

# **POLICE AND FIRE REFORM (SCOTLAND) ACT 2012**

---

## **EXPLANATORY NOTES**

### **THE ACT - OVERVIEW**

3. The purpose of the Act is to create a single police service and a single fire and rescue service. The Act sets out the governance arrangements and framework for the new services. In addition, it provides:
  - a modern purpose for the police service and updated oath for constables. For fire, the Scottish Government intends that a new purpose will be included in a new fire and rescue framework;
  - a statutory framework for the delivery of police and fire and rescue services and appropriate scrutiny and oversight arrangements; and
  - arrangements for the transfer of existing officers and staff to both services.
4. The Act also places the arrangements for independent custody visiting in Scotland on a statutory footing. It ensures that independent custody visiting in Scotland complies with the Optional Protocol to the Convention against Torture.
5. To facilitate the establishment of single services the Act abolishes the existing unitary police and fire authorities (Fife and Dumfries and Galloway) and the 6 joint police and joint fire and rescue boards which are established by amalgamation schemes made under the provisions of the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005 by bringing together a number of local authorities (who are individual police and fire and rescue authorities under the enabling legislation) to form joint boards.
6. The Act is in 3 parts. Part 1 deals with police, and has 17 Chapters and 100 sections. Part 2 deals with fire and rescue, and has 23 sections and Part 3 deals with general provisions with 7 sections. The Act also includes 8 schedules setting out the detailed arrangements in relation to a number of areas covered by the Act.

### **Part 1: Police Reform**

7. **Part 1** largely replaces the legislation underpinning policing in Scotland, the Police (Scotland) Act 1967, and puts in place a new modernised framework for policing. The Act also repeals Part 1, Chapter 1 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 which established the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA). It amends Part 1, Chapter 2 of that Act which established the Police Complaints Commissioner for Scotland to rename it and extend the provisions in that Chapter to provide for more robust scrutiny of policing. Specifically, it makes provision for:
  - The establishment and way of working of the Scottish Police Authority (SPA), responsible for the governance, oversight and maintenance of the Police Service, for holding the chief constable to account, and for providing forensic services. The

Act will also give the Scottish Ministers power to direct the SPA, but not the chief constable (**Chapters 1 and 3** and **schedule 1**);

- The responsibilities of the chief constable for the direction and control and day to day administration of the Police Service of Scotland (the Police Service), the allocation and deployment of resources received from the SPA, and ensuring adequate arrangements for the policing of each local authority area. The Act also makes clear that the chief constable must account to the SPA (**Chapter 2**);
- An updated oath, a restatement and reframing of the functions and duties of constables, and provision for the terms and conditions of service of constables and police cadets, as well as that of police staff, police custody and security offices and constables from another jurisdiction on temporary service with the Police Service (**Chapter 2** and **schedule 2**). In addition, the Act gives the Scottish Ministers power to make regulations on a range of issues concerning the governance, administration and conditions of service of constables and police cadets (**Chapter 8**);
- A statement of the policing principles to which the Scottish Ministers, SPA and the chief constable must have regard when setting the strategic direction for the service and commanding constables, as well as detailed arrangements for the strategic police plan and annual police plan. (**Chapter 4**);
- A statutory duty on the SPA and the chief constable to make arrangements which secure best value for the SPA and the Police Service (**Chapter 5**);
- Reporting on and examining policing matters, including placing specific obligations on the SPA to produce an annual report. It also provides for the preparation and submission of accounts and arrangements for audit, and enables the Auditor General for Scotland to initiate examinations into the delivery of best value (**Chapter 6**);
- The chief constable to make arrangements for local policing, including establishing a new formal statutory relationship with each local authority and designating a local commander for each local authority area (**Chapter 7**);
- Arrangements for police appeals tribunals in disciplinary cases where the processes of review or appeal have been exhausted (**Chapter 9** and **schedule 3**);
- A new independent investigatory capacity outside the Police Service (the Police Investigations and Review Commissioner (PIRC)) to deal with the investigation of the most serious cases involving the police and where it is in the public interest to have an independent investigation (**Chapter 10**);
- Inspection of the SPA and the Police Service by HMICS, which will retain its existing powers and also be able to examine the delivery of best value. It also requires the Scottish Ministers to lay HMICS inspection or inquiry reports before the Scottish Parliament (**Chapter 11**);
- A requirement on the SPA and the Police Service, and on HMICS, the Auditor General and PIRC to work together (**Chapter 12**);
- The Scottish Ministers to pay a grant directly to the Scottish Police Authority (**Chapter 14**). The SPA will also be able to charge for goods and services provided by the SPA or Police Service (**Chapter 13**);
- A number of offences committed against or in relation to the police (**Chapter 15**);
- Independent Custody Visiting (**Chapter 16**); and
- The transfer of officers, staff and assets from the existing unitary authorities, joint boards and SPSA to the new service, with transitional arrangements for the period before the Police Service is established (**Chapter 17** and **schedules 4 and 5**).

## **Part 2: Fire Reform**

8. **Part 2** amends the Fire (Scotland) Act 2005 to establish the Scottish Fire and Rescue Service (SFRS) and transfers to it fire-fighting, fire safety and other functions under that Act. Specifically, it makes provision for:
- The establishment and way of working of SFRS, responsible for the delivery of fire and rescue functions, and for employing the Chief Officer, fire-fighters and other staff. The Act also gives the Scottish Ministers power to direct SFRS (**sections 101 and 118**);
  - Fire and rescue functions in the Fire (Scotland) Act 2005 to be the responsibility of SFRS, and for SFRS to carry out those functions (**sections 102-112**);
  - SFRS to have a specific statutory duty to make arrangements which secure best value (**section 113**);
  - SFRS to produce, publish and review a strategic plan (**section 114**);
  - SFRS to make arrangements for local fire and rescue services, including establishing a formal statutory relationship with each local authority and designating a Local Senior Officer for each local authority area (**section 115**);
  - Monitoring and scrutiny of fire and rescue matters, including placing a specific duty on SFRS to produce an annual report, to prepare and submit for audit accounts and to provide information to the Scottish Ministers (**sections 116, 101 (inserting paragraph 17 of schedule 1A into the Fire (Scotland) Act 2005), and 117**);
  - Inspection of SFRS by newly established Inspectors of the Scottish Fire and Rescue Service. It also provides for reports by the Chief Inspector to SFRS, the Scottish Ministers and the Scottish Parliament, and requires the Inspectors and Auditor General to work together (**section 119**); and
  - The transfer of fire-fighters and other staff and assets from the existing unitary authorities, joint boards and the Scottish Ministers to the new service, with transitional arrangements for the period before SFRS takes up its functions (**section 121 and schedule 6**).

## **Part 3: General**

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