Justice Committee

Criminal Cases (Punishment and Review) (Scotland) Bill

Written submission from the Association of Chief Police Officers in Scotland

I refer to the correspondence dated 7 December 2011 regarding the above subject and can confirm that this has been considered by ACPOS and I can now offer the following by way of comment.

Part 1 – Punishment part of non-mandatory life sentences

Does the Bill provide sufficient clarity in determining the punishment part in discretionary life sentences and orders for lifelong restriction?

Yes – in respect of the punishment part on non mandatory life sentences, no issues were identified with the suggested changes. It appears a fair way to approach this issue, allowing individuals to apply for parole earlier based on the punishment part of their sentence. It does not allow automatic early release and therefore the safeguards that were present regarding the public protection aspect of any sentence still remain and should not be diluted as a result of this, as this would still be a crucial aspect when the parole board are considering early release. The Bill also provides courts with discretion to determine that discretionary life sentence prisoners and OLR prisoners will only become eligible for parole at a point when the court considers they have served an appropriate period of imprisonment to satisfy the need for punishment of the offender.

Part 2 – Disclosure of information obtained by SCCRC

Is the framework provided in the Bill appropriate for the purpose of the SCCRC determining whether it is appropriate to disclose information?

ACPOS agrees that the Bill meets the Scottish Government commitment to being as open and transparent as possible and leaves it to the Commission to decide whether it is appropriate to disclose information. The suggested framework in relation to the disclosure of information obtained by SCCRC causes no issues. It ensures that all interested parties are informed that information will be disclosed and give the appropriate time to respond to a decision to disclose, where the owner of the information has concerns around such disclosure.

The only matter raised relates to the disclosure of sensitive intelligence which the Crown would be aware of but which wasn't disclosed due to the sensitivities around source protection at the time of the trial. There is an assumption that as it was not disclosed from the outset for the reasons detailed, it would not have been available to the SCCRC and as such would not be considered by them for further disclosure, particularly in the case of intelligence that has not been disclosed following an application by the Crown for non disclosure in the public interest, under the Criminal Justice & Licensing (Scotland) Act 2010.

Will the requirement for the SCCRC to consider relevant reserved statute such as the Data Protection Action 1998 and the Official Secrets Acts impact on the disclosure of information?
There are a number of implications with regard to the Data Protection Act 1988 prohibiting the unauthorised disclosure of personal information. There may be similar issues as regards to the Official Secrets Act 1911-1989, which will require to be considered by the legislative draftsmen.

Are there any other issues that you would like to draw to the attention of the Committee?

ACPOS is heartened to note that in Part 3 there is not an automatic right for information to be released and that SCCRC must undertake consultation with the affected persons, The Lord Advocate and additional persons who ‘have a substantial interest in the question of whether the information should be disclosed’. ACPOS supports and endorses the fact that the explanatory notes state ‘the Lord Advocate will always be notified’.

ACPOS is concerned however that under the proposed legislation, the SCCRC, whilst they are required to consult with all relevant parties including the Chief Constable, have an unfettered legal right under the proposed S / 94 (M) (I) contained in Section 3 of Part 2 of the Bill to release the information.

There is also no proposed right of appeal contained in the legislation against a decision to release information and ACPOS suggests that a statutory right of appeal should be considered or alternatively a right for any dispute regarding the release of information to be considered by the Scottish Information Commissioner.

Ruairaidh Nicolson
Secretary, Crime Business Area
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