Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Association of Scottish Police Superintendents

1. Introduction

1.1 The Association of Scottish Police Superintendents (ASPS) support the policy objectives described in the Policy Memorandum (PM). We recognise the reality of the challenging economic environment in which we are currently placed has led to a need to reduce the cost of policing whilst ensuring improved outcomes for communities. We also believe that this process should be allied to wider public sector reform. That said, the change programme must be considered against a backdrop of current police performance which has provided the lowest recorded crime figures for thirty five years allied to improved detection rates which has led Scottish Government to describe policing in Scotland as “excellent”.

1.2 ASPS is a long established body that represents constables holding the ranks of Superintendent and Chief Superintendent in Scotland. Our immediate concern with regard to the contents of the Bill is the failure at Section 11 (6), and elsewhere, to specify ASPS as the statutory consultee in respect of these ranks. This is a designation which we have repeatedly requested throughout the consultation phase with a view to establishing for our Association a similar statutory basis to that which has been afforded to the Scottish Police Federation. A satisfactory explanation for this continued omission has yet to be provided to us.

1.3 In relation to the other provisions of the Bill, we offer the following comments for consideration in our capacity as the senior operational leaders of the service in Scotland and in respect of our role as a staff association, tasked with protecting the interests of our members in terms of welfare, efficiency and conditions of service.

2. Operational independence of the Chief Constable

2.1 At a national level, ASPS believe that further safeguards are required in order to protect the operational independence\(^1\) of the Chief Constable. Section 5 of the Bill instructs the authority to comply with any direction given by ministers, with certain restrictions given in respect of specific operations. In our opinion, these safeguards are insufficient and must be extended to ensure that all police operations are protected from the potential for inappropriate political interference.

2.2 Moreover, Section 14 of the Bill provides the Authority with an option to require a senior officer to retire from office. When allied to the provisions of section 5, it is not inconceivable to imagine a Chief Constable being required to retire on political grounds. This is a situation that must be avoided and further protection should be afforded to senior officers within the legislation not only for their personal protection

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\(^1\) The Court of Appeal judgment of Lord Denning in the case of Blackburn in 1968
but in the wider public interest. In any event, we should wish to be informed with regard to the appeal process that would apply in such circumstances.

2.3 At a local authority level, ASPS support measures which strengthen the connection between services and communities. We recognise the need to be responsive to the needs of communities and ensure that local government can influence local policing whilst protecting the service from the potential for inappropriate political interference from either local or central government - in the wider public interest.

2.4 Clearly, local governance arrangements will be required in order to ensure openness, transparency and fairness in the setting and agreeing of local plans. That said, the Bill does not specify how this is to be achieved and to whom local commanders will report. In any event, we would be opposed to an element of local government control being introduced to policing and would wish to ensure that responsibility of the Chief Constable as the individual with operational autonomy over the deployment of policing resources is thoroughly underlined. Formal reporting and accountability from Local Commanders for operational performance must be to the Chief Constable alone.

2.5 The PM does state, however, that “it will be for the local authorities to determine the most appropriate local mechanism for exercising their role…and formalising their relationship with the local commander…to help shape and deliver local outcomes.” This infers considerable latitude for local authorities to place demands upon the local commander and appears to erode the authority of the Chief Constable.

2.6 It is our view that the operational responsibility of constables and the local police commander to act in pursuance of Section 19 (function and jurisdiction), 20 (general duties) and 32 (policing principles) of the Bill, in the context or local policing, must be explicitly stated and understood. This will avoid a situation in which local policing might become inappropriately influenced by any individual or organisation and the impartial execution of the office of constable or public confidence in that impartiality is eroded as a consequence.

2.7 Furthermore, Section 46 (3) (a) instructs local commanders to produce ‘reports’ for the local authority as ‘reasonably required’. Without further clarification, this section of the Bill may result in police resources being diverted from their primary policing tasks in order to collate information and prepare such reports.

