Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Police Authorities Conveners Forum

1. Background

The ‘Police and Fire & Rescue (Scotland) Bill’ was introduced to the Scottish Parliament on 16 January 2012. The Justice Committee was designated as Lead Committee to oversee the Bill process and the Local Government and Regeneration Committee was designated as the Secondary Committee. While the Bill considers issues around both Police and Fire & Rescue Services, this submission deals only with issues pertaining to the Police and for ease of reference follows the Bill Chapters and headings with relevant comment immediately underneath.

2. Chapter 1 (including Schedule 1)

The principle of the SPA having the sufficiency of correct skills, experience and expertise to collectively govern and hold the Chief Constable to account is supported. However the Bill content does not remove a number of continuing concerns.

Section 2(3) indicates the SPA must carry out its functions in a way which is ‘proportionate, accountable and transparent and which is consistent with any principle of good governance….’. At this point there is no specific detail in regard to practical functionality or how it will conduct business. Presumably this means that the SPA will (in general) meet in public as police authorities do at present? It is expected that the detail of Standing Orders and Terms of Reference for committees etc will be agreed once the relevant appointments are made towards the end of 2012. The Scottish Government has responsibility for developing the workstream which will provide and recommend, to the Authority designate at this time, a framework for structure and functionality. Work is ongoing by them to develop a framework for structure and functionality and police authorities look forward to contributing to this workstream in due course.

In general terms the Bill structures the SPA as an NDPB. We cannot support this principle. The Authority should have a specific legal identity where it retains financial functions in terms of borrowing capability, reserves and carry forward facilities. The necessity of being able to hold, and utilise, reserves to smooth out unexpected operational demand is essential and well proven by current police authorities. In particular, the SPA simply must be able to recover VAT.

Schedule 1, section 2(1) indicates an SPA membership of 7 – 11 members. We believe that this possible range of members is too low, and in particular consider that a membership range of 13 – 18 members would be more appropriate arising from past experience within existing police authorities. Unfortunately, with the total absence of detail as to how the actual SPA business will be structured and conducted, this effectively introduces an element of guesswork into the process. In
terms of appointments to the Authority, the issue of appropriate levels of vetting required by members and staff has also yet to be considered.

The Chief Constable has responsibility under sections 17(1), 17(2)(e) and 45 to ensure 'local policing arrangements' and relevant oversight of such responsibilities rests with the Authority. Given this oversight duty we believe that a minimum of 50% of Authority members should be drawn from suitably experienced locally elected representatives.

Schedule 1, section 10 introduces the establishment of committees and sub-committees, and also the concept of membership of such committees by persons who are ‘not members of the Authority’. While non-members do not possess voting rights, we are against this particular principle. It serves to reinforce the current lack of detail as to how the Authority will actually conduct its business. For example, what levels of members and non-members are expected to constitute the different committees and sub-committees, and indeed, what numbers would constitute a quorum? Could it be that 1 member and a number of non-members could provide competency and quorum to a committee? It is unclear as to whom the non-members are there to represent, or as to whom, and how, they would be accountable.

Section 5, indicates that the Authority must comply with any direction (general or specific) given by Scottish Ministers. While section 5(2) seems to separate matters of operational policing and enshrine the independence of the Chief Constable in such matters, we do not agree with this overarching power being afforded to Ministers. If one aim of the Bill is to keep policing separate from Ministerial control, then the general or specific power of direction does not provide this essential separation. Such direction should, in principle, only be capable of enactment subsequent to relevant necessity arising from inspection processes, for example, by HMICS, as at section 78 of the Bill.

Chapter 2 - Police Service of Scotland

Section 7(a) indicates that the Authority must appoint the Chief Constable. Recent papers to the Scottish Policing Board indicated that different arrangements could be put in place whereby an Authority Chair designate and a panel may appoint the first Chief Constable. Subsequent discussion considered alternative proposals to effect as early an appointment as possible. In principle, should any future, workable proposals be put forward with the full support of all relevant parties, then we would be, generally, supportive of the process. That would of course be subject to any such alternative proposals being considered competent in terms of the Bill process and all relevant legislation.

