner in which their non-criminal complaint has been dealt with by Police Scotland.
373. In supplementary written evidence, Police Scotland indicated that this figure suggested that “around 95% of complainers are sufficiently satisfied with the manner in which their complaint is handled”.¹⁴⁸
374. Commissioner Kate Frame told the Committee that due to the internal nature of Police Scotland’s complaints handling processes there was no way of knowing whether this was the case.¹⁴⁹
375. The Commissioner recommended that an independent organisation be given responsibility, instead of Police Scotland, to initially consider complaints prior to referral or to consider non-criminal complaints against Police Scotland. The Commissioner suggested that the PIRC would be well placed to take on these responsibilities.¹⁵⁰

376. The Committee notes the opposing views of the PIRC and the Scottish Police Authority about whether 5% of complainants referring their complaint to the Commissioner for review demonstrates that 95% of complainants were satisfied with the manner in which their complaint had been handled by Police Scotland. The Committee is unable to come to a view due to the internal nature of the complaints process.

377. The Committee recommends that Police Scotland review its complaints handling processes to ensure that it is able to provide data on how it categorises and investigates complaints, and that the Scottish Police Authority review its oversight and audit processes to ensure that they can effectively determine whether Police Scotland’s complaints handling processes are being implemented correctly.

Whistle-blowing

378. Police Scotland and the SPA both have whistle-blowing policies. The Scottish Parliament’s Public Audit and Post-Legislative Scrutiny Committee recently wrote to the Chair of the SPA to raise an issue regarding its policy.
379. The Committee referred the SPA to written evidence that it had received from Amy McDonald, former SPA Director of Financial Accountability. Ms McDonald stated that during the 2016-17 financial year she brought to the attention of the former SPA Chief Executive Officer and SPA Chair information which she believed showed that public funds had been used improperly.
380. Ms McDonald indicated that, “As a Director I was only able to raise whistleblowing concerns after incidents had occurred and the public funds in question paid out. I did not have the authority to stop alleged improper payments being made”. The

Public Audit Committee is seeking a reassurance from Ms Deacon that this issue has been addressed as part of the SPA's review of processes and procedures. ¹⁵¹

381. In response to a question about whether there is a lack of independent scrutiny of Police Scotland's whistle-blowing procedures, Commissioner Kate Frame told the Committee that Police Scotland's policy "does not provide any external confidential reporting system or mechanism". ¹⁵²
382. Ms Frame suggested that this could be remedied by independent oversight by the PIRC, if it was given similar powers to the Independent Office for Police Conduct (IOPC) in England and Wales, which can investigate whistle-blowing concerns. ¹⁵³
383. In her written evidence, Karen Harper indicated that the membership of the SPA's reference group, which is tasked with reviewing whistle-blowing procedures, is not publicly available, which means that complainants are unaware of who has access to their complaints. ¹²³

Proposed legislative changes to the police complaints handling processes

384. The Committee received a number of suggestions for amendments to various pieces of secondary legislation relating to police complaints handling and investigations. These are detailed below.
385. The SPA indicated in its written evidence, that there is a lack of clarity in legislation as to whether an allegation is to be treated as a "misconduct allegation" (as defined in the 2013 regulations) or a "relevant complaint" (as defined in the Police Public Order and Criminal Justice (Scotland) Act 2006), and a lack of clarity in the regulations as to the extent of enquiries which the SPA is permitted to conduct into an allegation before deciding whether to refer it to the PIRC. ¹⁴²
386. In its written evidence, the Scottish Chief Police Officers Staff Association (SCPOSA) indicated that the Police Service of Scotland (Senior Officers) (Conduct) 2013 regulations do not deal with conduct issues occurring prior to 2013 of senior officers who were not of that rank at their inception. ¹³⁹
387. In its written submission, the PIRC indicated that a lack of clarity in the Public Order and Criminal Justice (Scotland) Act 2006, as amended by Section 33 (A) (b) of the 2012 Act means that the PIRC and Police Scotland can carry out simultaneous investigations. The Commissioner stated that "There is a divergence of legal opinion on whether that section applies only to those currently serving with the police or to those who were serving with the police at the time of the alleged offence or when the death took place". ¹⁴⁷
388. Chief Superintendent Hargreaves of Police Scotland told the Committee that if it is a PIRC-led matter then it should lead the investigation, saying that "A victim-centred approach would seem to me to make sense". ¹⁵⁴

