Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Institute for Policing Research

Introduction
This written evidence is provided on behalf of the Scottish Institute for Policing Research (SIPR), a strategic collaboration between twelve of Scotland’s universities and the Scottish police service, supported by investment from the Association of Chief Police Officers in Scotland (ACPOS), the Scottish Funding Council and the participating universities. SIPR’s key aims are:

- To undertake high quality, independent and relevant research;
- To support knowledge exchange between researchers and practitioners that improves the evidence base for policing policy and practice;
- To expand and develop the research capacity in Scotland’s universities and its police service.

Chapter 1 The Scottish Police Authority
We welcome the intention to secure and maintain ‘constabulary independence’ in respect of the role and functions of the Scottish Police Authority. In particular, Chap.1 s.5 embodies a fundamental principle that Scottish Ministers should not issue directions to the Authority in respect of a specific police operation or the way in which the Police Service is carrying out a specific operation. It is all the more important, therefore, that the SPA’s position in relation to Scottish Ministers is clearly established with regard to its administration. As well as being an independent governance body, it is essential that the SPA is independently serviced by its own staff so that its functions in relation to maintaining the Police Service, promoting and supporting continuous improvement in policing, and holding the chief constable to proper account are effectively and efficiently carried out.

The wording of the Bill is construed too loosely in relation to the functions of the Authority in s.2 (3). This states that the Authority ‘must try to carry out its functions in a way which is proportionate, accountable and transparent' and in accordance with any principle of good governance ‘which appears to it to constitute best practice’. There is plenty of good research evidence on, and good practice in police governance on which the Authority can be reasonably expected to draw in a more positive manner.

Whilst it is appropriate that decisions on the internal structure and organisation of the new Police Service should be taken by the chief constable, it is likely that important aspects of police work will be undertaken at a national level. Policing initiatives at a Scottish level have grown considerably in recent years - for example the activities of the Scottish Crime and Drug Enforcement Agency – and these are likely to expand further under a single force in response to the changing nature of crime and the need for efficiencies. The proper emphasis on local policing arrangements means that less attention has been given to policing which operates beyond local council areas.

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1 This evidence was prepared by Professor Nicholas Fyfe (Director, SIPR and University of Dundee) and Dr Kenneth Scott (Associate Director, SIPR and University of West of Scotland).
It is important that recognition is given to the SPA’s role in monitoring those policing activities which operate at national and regional levels to ensure that these are held properly accountable.

Because the Police Service requires to interact with a wide range of stakeholders, it is important that the membership of the SPA is as broadly based as possible, in line with the requirement in Schedule 1 that Ministers ‘must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority’. Members who have knowledge and experience of local government and local communities, in particular those who have served as conveners of Police Boards, would have a contribution to make, especially in the initial period. A combination of local government representation along with independent public appointments would certainly reflect experience in other countries.

It is essential that members be provided with an early opportunity after appointment to be fully briefed and to receive appropriate and ongoing training and support to enable them to meet their important responsibilities, particularly so following the identification of this by Audit Scotland as a significant weakness in the current Police Board system.

**Chapter 2 (s.10) Constables’ Declaration**

The legal status of the office of constable embodied in the Bill is an important reaffirmation of the police officer’s role within society through the requirement to make a declaration before a sheriff of J.P. The wording of the declaration is significantly adjusted to include a number of ethical values – fairness, integrity, diligence, impartiality – which are in line with the best practice associated with the procedural justice model in a number of other jurisdictions and of the Scottish public’s high expectations of its police. It does raise, however, the issue of how such values are to be monitored in terms of disciplinary codes or complaints by the public so that their importance is duly recognised in the routine practices of Scottish policing.

**Chapter 2 (s.17) The Chief Constable**

The position of chief constable within the present tripartite system is maintained in terms of direction and control of the Police Service, although this is now a single position as opposed to one of several within Scotland. Selection procedures for, and terms of appointment of, a chief constable need to be robust to ensure that there is public confidence in the independence of the system.

The chief constable’s responsibilities are helpfully clarified in s.17(2) in terms of administration, strategic planning and reporting, and local policing arrangements. There appears to be an inconsistency in s.17(2)(f), however, where the chief constable ‘may be required’ to provide the Authority with certain information rather than ‘must’.