Chapter 3 - Forensic Services

Section 31 sets out provision of forensic services by the Authority. While agreeing with the principle, no supporting detail is available at this time which makes it difficult to provide meaningful comment. In particular, it is unclear as to the practical implementation of procedures necessary for the Authority to ensure meaningful scrutiny of such services.
Chapter 4 - Principles, Priorities, Objectives and Plans

Section 34 introduces a duty on the Authority to make such arrangements as are necessary to obtain the views of relevant persons to assist in preparing a Strategic Police Plan. Section 35 sets out arrangements for Annual Police Plans and 36 sets out arrangements between the Authority and Chief Constable in this regard. These are new duties placed on a police authority and will require further detail in regard to how such arrangements will be effected in practice.

Chapter 6 - Annual Reports Accounts, Audit and Examination

Section 40 introduces a duty on the Authority to prepare and publish an Annual Report assessing the performance of both the Authority and the Police Service. Again, this is a new duty placed on a police authority. A workstream has commenced to consider what an appropriate performance regime might look like in respect of a single force and identify what performance indicators and outcomes would be necessary. While the Scottish Policing Performance Framework is utilised at present by police authorities, in conjunction with other measures, to assist in performance reporting by Chief Constables, we are unable at this time to indicate what a future performance model will look like.

Chapter 7 - Local Policing

[Note:- Before commenting on specific sections of the Bill, there are a number of general principles regarding the implementation of new local policing arrangements to consider. The SPA will have limited scope to address local accountability and scrutiny, compared to present arrangements and concerns have been expressed that the proposed new arrangements may simply become ‘talking shops’ without any real powers, which would result in a serious diminution of local accountability over policing. The role and powers of the proposed new local arrangements therefore need to be clearly defined to ensure that they have real impact, and can deliver effective local accountability. There are four key points:

1. clear recognition that the role of the local arrangements is to deliver local accountability and scrutiny of all policing activities provided in the local area, and this role complements the national scrutiny and accountability by the national authority (this point is particularly important given the limited number of councillors proposed for the national authority);
2. creating an effective mechanism for resolving disputes between the local body and the local commander, should they arise;
3. providing greater clarity on the balance between operational independence and scope for scrutiny;
4. creation of effective mechanisms to deal with issues over the distribution of resources.]

Section 46 sets out arrangements for the ‘local authority role’ in policing. Section 46(3) details what a local police commander must provide to a local authority and states ‘(3) a local commander must provide to the local authority such – (c) other information about the policing of its area, as the local authority may reasonably require.’ There is a similar provision at section 81(3) in respect of a reasonable
requirement by the Authority on the Chief Constable to provide reports or other information. However, sub-sections within section 81 then detail a process to define and arbitrate upon what ‘may reasonably require’ means in practice. There is a need to consider a suitable process of arbitration at a local policing level in terms of section 46(3). At present HMICS can provide professional advice to all police authorities should they so request it. While not explicit within the Bill, it begs the question as to whether this provision of professional advice is likely to be extended to local authorities, should they so request it, in terms of their ‘local policing arrangements’?

Section 48 sets out arrangements for Local Police Plans (LPP) and 48(1) and (4) indicates that the local authority must ‘approve’ an LPP prior to it being published. While appreciative of the principle of enhanced local accountability, the current lack of practical detail highlights concerns as to what procedures are available if ‘approval’ is not given? For effective scrutiny and accountability the relationship with the local commander must be positive and constructive while allowing scope for challenge. A point which should be clearly reflected in legislation.

The above two bullet points are relative to general concerns around local policing. It is unclear as to what formal links and procedures will exist between the local policing areas and the national Authority. While individual local authorities may monitor policing performance within their own areas, how will the Authority provide overall, meaningful scrutiny in terms of its overall accountability for ensuring delivery of all local policing arrangements? All of this is closely linked to resource allocation to local commanders which will (ultimately) determine what policing services local authorities will receive, and what remedies might exist should local authorities consider that they have not received an equitable allocation?