389. The Committee heard that the 2012 Act does not distinguish between allegations of on-duty and off-duty criminality by police officers. Commissioner Kate Frame told the Committee that the Lord Advocate's guidelines relate to a time prior to the creation of Police Scotland. The Commissioner recommended that they be updated to reflect the current legislation and to enable the Crown Office to determine whether an independent investigation should be sought, with the case re-channelled or redirected to the PIRC.¹⁵⁵
390. The Committee heard that under regulation 5 of the Police Investigations & Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons Regulations 2013) police officers must provide the PIRC with information for a police-referred investigation.
391. However, John McSporran told the Committee that the regulations do not apply in more serious matters, such as death investigations or serious crime investigations, in which a police officer is not a suspect but a witness. In these circumstances the PIRC cannot use the powers to compel police officers to provide information. Mr McSporran said that for death investigations this was unsatisfactory, stating that "The Scottish public and the Scottish Parliament would expect a police officer who was a witness to the events to give an account of what they had seen or done". Mr McSporran asked that this anomaly in the regulations be addressed.¹⁵⁶
392. In undertaking a complaint handling review the PIRC can, where it considers it appropriate, make recommendations, issue reconsideration directions and identify learning points for Police Scotland. In written evidence, David Yeoman and Beverly Johnson (now deceased) indicated that it was their experience that the PIRC lacked the authority to make Police Scotland take the recommended actions.¹²⁶
393. The PIRC, in its written submission, suggested that Section 35 of the Public Order and Criminal Justice (Scotland) Act 2006 be amended to provide defined timescales for policing bodies to implement actions detailed in complaint handling review reports and to enable the PIRC to include recommendations as well as directions. The 2006 Act should also be amended to provide the PIRC with the authority to instruct the relevant policing body to uphold a complaint.¹⁴⁷

394. Police complaints handling is one of the main areas in the Committee's report. It is clear from the evidence that the Committee has received that there are fundamental issues with the police complaint handling processes and that they are not functioning as the 2012 Act intended.

395. To strengthen public confidence in the complaint handling processes they must be fair, transparent, accountable and proportionate. They must also be easy to understand, confidential, impartial, subject to robust oversight, and enable complaints to be dealt with in a timely manner.

396. The Committee asks Dame Angiolini to consider, as part of her review, the evidence that it has received and the suggested legislative and other changes to improve the police complaints handling processes.

397. The Committee looks forward to reading the review's findings and the Scottish Government's response.

Human rights

398. Diego Quiroz of the SHRC told the Committee that human rights should be explicit throughout the 2012 Act and Police Scotland's processes and structures. In particular, policy and strategic decision making, operational planning and deployment, training and guidance, and investigation, monitoring and scrutiny. ¹⁵⁷
399. Mr Quiroz recommended that Police Scotland adopt a similar human rights approach to the Police Service of Northern Ireland (PSNI), which would include:
- ” The first mechanism is the creation of an independent human rights adviser for the force. The second is the introduction of mechanisms to protect and promote transparency and democratic accountability within local communities. The third is training on human rights for all new and existing police officers within Police Scotland. We are missing most of those mechanisms in Scotland. ¹⁵⁸
400. Mr Quiroz added that this could also include the establishment of a statutory code of ethics for Police Scotland, similar to that of the Police Service of Northern Ireland (PSNI), which would be “... a valuable tool to ensure that the police service complies with the Human Rights Act 1998”. ¹⁵⁹
401. Section 2 (3) of the 2012 Act, states that “The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice”. In its written submission, the Scottish Human Rights Commission (SHRC) recommended that, to be compliant with ECHR legislation, the words “try to” should be deleted. ¹¹⁷
402. The Cabinet Secretary told the Committee of the importance to him of human rights in the justice system and other parts of society and committed to meet with the SHRC to consider its recommendations for improving the 2012 Act. ¹⁶⁰

403. The Committee recommends that the Scottish Government consider whether the 2012 Act remains compliant with human rights legislation.