**Chapter 2 (s. 19) Functions of Constables**

The limitations of the traditional functions of constables as to ‘guard, patrol and watch’ having been long recognised, the general duties which the Bill lays out in s.20(1)-(2) present a much clearer statement of what police officers are expected to
do in line with the expanding policing agenda. A more explicit requirement on constables to exercise their duties in relation to the policing principles in s.32, which are in line with well-established evidence on the nature of contemporary policing, would further clarify these functions.

In accordance with modern constitutional practice, there should be reference to all police duties being carried out in compliance with the Human Rights Act 1998. In the appropriate section of the Bill, it would be important to include a requirement on the SPA to monitor, as does the Northern Ireland Policing Board, such compliance.

Chapter 2 (s.26) Police Staff
The value of a ‘mixed economy’ of police officers and police staff has been recognised as an important part of creating an efficient and effective workforce. Research carried out by SIPR on workforce modernization, for example, demonstrated the value of police officers working along side civilian staff in investigations of volume crime. SIPR also works very closely with analysts employed by police forces who also play a vital role in providing an evidence-base for targeted interventions (via initiatives like the National Intelligence Model) and robust assessments of the impacts of operational activity. Against this background, a narrow focus simply on police officer numbers as a measure of the capacity and capability of the police service offers only a limited perspective on the scope of policing to intervene efficiently and effectively.

Chapter 4 Policing Principles
The recognition within the Bill that policing is about more than crime prevention and crime reduction is to be welcomed. The references within the Bill to the importance of policing in contributing to safety and well-being and playing a role in preventing harm and disorder creates scope for a much more inclusive understanding of the role of the police which explicitly recognises that some activities (such as community policing) cannot be measured simply in crime reduction terms. It is therefore important that the performance framework that is put in place to capture police activity adequately engages with this broader understanding of policing and uses a range of qualitative and quantitative indicators to demonstrate how policing contributes to broader objectives of enhanced well-being and harm reduction.

Chapter 7 Local Policing
The proposals in the Bill around local policing are to be welcomed. It has long been recognised by researchers that much crime and disorder is rooted in the characteristics of localities and police effectiveness in dealing with such problems is related strongly to levels of trust, cooperation and legitimacy at a local level. Furthermore, SIPR’s review of the evidence of the impact of police mergers in other countries highlighted the risks around declining citizen satisfaction with local policing in the initial period following force amalgamations. By placing obligations on the chief constable to make ‘adequate arrangements’ for local policing and on local commanders to ensure that local policing is delivered in close consultation with

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local authorities, there is the basis for developing a strong framework within which local policing can develop. Nevertheless, there are several areas where there are important questions as to how local policing will develop within the new Police Service for Scotland.

- **What is ‘local policing’?** The reconfiguration of policing associated with the reform programme means that there is now close scrutiny of how different aspects of policing are delivered, from specialist operations and training to tackling crime and partnership activity. As a result some activities and assets may be based nationally or at a regional level rather than locally. Against this background, it is important to achieve some clarity around what constitute ‘local policing’ matters and what are regional or national issues. To take a simple example: while providing a visible and accessible local presence and community engagement are clearly local policing issues, is providing an armed response, tackling drug dealing or searching for missing people, matters for local policing or the responsibility of more specialist regional or national units? Without some definitional clarity around what is meant by ‘local policing’, local authorities will be left unsure as to what they can expect in terms of resourcing local policing and what should be included in a local policing plan.

- **How will levels of local resources be determined?** Understanding what local policing is for is important because of the likely tensions between ‘national’ and ‘local’ around resources and assets made available at a local level. The Bill makes clear that this is a matter for the Chief Constable to ensure there are ‘adequate arrangements in place for the policing of each local authority’ (45(1)) but if there are disputes over the level of resources available at a local level, how will these be resolved and within what forum? A related issue is the determination of the rank of officer designated as a local commander. It is likely that this will vary across Scotland depending on the nature and complexity of the policing requirements of different areas but it may result in some local authorities that in the past have dealt with a chief officer now engaging with somebody of lower rank which may have implications in negotiations for resources;

- **How will local police plans be developed and evaluated?** The Bill makes clear the requirement on a local commander to submit a local police plan to the relevant local authority for approval. Given that such a plan must have regard to the national strategic police plan as well as priorities identified by local community planning there are areas of potential tension around the balance between a ‘bottom up’ and a ‘top down’ approach to setting priorities and objectives. Similar tensions may also exist in relation to performance measurement and performance reporting. For example, to what extent will national reporting requirements be allowed to shape local performance measurement?

