The Police Complaints Commissioner for Scotland (PCCS) was created by the Scottish Parliament under the Police, Public Order and Criminal Justice (Scotland) Act 2006 (the 2006 Act) as a non-departmental public body. The PCCS took over the powers of Her Majesty’s Inspectorate of Constabulary for Scotland to review the handling of complaints about the police. The main role of PCCS is to review the way in which police organisations in Scotland deal with complaints made by members of the public.

Introduction
The Police Complaints Commissioner for Scotland welcomes the opportunity to submit evidence on the Public Services Reform (Scotland) Bill (the PSR Bill), particularly as the deadline of 14 August 2009 has already passed. The current Commissioner, Mr John McNeill, was appointed to his post on 17 August 2009, and as such had no opportunity to submit evidence in advance of the deadline.

The Commissioner supports in principle the Scottish Government’s stated policy objective in introducing the PSR Bill, namely to “help simplify and improve the landscape of Scottish public bodies, to deliver more effective, co-ordinated government that can better achieve its core functions for the benefit of the people of Scotland”. This fits well with the Commissioner’s own aim of developing a culture of continuing improvement within the police service and the complaints handling system.

Legal Framework
- Police, Public Order and Criminal Justice (Scotland) Act 2006

Comments
The Commissioner intends to restrict his comments to Parts 2 and 6 of the PSR Bill.

The Commissioner considers that including the Commissioner within schedule 3 of the PSR Bill contradicts the role of the Commissioner as an independent commissioner with the powers and duties set out in Chapter 2 and schedule 4 of the 2006 Act. In exercising his powers and fulfilling his duties in the supervision of the handling of complaints against the police, the Commissioner performs a key function in the protection of the civil liberties of the citizens of Scotland. For the public to have a continuing confidence in the handling of complaints against the police, it is essential that the Commissioner operates without direct influence or control from Scottish Ministers. The office of the Commissioner is a relatively new one and the present Commissioner has just been recently appointed. This is a time of significant change in policing and a time of rising numbers of police complaints. The stability which the preservation of the office of the Commissioner,
with the powers and duties set out in the 2006 Act, will bring is particularly important at this time.

The delegation of authority to Scottish Ministers of order-making powers that could fundamentally change the position of the Commissioner, including his removal, would undermine this necessary independence, impartiality and stability.

Section 10(1) of the PSR Bill confers order-making powers on Scottish Ministers which would allow them to make changes to public bodies in the pursuit of 'effectiveness, efficiency and economy'. Provisions include modifying, conferring, abolishing, transferring, or providing for the delegation of any function or amending the constitution of, or abolishing, a person, body or office-holder listed in Schedule 3.

The Scottish Government sets out that the reason for seeking this power in the Delegated Powers Memorandum:

“14…public functions and responsibilities are sometimes for historical reasons enshrined in legislation or established by royal prerogative in the case of chartered bodies. If primary legislation is needed, this makes any change not only dependent on the legislative process but also on finding legislative time which may not be possible or may be subject to a wait of years.” (emphasis added)

While an order could only be made subject to the approval of Parliament, the stated purpose of this provision is to reduce the amount of parliamentary scrutiny of future changes.

The wide scope of the powers delegated to Scottish Ministers under section 10 are particularly inappropriate for the Commissioner who occupies a key place in the constitutional guarantees given to the people of Scotland by the 2006 Act.

The Scottish Government has stated that it currently has no intention of bringing forward any order in relation to the Commissioner. Reference might be made to the preconditions under section 12, requirement for consultation under sections 20 and 21 and for explanatory documents under section 22 as possible safeguards. However, the delegation of powers to Scottish Ministers would in itself undermine the independence and impartiality of the Commissioner.

The Commissioner also has concerns about the proposed Part 6 of the PSR Bill. Sections 92 to 98 provide a range of scrutiny mechanisms including obligations to secure continuous improvement in user focus, to have regard to guidance provided by Scottish Ministers and a duty to cooperate with other bodies. These duties apply to the persons, bodies and office-holders listed in Schedule 13 in respect of sections 92 and 93, and Schedule 14 in respect of section 94. Section 95, which provides for joint inspections, applies to the persons and bodies listed in section 95(6).

In relation to each of these sections, the Scottish Ministers may by order modify the list by adding a person, body or office holder or by removing an entry. Again this power is vested solely in Scottish Ministers without the need for primary
legislation and detailed parliamentary scrutiny. This again constitutes a material undermining of the independence and impartiality of the Commissioner.

Conclusion

The Commissioner considers that it would be appropriate that the PCCS be removed from the list of bodies set out in Schedule 3 to the PSR Bill, and that Part 6 be amended so that the power to add to the bodies listed in schedules 13 and 14 and section 95 is removed.