404. The Committee asks the Scottish Police Authority to review how Police Scotland demonstrates that its officers and staff are adhering to the values outlined in its Policing Values and Police Reform code of ethics.

Achieving transformation

405. There are a number of areas highlighted throughout the Committee's report where improvements are required to enable Police Scotland to achieve the full policy intentions of the 2012 Act and achieve transformation of the police service in Scotland.
406. The Committee heard evidence of some other issues which required to be addressed to enable the police service to move from the consolidating and integrating phases into the transforming phase of reform

Managing the on-going change process

Delivering the long-term strategy: Policing 2026

407. The year 3 evaluation report found that the police service was very much focused on planning for a 'transformation phase' and that Police Scotland's development of Policing 2026 was viewed as providing the strategic direction and a plan of how to achieve transformation. However, there was a view from outside the police service that Police Scotland were still struggling with the integration phase of reform which might delay the scope to engage in more fundamental transformation.
408. In its written submission, Police Scotland explained that the 10-year strategy was required to reflect the changing nature of Scotland's society and communities and, in turn, the changes in demand for policing services. It aims to build an efficient, effective and sustainable service to meet future demands.¹⁶¹
409. Police Scotland's digital, data and ICT transformation represents a key part of the Policing 2026 strategy. The views of the SPA and Police Scotland that the draft 2019-20 budget will only enable the partial implementation of the digital, data and ICT strategy represents a risk to implementing Policing 2026 and the future financial sustainability of the SPA.
410. Other risks identified by the SPA and Police Scotland to implementing the strategy include the lack of comprehensive future workforce and estates strategies and how they will be funded and the views from both the SPA and Police Scotland that the draft capital settlement of £39.6 million falls well short of what it requires to transform the service.¹⁶²

- 411. It is clear to the Committee that Police Scotland's digital, data and ICT strategy cannot be fully implemented without an increased budget allocation. Police Scotland should now submit full business cases for its prioritised areas to the Scottish Police Authority for approval.**

Implementing culture change

412. The Year 3 evaluation report found that some of the interviewees thought that much of the transformation required hinges on creating a healthy organisation which delivers on the well-being of the public and the workforce.
413. The [Policing 2026 strategy](#) includes a commitment to “Empower, enable and develop our people” and to harmonise staff terms and conditions.
414. The Committee heard that the impact of the reform on those working within the policing service was under-estimated in the first few years of reform.
415. The Chief Constable, Iain Livingstone, acknowledged that processes were prioritised ahead of people during the early days of reform, telling the Committee that “We did not listen as well as we could have done to our own people or to the public that we serve”.¹⁶³
416. Chief Superintendent Marshall of ASPS told the Committee that communication within Police Scotland has not been “a two-way process” and as a result staff do not feel valued. Whilst this has begun to change CS Marshall suggested that Police Scotland develop a learning culture, where issues raised in staff surveys are actioned, and that it invests in professional development, training and empowering people.¹⁶⁴
417. In its submission, Police Scotland acknowledged that its officers and staff are responsible for ensuring the success of the single service and critical to its future success. They indicated that change continues to be challenging and that they need to improve how they lead, manage and support people through further change. This includes better engagement and consultation, responding to issues raised in the staff surveys, and the implementation of the people strategy in Policing 2026.²⁹
418. The Committee heard that police staff have still not had their terms and conditions harmonised. Chief Superintendent Thomson of Police Scotland described the lack of a resolution to police staff terms and conditions as “extremely disappointing”, telling the Committee that “They are a key part of my team in delivering to the communities of the north-east of Scotland”.¹⁶⁵

419. The Committee notes that the lack of consideration given to the needs of staff and officers was a significant failing early in the reform process. There is clearly still work to be done. The Committee welcomes the Chief Constable’s commitment to an inclusive process going forward.

420. The Committee recognises that the dedication, commitment and hard work of police officers and staff during a period of significant change is responsible for the many successes of the single service and that officers and staff are critical to Police Scotland’s future success.