- **How will the local authority execute its role in local policing?** The Bill clearly proposes that the local authority play a key role in setting priorities and objectives in consultation with the local commander. In order to execute this role effectively it is important that local authorities develop effective structures for engagement with their local commander and the capacity and capability to monitor and scrutinise local policing issues in ways which do not rely exclusively on information provided by the local police. In relation to structure,
the Policy Memorandum makes clear that it is for local authorities to determine the most appropriate local mechanism for exercising their role. Given that there already exist a number of local forums in which policing issues are discussed with representatives of local authorities (for example, Community Planning Partnerships, Community Safety Partnerships and Community Councils) the challenge will be to ensure that there is not duplication of effort nor the creation of a confusing and cluttered landscape of different settings where police and local authorities interact. In relation to issues of capacity and capability, local authorities need to develop the ability to engage with their local communities in order to better understand their policing needs and concerns over crime and disorder so that these can be included in discussions about priorities and objectives along side information provided by the local police.

• **What happens to local community policing initiatives?**: there has been a significant revival of interest in community policing in Scotland over the last five years, prompted by a combination of the publication of the ACPOS Public Reassurance Strategy (2007), the Scottish Government’s Community Policing Engagement Principles (2009) and the Scottish Parliament’s Justice Committee report into community policing (2009). As a result, most police forces have made significant changes to the way community policing is organised, resourced and delivered. SIPR has undertaken a programme of research evaluating the operation of these different approaches so that there is now an evidence base that provides insights into the strengths and weaknesses of different community policing activity. What happens to the diversity of community policing arrangements within a single police service will be an important test of the relationships between the Chief Constable, Scottish Police Authority, local commanders and local authorities. A single service clearly creates opportunities to share ‘good practice’ but there may also be local concerns about any attempts to impose a ‘top down’ approach to community policing.

**Chapter 10  Complaints and Investigations**
The creation of the Police Investigations and Review Commissioner (PIRC) with its own investigative capacity is an important advance, both because the present procedure whereby police forces investigate complaints on their own is no longer tenable where there is only a single force, and because best practice elsewhere, including within the UK, points in this direction. This will also build upon recent experience of the Police Complaints Commissioner for Scotland (PCCS) in developing a learning culture in relation to handling public complaints.

There remain certain gray areas in defining those ‘relevant complaints’ with which the chief constable must deal and those which are reserved to the Crown, but there is sufficient clarity around PIRC's areas of operation to demonstrate that it can have a considerable effect on the public’s perceptions of independent complaints investigation against the police and offers a more thorough and effective means of dealing with such complaints.

The right to investigate ‘matters in the public interest’ [s.41C] is very important and provides an area of truly independent initiative for the Commissioner in which to act. It is particularly the inclusion of this ‘public interest’ clause which moves police
complaints in Scotland from a position in which it lags behind other comparable jurisdictions to one in which it potentially leads the field.

**Chapter 11  HM Inspectors of Constabulary in Scotland**

The arrangements for HMICS inspection reports to be lodged with the Scottish Parliament as well as the SPA is to be welcomed. The continuing involvement of Audit Scotland with policing bodies, which has been so fruitful, is also welcomed. There remain a number of questions around the role of Inspection in the context of a single police service: what forms will inspections take and who will decide; where will inspection teams be recruited from; and will there be any place in the new system for the appointment of a Lay Inspector to be fully involved in the inspection process. The underpinning issue is to establish who inspection is for. It obviously serves an important purpose for the SPA and the chief constable, but it should also be regarded as an important part of the public accountability structure for the Scottish Parliament, local authorities and, above all, the citizens of Scotland.

**Chapter 16  Independent Custody Visiting**

The decision to make Independent Custody Visiting (ICV) a statutory requirement is very much in line with the recommendations that SIPR made in its evaluation of custody visiting in Scotland carried out for the Independent Custody Visiting Association.\(^4\) This should ensure improved coverage of Scotland’s detention facilities and provide a basis for consistent performance reporting mechanisms, and structures of accountability. However, it is important that ICV is properly resourced in terms of administrative capacity, perhaps by the appointment of a national support officer. Such an appointment could play a key role in raising the profile of custody visiting among the public and thus help achieve one of ICV’s main aims of providing public reassurance about the treatment of detainees in police custody. Detailed consideration will also need to be given as to how a national body (the Scottish Police Authority) will execute its responsibilities in relation to the very local character of custody visiting which involves the recruitment and deployment of local volunteers and visits to local detention facilities.

