EXPLANATORY MEMORANDUM TO

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2012

2012 No. 3073

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This Order specifies the offices of Her Majesty's inspector of constabulary, Her Majesty's Chief Inspector of the Scottish Fire and Rescue Service (SFRS), Her Majesty's Inspector of the SFRS and Assistant Inspector of the SFRS as offices in the Scottish Administration which are not ministerial offices for the purposes of the Scotland Act 1998 ("the 1998 Act").

2.2 The specification of the offices of Her Majesty's Chief Inspector of the SFRS, Her Majesty's Inspector of the SFRS, and Assistant Inspector of the SFRS reflect the provisions in the Fire (Scotland) Act 2005 ("the 2005 Act") as amended by the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act") which provide for the appointment of persons to these offices.

2.3 The specification of the office of Her Majesty's inspector of constabulary reflects the provisions in the 2012 Act which provide for the appointment of persons to that office.

2.4 This Order revokes the Scottish Administration (Offices) Order 2005 (S.I. 2005/1467) ("the 2005 Order"). This Order also revokes as offices in the Scottish Administration which are not ministerial offices, Her Majesty's chief inspector of constabulary and Her Majesty's inspector of constabulary established under the Police (Scotland) Act 1967 ("the 1967 Act"), as entered in the Schedule to the Scottish Administration (Offices) Order 1999 (S.I. 1999/1127) ("the 1999 Order").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is to be made in exercise of the power conferred by section 126(8)(b) of the 1998 Act. Section 126(8)(b) of the 1998 Act enables Her Majesty by Order in Council to specify offices in the Scottish Administration which are not ministerial offices, in addition to those specified in section 126(8)(a) of that Act.

3.2 By virtue of the 1998 Act, this Order is subject to negative resolution procedure in both Houses of the UK Parliament and in the Scottish Parliament.

4. Legislative Context

4.1 The 2012 Act received Royal Assent on 7 August 2012. It creates a single Police Service of Scotland, to be maintained by an independent Scottish Police Authority, and a single Scottish Fire and Rescue Service. These newly created services replace the two unitary police and fire authorities, six joint police boards and joint fire and rescue boards and two national police organisations which currently operate within Scotland. It repeals and replaces almost all of the 1967 Act and amends the 2005 Act.

4.2 Section 71(2) of the 2012 Act provides for Her Majesty to appoint inspectors of constabulary, replacing section 33 of the 1967 Act. This Order reflects the change to this office.

4.3 Section 43A(1)(a) of the 2005 Act provides for the appointment of Her Majesty's Chief Inspector of the SFRS. Section 43A(1)(b) of the 2005 Act provides for Her Majesty to appoint Inspectors of the SFRS. Section 43A(2) provides for the appointment of Assistant Inspectors of the SFRS by Scottish Ministers. This Order reflects the creation of these new offices.

4.4 The 2005 Order specifies the offices of Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspector of Fire and Rescue Authorities and Assistant Inspector of Fire and Rescue Authorities, appointed under section 43 of the 2005 Act, as offices in the Scottish Administration which are not ministerial offices. As a result of the repeal of section 43 by the 2012 Act, these references require to be revoked.

4.5 The 1999 Order specifies Her Majesty's chief inspector of constabulary and Her Majesty's inspector of constabulary, appointed under section 33 of the 1967 Act, as offices in the Scottish Administration which are not ministerial offices. As a result of the repeal of the 1967 Act by the 2012 Act, these references require to be revoked.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The 2012 Act reorganises police services and fire and rescue services in Scotland, amalgamating the current regional structure into a single Police Service of Scotland and a single SFRS. It does not fundamentally alter the role of Her Majesty's inspectors, to carry out inquiries into, amongst other things, the state and efficiency of the services and how they carry out their functions, although it does set out the inspectors' functions and powers in more detail.

7.2 The current inspectors are listed as offices in the Scottish Administration which are not ministerial offices, and this Order replaces them with the new offices, reflecting the changes in terminology and establishing legislation.

7.3 The offices of Chief Inspector, Inspector and Assistant Inspector of Fire and Rescue Authorities appointed under section 43 of the 2005 Act are replaced by the Chief Inspector, Inspector and Assistant Inspector of the SFRS, appointed under section 43A of the 2005 Act.

7.4 In place of the chief inspector and inspector of constabulary appointed under section 33 of the 1967 Act, there will be inspectors of constabulary appointed under section 71(2) of the 2012 Act. Scottish Ministers may designate one of these appointed inspectors as the chief inspector of constabulary. Assistant inspectors of constabulary may also be appointed, but these may be constables on secondment and it is not appropriate for them to hold office in the Scottish Administration, in addition to their office as constable. Therefore, only the office of inspector of constabulary is listed in the Order.

7.5 Section 71 (Her Majesty's inspectors of constabulary in Scotland) and section 119 (Inspectors of SFRS) of the 2012 Act are expected to be commenced and take effect from 1st April 2013. Therefore, this Order also requires to take effect from 1st April 2013.

8. Consultation outcome

8.1 The Scottish Government ran two consultations: *A Consultation on the Future of Policing in Scotland*; and, *A Consultation on the Future of the Fire and Rescue Services in Scotland*, between 10th February and 5th May 2011 on the principles of reform. The Scottish Government also ran an extensive programme of engagement with stakeholders across Scotland about the future of the Scottish police and fire and rescue services.