- 421. The Committee recommends that Police Scotland prioritise the needs and well-being of its staff and officers, including finalising the harmonisation of the terms and conditions of police staff.**

Proposed amendments to the 2012 Act

422. In its written evidence Police Scotland suggested a number of proposed amendments to the 2012 Act to improve the operation of various policing functions and services, and the working relationship between Police Scotland and the SPA:
- Section 26 and Schedule 1 could be amended to widen the narrow definition of ‘police staff’ as the definition causes significant difficulties in the operation of support services by Police Scotland and its interaction with the SPA.
 - Sections 86 and 87 could be amended to widen those with whom Police Scotland can provide goods and services, beyond a public body or office-holder. This would enable them to contract with external companies, for example, to provide training.
 - Sections 88 and 89 could be amended to enable the SPA to provide funding or grants to initiatives, for example, local community policing.
 - Section 31 could be amended to provide an improved definition of what is encompassed within ‘forensic services’. This is required to clarify the distinctions between the forensic obligations of the SPA and operational policing needs. In addition, clarification is required of the statutory obligations of the SPA, Police Scotland and Health Boards in the delivery of their investigative duties and obligations to those in custody, victims of crime and vulnerable people.
423. Police Scotland request that its proposed amendments be explored further in collaboration with key stakeholders.¹⁶⁶

424. **The Committee recommends that the Cabinet Secretary for Justice consider, and seek the views of relevant stakeholders, Police Scotland’s proposed amendments to the 2012 Act.**

Annex A

Extracts from the minutes of the Justice Committee and associated written and supplementary evidence

5th Meeting, 2018 (Session 5) Tuesday 6 February 2018

Work programme (in private): The Committee considered its work programme and agreed (a) to consider at a future meeting its approach to scrutiny of the police and fire services; [...]

10th Meeting, 2018 (Session 5) Tuesday 20 March 2018

Police and fire and rescue services (in private): The Committee agreed its approach to its future scrutiny of the police and fire and rescue services.

18th Meeting, 2018 (Session 5) Tuesday 12 June 2018

Work programme (in private): The Committee considered its work programme and agreed [. . .] (b) potential witnesses for future evidence sessions on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012.

23rd Meeting, 2018 (Session 5) Tuesday 18 September 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence, in round-table format, from—

Chief Superintendent Ivor Marshall, President, Association of Scottish Police Superintendents;

Councillor Elena Whitham, Spokesperson for Community Wellbeing, and Mike Callaghan, Policy Manager, COSLA;

Denise Christie, Scottish Regional Secretary, Fire Brigades Union Scotland;

Sandy Brindley, Chief Executive, Rape Crisis Scotland;

Professor Nick Fyfe, Founding Director, Scottish Institute for Policing Research.

Written evidence

- Association of Scottish Police Superintendents
- COSLA
- Fire Brigades Union Scotland
- Rape Crisis Scotland
- Professor Nick Fyfe, Scottish Institute for Policing Research

24th Meeting, 2018 (Session 5) Tuesday 25 September 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Councillor Ross Vettraino, Convener, Environment, Protective Services and Community Safety Committee, Fife Council;

Yvonne Beresford, Policy and Performance Officer, West Lothian Council;

Chief Superintendent Campbell Thomson, Divisional Commander, 'A' Division, Police Scotland;

Caroline Gardner, Auditor General for Scotland, Audit Scotland;

Gill Imery, HM Chief Inspector of Constabulary in Scotland, HM Inspectorate of Constabulary in Scotland.

Written evidence

- Audit Scotland
- HM Inspectorate of Constabulary in Scotland
- Police Scotland
- West Lothian Council

25th Meeting, 2018 (Session 5) Tuesday 2 October 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Chief Superintendent Mark Hargreaves, Head of Professional Standards, Police Scotland;

Lindsey McNeill, Director of Governance and Assurance, Scottish Police Authority.

John Finnie declared that he had some involvement in an historical case, referred to in one of the papers, as a Scottish Police Federation representative and as an MSP for the area, but no longer has any involvement.