**Conclusions**

There is much to be welcomed in the arrangements which this Bill makes for the creation of a Police Service of Scotland and for the legislative framework which it provides to support key principles of Scottish policing, such as policing by consent and local delivery of policing. At the same time, it is a starting point and there will be matters which require continuing attention as the new Police Service develops. In Appendix 1 (below) a set of issues and questions relating to how police reform aligns with key democratic criteria are set out to provide a framework within which the reform programme might be assessed in the future. More immediately, the reform programme will demand the development of effective leadership at all levels within an enlarged single force, ensuring that the Police Service establishes robust working with partners in a variety of contexts, and, most importantly, that a high level of public confidence is sustained through this period of transition and change.

APPENDIX 1
Summary of key issues in relation to police reform and democratic criteria
The Bill involves a complex reconfiguration of the relationships between the police, national and central government and the citizens of Scotland. The table below attempts to summarise some of the key issues which the Bill raises and how these relate to a set of ‘democratic criteria’ that might be used to assess policing and police governance⁵ in Scotland in the future.

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### Democratic criteria and the governance of policing in Scotland

<table>
<thead>
<tr>
<th>Democratic criteria</th>
<th>Questions raised by policy proposals</th>
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| **Equity**                                                                         | - How, and by whom, will decisions about the allocation of resources between local policing areas be determined?  
- How will conflicts between local and national views as to appropriate resourcing of local areas be resolved?  
- How will access to specialist expertise and resources be facilitated in an equitable manner? |
| (Policing services should be fairly distributed between geographical areas, groups and individuals) |                                                                                                       |
| **Service delivery**                                                               | - How will the Scottish Police Authority determine what should be delivered nationally and locally and does consideration need to be given to an intermediate geography (i.e. regional level) for some services?  
- To what extent will delivery be shaped by centrally determined statistical targets and performance indicators, and what scope will there be for local democratic input in the setting of these? |
| (The police deliver appropriate services as efficiently and effectively as possible) |                                                                                                       |
| **Responsiveness**                                                                 | - Against a background of declining responsiveness to local representative bodies and growing central government influence, how responsive will policing be to local preferences expressed through local elected representatives with only limited statutory powers?  
- What mechanisms will be in place to respond to the perceived needs of local communities directly (i.e. other than through local councils)?  
- At a national level, how responsive will the Scottish Police Authority be to the views of external bodies when its membership is selected rather than elected? |
| (As long as it is consistent with equitable policing, the police should be responsive to the views of representative bodies in determining priorities, the allocation of resources between different objectives and choice of policing methods) |                                                                                                       |
| **Distribution of power**                                                           | - To what extent will the proposals address the centralisation of power that has occurred within the tripartite structure over the last 20 years?  
- Will the proposals around local consultation between the local commander and local authority be sufficient to address the democratic deficit that has emerged at a local level?  
- What powers, if any, will local councils have in relation to the local consultation proposals? |
<p>| (The power to influence and review policing policy should not be concentrated but should be distributed across a number of institutions and agencies) |                                                                                                       |</p>
<table>
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<tr>
<th>Information</th>
<th>Against a background of growing concerns that unrefined police performance data in the public realm may have hindered rather than enhanced sophisticated debate about policing (Jones, 2008: 717), how will the different (but overlapping) information needs of police managers, local authority members, community groups and the public be addressed?</th>
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<tr>
<td>Redress</td>
<td>What are the implications of the changes proposed for the investigation and review of complaints by the public against the police, including the replacement of the Police Complaints Commissioner for Scotland with the Police Investigation and Review Commissioner?</td>
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</tbody>
</table>
| Participation | Are the proposals, which focus on increasing the quantity of locally elected councillor involvement in local policing, likely to improve the quality of the engagement between police and citizens at a local level? Who will have responsibility for ensuring engagement and participation between the police and other social groups so that their views on local policing are also heard?  
At a national level, how best can the membership of the Scottish Police Authority be constituted in such a way as to properly involve as wide a range of interests as possible in discussions of policing policy? |