2.8 We would also welcome the provision of greater detail in respect of the “joint development of a local plan”, as outlined in Section 48, and the potential for disagreement between contributing parties. Clarity over the extent to which the Local Authority is to “approve” the local policing plan is necessary in order to ensure that police officers are not hindered from following the direction and control of the Chief Constable and can impartially execute their statutory duties at a local level. We believe that “agreement” rather than “approve” represents a more appropriate description of the relationship between local commanders, local authorities and the Chief Constable.
2.9 Public Sector reform offers an opportunity to legislate for improved collaboration between other agencies and police and we hope to see such a legal duty in other public sector reform legislation.

3. Frontline policing and the provision of forensic services

3.1 We agree that there is considerable scope for reducing the duplication of support services in Scotland by the creation of a single Police Service. That said, we are keen to see police officers performing roles that require the office of constable whilst being provided with support from professionally qualified individuals in those roles that do not require the post holder to utilise police powers. This will provide a balanced workforce. Indeed, in this respect, we believe that there are opportunities and cost savings available in wider private or public sector involvement in support of police operational delivery.

3.2 Notwithstanding, some clarity is required in respect of the widespread use of the term "frontline" when discussing policing. We have long held the opinion that the term 'frontline' is primarily used by external parties to describe visible uniformed police operations and 'crime fighting'. In reality, the use of this term in such circumstances betrays a lack of knowledge and understanding of policing. In our opinion, ‘frontline’ service delivery includes a number of other functions such as surveillance, intelligence, custody handling, case preparation, counter terrorism and offender management which are sometimes referred to as ‘middle’ or ‘back’ office functions. Errors in any of these areas can have a serious detrimental impact on crime figures, public confidence and community safety and thus their importance should not be downgraded or overlooked.

3.3 We also believe that change to local operational service delivery should be kept to a minimum in order to reduce the potential for adverse impact on performance or a reduction in outcomes for communities. Where changes are proposed, evidence for the change, cost savings to be achieved and the potential for improved outcomes should be clearly articulated. When policing in Scotland is recognised as “excellent” we would not encourage wholesale change.

3.4 We would encourage a focus on the removal of duplication and cost reduction in the directly non-operational areas and in the provision of enabling services, such as, ICT where there is an annual spend of circa £60 million.

3.5 One area of concern to our members, however, is the proposals in respect of forensic services as outlined in Chapter 3 of the Bill. We believe that further thought should be given to the proposed arrangements being applied with any distinction being drawn between the forensic analysis of evidence and responsibility for the gathering of that evidence.

3.6 In our opinion, responsibility for operational direction and control of staff at crime scenes should be a matter for the police alone. This will ensure appropriate levels of service at crime scenes under the control and direction of senior investigating officers, whose role it is to oversee all elements of evidence gathering, whilst public confidence in the impartiality of the analysis of evidence and submission of reports in the criminal justice process is maintained. We do not wish to see savings that are
realised from reform being invested in the creation of large public bodies with their own management structures and support functions.

4. Complaints and investigations

4.1 We acknowledge the decision to introduce the post of Police Investigation and Review Commissioner (PIRC). We are concerned, however, that there is insufficient time available to implement this change prior to the establishment of the Police Service of Scotland.

4.2 Indeed, whilst we support the establishment of a PIRC, we should wish to be provided with greater clarity in respect of the investigation protocols, particularly as they apply to 'investigations of other matters in the public interest' as outlined at section 63 (d). In our opinion, this section, as worded, may enable a PIRC to embark on an investigation of their choosing in their subjective interpretation of public interest.

4.3 Similarly, in our opinion, the provisions of Section 70 as they relate to complaints about the PIRC do not provide an acceptable level of scrutiny in that the post holder in effect oversees the procedure to be adopted in respect of any complaint about their own department. In our view the role of the Public Service Complaints Ombudsman must be clearly stipulated within this section.

4.4 We note the development of the role of the PIRC and that it will require significant investment to fulfil the expanded role described in the Bill. We hope the PIRC will operate in a proportionate, accountable and transparent manner and be conscious of not disrupting ongoing operations.

5. Her Majesty's Inspectors of Constabulary in Scotland

5.1 Similarly, we believe that the role of Her Majesty’s Inspector of Constabulary in Scotland (HMICS) requires greater clarity. In our opinion, the individual holding this post must not only be independent of both the police service and the government but clearly seen to be so. This will require an alteration to current practice and the identification of new office premises out with St Andrew’s House.