Written evidence

- Scottish Police Authority

Supplementary written evidence

- Police Scotland
- Scottish Police Authority
- Scottish Police Authority

26th Meeting, 2018 (Session 5) Tuesday 23 October 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Chief Superintendent Ivor Marshall, President, Association of Scottish Police Superintendents;

Stuart Aitken, Acting Chair for the Scottish Fire and Rescue Service, Fire and Rescue Services Association;

Chris McGlone, Executive Council Member, Fire Brigades Union;

Calum Steele, General Secretary, Scottish Police Federation;

Derek Jackson, Branch Secretary, Scottish Fire and Rescue Service Branch, Unison Scotland.

Written evidence

- Fire and Rescue Services Association
- Scottish Police Federation
- Unison Scotland

Supplementary written evidence

- Fire Brigades Union Scotland

27th Meeting, 2018 (Session 5) Tuesday 30 October 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Chief Constable Iain Livingstone, Police Scotland;

Susan Deacon, Chair, Scottish Police Authority;

Alasdair Hay, Chief Officer, Scottish Fire and Rescue Service;

Dr Kirsty Darwent, Chair, Scottish Fire and Rescue Service Board.

Written evidence

- Scottish Fire and Rescue Service
- Scottish Fire and Rescue Service Board

Supplementary written evidence

- Police Scotland
- Scottish Police Authority
- Scottish Police Authority

28th Meeting, 2018 (Session 5) Tuesday 6 November 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Simon Routh-Jones, HM Chief Inspector, Scottish Fire and Rescue Service, HM Fire Service Inspectorate in Scotland;

Douglas Scott, Senior Policy Adviser, and Graham Jones, Safer Communities and Community Justice Manager, Scottish Borders Council;

Kate Frame, Commissioner, and John McSporran, Head of Investigations, Police Investigations and Review Commissioner;

Diego Quiroz, Policy Officer, Scottish Human Rights Commission.

Written evidence

- HM Fire Service Inspectorate in Scotland
- Scottish Borders Council
- Police Investigations and Review Commissioner
- Scottish Human Rights Commission

Supplementary written evidence

- HM Fire Service Inspectorate in Scotland
- Scottish Borders Council
- Police Investigations and Review Commissioner
- Police Investigations and Review Commissioner

29th Meeting, 2018 (Session 5) Tuesday 13 November 2018

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012: The Committee took evidence from—

Humza Yousaf, Cabinet Secretary for Justice, and Ash Denham, Minister for Community Safety, Scottish Government.

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee reviewed the themes emerging from the evidence received in order to inform the drafting of its report to the Parliament.

Written evidence

- Scottish Government

Supplementary written evidence

- Scottish Government
- Scottish Government
- Scottish Government

5th Meeting, 2019 (Session 5) Tuesday 5 February 2019

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee considered a draft report. Various changes were agreed to and the Committee agreed to continue consideration of the draft report at its next meeting.

6th Meeting, 2019 (Session 5) Tuesday 19 February 2019

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee considered a draft report. Various changes were agreed to and the Committee agreed to continue consideration at its next meeting.

8th Meeting, 2019 (Session 5) Tuesday 5 March 2019

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee continued its consideration of a draft report. Various changes were agreed to and the Committee agreed to continue consideration at its next meeting.

9th Meeting, 2019 (Session 5) Tuesday 12 March 2019

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee continued its consideration of a draft report. Various changes were agreed to and the Committee agreed to continue consideration at its next meeting.

10th Meeting, 2019 (Session 5) Tuesday 19 March 2019

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private): The Committee continued its consideration of a draft report. Various changes were agreed to and the Committee agreed its report to the Parliament.