8.2 The Scottish Government ran a further consultation, *Keeping Scotland safe and Strong: A Consultation on Reforming Police and Fire & Rescue Services in Scotland*, for 12 weeks from 9th August to 2nd November 2011. 145 responses were received and broad support was received for the provisions taken forward in the Police and Fire Reform (Scotland)Act 2012. The research findings of this consultation can be viewed via the following link: http://www.scotland.gov.uk/Publications/2011/12/15130636/0

9. Guidance

9.1 No additional guidance is required for this Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Monitoring and review of this Order is not considered necessary.

13. Contact

13.1 Emma Lopinska at the Scotland Office (tel: 0131 244 9026 or email: emmalopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.

POLICY NOTE

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2012

2012 No. 3073

1. The above instrument is made in exercise of the powers conferred by section 126(8)(b) of the Scotland Act 1998 ("the 1998 Act"). Section 126(8)(b) of that Act enables Her Majesty by Order in Council to specify offices in the Scottish Administration which are not ministerial offices, in addition to those specified in section 126(8)(a) of the 1998 Act.

Policy Objectives

2. The Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act") received Royal Assent on 7 August 2012. It creates a single Police Service of Scotland, to be maintained by an independent Scottish Police Authority, and a single Scottish Fire and Rescue Service. These newly created services replace the two unitary police and fire authorities, six joint police boards and joint fire and rescue boards and two national police organisations which currently operate within Scotland. It repeals and replaces almost all of the Police (Scotland) Act 1967 ("the 1967 Act") and amends the Fire (Scotland) Act 2005 ("the 2005 Act").

3. Section 71(2) of the 2012 Act provides for Her Majesty to appoint inspectors of constabulary, replacing section 33 of the 1967 Act. Scottish Ministers may designate one of these appointed inspectors as the chief inspector of constabulary. Assistant inspectors of constabulary may also be appointed, but these may be constables on secondment and it is not appropriate for them to hold office in the Scottish Administration, in addition to their office as constable, therefore they are not mentioned in this Order.

4. Section 119 of the 2012 Act inserts sections 43A to 43G into the 2005 Act. Section 43A(1)(a) of the 2005 Act provides for the appointment of Her Majesty's Chief Inspector of the SFRS, section 43A(1)(b) provides for Her Majesty to appoint Inspectors of the SFRS, and section 43A(2) provides for the appointment of Assistant Inspectors of the SFRS by Scottish Ministers. These new offices replace the offices of Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspector of Fire and Rescue Authorities and Assistant Inspector of Fire and Rescue Authorities, appointed under section 43 of the 2005 Act, which is repealed by the 2012 Act.

5. Her Majesty's chief inspector of constabulary and Her Majesty's inspector of constabulary established under the 1967 Act are listed in the Schedule to the Scottish Administration (Offices) Order 1999 (S.I. 1999/1127) ("the 1999 Order") as offices in the Scottish Administration which are not ministerial offices. Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspector of Fire and Rescue Authorities and Assistant Inspector of Fire and Rescue Authorities, appointed under section 43 of the 2005 Act are specified as offices in the Scottish Administration which are not ministerial offices by the Scottish Administration (Offices) Order 2005 (S.I. 2005/1467) ("the 2005 Order")

6. This Order specifies the offices of Her Majesty's inspector of constabulary, Her Majesty's Chief Inspector of the Scottish Fire and Rescue Service (SFRS), Her Majesty's Inspector of the SFRS and Assistant Inspector of the SFRS as offices in the Scottish

Administration which are not ministerial offices for the purposes of the Scotland Act 1998 ("the 1998 Act"). It revokes the 2005 Order and revokes the entries in the 1999 Order relating to Her Majesty's chief inspector of constabulary and Her Majesty's inspector of constabulary, reflecting the repeal of the provisions establishing those offices.

7. Section 71 (Her Majesty's inspectors of constabulary in Scotland) and section 119 (Inspectors of SFRS) of the 2012 Act are expected to be commenced and take effect from 1st April 2013. Therefore, this Order also requires to take effect from 1st April 2013.

Consultation

8. The Scottish Government ran two consultations: *A Consultation on the Future of Policing in Scotland*; and, *A Consultation on the Future of the Fire and Rescue Services in Scotland*, between 10th February and 5th May 2011 on the principles of reform. The Scottish Government also ran an extensive programme of engagement with stakeholders across Scotland about the future of the Scottish police and fire and rescue services.

9. The Scottish Government ran a further consultation, *Keeping Scotland safe and Strong: A Consultation on Reforming Police and Fire & Rescue Services in Scotland*, for 12 weeks from 9th August to 2nd November 2011. 145 responses were received and broad support was received for the provisions taken forward in the Police and Fire Reform (Scotland)Act 2012. The research findings of this consultation can be viewed via the following link: http://www.scotland.gov.uk/Publications/2011/12/15130636/0

Impacts

10. A Business Regulatory Impact Assessment and Equality Impact Assessment were carried out for the Police and Fire Reform (Scotland) Bill. This Order in itself has no impact on business, charities or voluntary bodies or the public sector.

Jean Waddie
Police and Fire Reform Division
December 2012