5.2 The HMICS must provide an alternative voice to that of the Chief Constable in matters of policing policy and practice and oversee the decisions and scrutiny provided by the Police Authority. Most importantly, the HMICS must be able to ensure that there is no misuse of the ministerial power to direct the authority.

5.3 In addition, HMICS must establish inspection protocols that ensure a consistent approach across Scotland in terms of policy implementation and best value. This should ensure a consistency of approach to local authority relations.

6. Terms and conditions of service

6.1 ASPS should wish to express serious concern about certain provisions which appear to enable the removal or addition of ranks below Assistant Chief Constable and achieve officer savings by "adopting a standard span of control ratio" as part of
the reform programme. Moreover, the Bill also appears to introduce the power to demote constables in rank other than for misconduct, discipline or individual inefficiency (for which we believe there is sufficient legislation available at present) and to make new regulations for constables to “hold and vacate office”.

6.2 When these provisions are combined with the duty on Best Value on both the Chief Constable and the Scottish Police Authority, financial and political expediency may result in the introduction of regulations which might require constables to exit the police service at any point in time by virtue of the open ended nature of Section 49 of the Bill.

6.3 Such an action would introduce severe uncertainty to the service, reduce the attractiveness of serving as a constable and leave individuals exposed to financial and political pressures which may adversely impact on the way in which they impartially execute their duty. Whilst police constables are currently neither subject to employment law nor subject to the prospect of redundancy, they do operate in a uniquely difficult environment. They face significant personal hazards, restrictions on their personal life and severe penalties for failure to perform their duty. The PM indicates that the policy intention of the Bill is to make “prosecution easier”. In this respect, ASPS would seek to identify the gap in current provisions that this change in penalty is seeking to close.

6.4 Indeed, it is our view that Sections 11, 12 and 49 of the Bill create unnecessary uncertainty and signals an intent that has not thus far been reflected in conversations with the Cabinet Secretary for Justice. This is unhelpful and may serve demotivate a committed and highly performing workforce.

6.5 At this time, it is difficult to assess the impact that police reform will have on our members but it is likely that the roles that we adopt will broaden and deepen as responsibilities increase and our numbers decrease as part of “management de-layering”. We believe though that command resilience must be maintained in order to protect our communities and the welfare of our members. We do not believe in “a one size fits all” approach to span of command. We believe that re-structuring can be achieved through appropriate succession planning and the exercise of professional judgement and restraint by the Chief Constable.

6.6 We hold the office of constable. We execute a duty and uphold the law fairly, impartially and without favour. Therefore no individual may direct a police constable to act other than in accordance with the terms of the law. Moreover, we accept limitations and restrictions on our personal life to ensure our impartiality and in exchange are compensated by specific terms and conditions. We regard Sections 11, 12 and 49 as representing a serious undermining of the safeguards of the office of constable and not in our members or the wider public interest.

7. Other issues

7.1 ASPS wish to underline our concern at the proposed dissolution of the Police Advisory Board for Scotland without any alternative body having been identified to undertake the role and responsibilities that presently sit within that structure.
Consequently, we believe that further consideration of this role is required before Section 94 is implemented.

7.2 We also wish to highlight the contents of Section 20 of the Bill which outlines the general duties of Constables. We deeply regret the decision to remove the symbolic wording of the 1967 Act ‘guard, patrol and watch’ and would seek that phrase re-instated. It is our belief that these functions remain as relevant today as they were in 1967 and provide every constable in Scotland with a basis for performing their duty.

7.3 Furthermore, the penalty in respect of a constable who neglects or violates their duty contained within section 22 (3) is, in our opinion, wholly disproportionate. Indeed, we would argue that sufficient powers are provided at common law and would therefore question the need for this statutory provision.

7.4 Finally, we have always connected police reform with a wider public sector reform programme. The emphasis on prevention - a key pillar of public sector reform - is perhaps not as evident in the Bill as we might expect, receiving only two explicit references. We should also wish to have the provisions of the Christie and McClelland reports considered as key pillars of reform as progress is made.

David O’Connor
President
23 February 2012