Written submissions on the Post-Legislative Scrutiny of the Police and Fire Reform (Scotland) Act 2012

The following [submissions](#) can be view online:

- Aberdeenshire Council (J/S5/18/PFR/6) (221KB pdf)
- Anonymous 1 (65KB pdf)
- Anonymous 2 (175KB pdf)
- Apex Scotland (70KB pdf)
- ASAPNHS (J/S5/18/PFR/11) (149KB pdf)
- Association of Scottish Police Superintendents (154KB pdf)
- Audit Scotland (J/S5/18/PFR/4) (289KB pdf)
- Coalition for Racial Equality and Rights (13KB pdf)
- COSLA (J/S5/18/PFR/8) (95KB pdf)
- Crown Office and Procurator Fiscal Service (18KB pdf)
- Crown Office and Procurator Fiscal Service (supplementary submission) (73KB pdf)
- Dumfries and Galloway Council (153KB pdf)

- East Ayrshire Council (114KB pdf)
- Fire and Rescue Services Association (82KB pdf)
- Fire Brigades Union (573KB pdf)
- Fire Brigades Union (supplementary submission) (8KB pdf)
- Fire Officers Association (134KB pdf)
- Fyfe, Professor Nick, SIPR and University of Dundee (198KB pdf)
- Harper, Karen (J/S5/18/PFR/1) (137KB pdf)
- HM Fire Service Inspectorate (157KB pdf)
- HM Fire Service Inspectorate (supplementary submission) (93KB pdf)
- HM Inspectorate of Constabulary in Scotland (281KB pdf)
- Highland Council (177KB pdf)
- Johnstone, William (J/S5/18/PFR/12) (22KB pdf)
- Kidd, Alexander (89KB pdf)
- Law Society of Scotland (143KB pdf)
- Livermore, Roger (J/S5/18/PFR/9) (74KB pdf)
- Malik, Dr Ali (J/S5/18/PFR/5) (152KB pdf)
- McBride, Dr Pauline, University of Glasgow (237KB pdf)
- McKerrell, Dr Nick, Glasgow Caledonian University (177KB pdf)
- McMillan, Andrew (69KB pdf)
- Munro, Stewart (96KB pdf)
- Murphy, Professor Peter, Nottingham Trent University (130KB pdf)
- Murray, Dr Kath (J/S5/18/PFR/3) (187KB pdf)
- Orkney Islands Council (74KB pdf)
- Police Investigations and Review Commissioner (79KB pdf)
- Police Investigations and Review Commissioner (supplementary submission) (68KB pdf)
- Police Investigations and Review Commissioner (supplementary submission) (188KB pdf)
- Police Scotland (286KB pdf)
- Police Scotland (supplementary submission) (75KB pdf)

- Police Scotland (supplementary submission) (110KB pdf)
- Public Audit and Post-legislative Scrutiny Committee (J/S5/18/PFR/7) (226KB pdf)
- Rape Crisis Scotland (144KB pdf)
- Retained Firefighters Union (121KB pdf)
- Safe Glasgow Group (147KB pdf)
- Scottish Borders Council (J/S5/18/PRF/2) (69KB pdf)
- Scottish Borders Council (supplementary submission) (J/S5/18/PRF/2a) (102KB pdf)
- Scottish Chief Police Officers Staff Association (126KB pdf)
- Scottish Courts and Tribunals Service (73KB pdf)
- Scottish Fire and Rescue Service (259KB pdf)
- Scottish Fire and Rescue Service Board (99KB pdf)
- Scottish Government (315KB pdf)
- Scottish Government (supplementary submission) (76KB pdf)
- Scottish Government (supplementary submission) (77KB pdf)
- Scottish Government (supplementary submission) (81KB pdf)
- Scottish Human Rights Commission (250KB pdf)
- Scottish Police Authority (105KB pdf)
- Scottish Police Authority (supplementary submission) (235KB pdf)
- Scottish Police Authority (supplementary submission) (250KB pdf)
- Scottish Police Authority (supplementary submission) (162KB pdf)
- Scottish Police Authority (supplementary submission) (120KB pdf)
- Scottish Police Federation (25KB pdf)
- Scottish Women's Aid (275KB pdf)
- Unison Scotland (150KB pdf)
- Unison Police Staff Scotland (284KB pdf)
- Unison Police Staff Scotland (supplementary submission) (129KB pdf)
- UK National Preventive Mechanism and HMICS (75KB pdf)
- Victim Support Scotland (69KB pdf)
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