At paragraph 184 of the Financial memorandum, COSLA estimated a joint cost of £3m to £4m for local authorities to engage with local policing and Fire and Rescue services. However, this paragraph also indicates a believed, overall cost-neutral scenario will ensue given the savings occurring from the dissolution of current arrangements for joint police and Fire and Rescue Boards and unitary authorities. However, as the current funding available to local authorities in respect of these arrangements will cease on their dissolution, it appears more likely that local authorities will be in an overall net-loss position by losing funding yet having to support the new, incoming local arrangements? These new arrangements will carry fixed costs regarding meetings and professional support (for effective scrutiny) and it will be essential, for them to be effective, that funding is provided to local authorities to meet such requirements. Similarly, some police authorities run local schemes such as Diversity Lay Advisers and clarification is required as to how these successful schemes will continue to be resourced in the future? There is also the risk of losing expertise and specialist knowledge should staff be transferred to the new Authority requiring replacement at further additional cost. While understanding that various workstreams and projects are currently being initiated in regard to all aspects of a single police force, no detail exists to presently understand what local authority arrangements will ultimately look like. This is an area of overall risk to ensure meaningful democratic accountability.
Chapter 8 - Governance and Administration of Police

Section 49 refers to ‘regulations’ which will require to be made regarding the governance, administration and conditions of service of constables and cadets. While noting the requirement for regulations to be made, there is concern regarding the substantial volume to be produced within such a short timescale.

Chapter 9 - Police Appeals Tribunals (including Schedule 3)

[Note:- The Police (S) Act 1967, Schedule 3 currently sets out two different arrangements for Police Appeals Tribunals in respect of ‘senior officers’ (those appointed to Chief Officer rank) and those constables of Chief Superintendent rank and below. Membership of Tribunals, as proposed by the Bill, is different from either of the arrangements existing at present. It is understood that the Police Investigations and Review Commissioner (PIRC) will have responsibility for the future investigation of complaints against ‘senior officers’ in the single force, but with the lack of detail pertaining to future regulations yet to be made under section 49 of the Bill, it is not clear at this time how the two current sets of arrangements are going to be assimilated in any practical sense for future application across all ranks.]

Section 57 sets out the detail for Police Appeals Tribunals and Schedule 3, section 1(3)(a) and (b) introduces new arrangements for members. Specifically that all members must be practising solicitors or advocates in Scotland. We cannot support that principle and would seek membership to consist of three members, The Chair to be held by member from a list nominated by the Lord President and supported by a former Chief Constable and a retired constable of appropriate rank. Previous Tribunal hearings have resulted in expertise being retained by such members in terms of regulations, police procedures and practice with past decisions, in effect, providing a background of case law.

Section 58(2) intimates that either party may require that the representations (to the Tribunal) are to be made by way of oral hearing. We cannot support that principle. It does not seem fit and proper that either party can dictate to a Tribunal in what manner it will receive representation. It should be incumbent upon the Tribunal to determine the manner in which it will receive representation.

Chapter 10 - Complaints and Investigations

Section 61 introduces new arrangements in respect of complaints and investigations. While supportive of the principle of the new arrangements and the introduction of a PIRC we are aware that further work is presently ongoing to develop the arrangements.

Section 63(e) relates to functions imposed on the Commissioner under section 49 of the Police & Fire Reform (Scotland) Act 2012 (asp 00) in relation to procedures for dealing with constables whose standard of behaviour or performance in unsatisfactory. It is unclear what this will refer to as none of the relevant regulations to be issued under section 49 have been promulgated.
Again, the lack of detail at present makes it unclear as to the practicalities as to how the Authority will maintain suitable arrangements for the handling of complaints at both local and national levels. This is an area of concern given the significant amount of work presently undertaken by police authorities in respect of the monitoring of complaints under current arrangements, notwithstanding how a small, centralised Authority will cope with the enhanced complaints functions being developed in accordance with the Bill at section 61.

Chapter 16 - Independent Custody Visiting

Sections 90 and 91 introduces the purpose and arrangements for Independent Custody Visiting. While fully supportive of this becoming a statutory obligation in Scotland, there is no detail available as to how a small, centralised Authority will undertake the practical recruitment, training, management and co-ordination of Custody Visiting as currently exists across Scotland. The earlier consultation indicated a willingness to build upon ‘existing skills and experience’ and further information is currently awaited as to how this will be facilitated in practice in the future.

Schedule 4 - Transfer of constables, staff and property etc.

Schedule 4, section 10 identifies what individuals will be regarded as ‘police employees’ for the Authority, and section 10(3) specifically notes that the SPA will determine whether or not a police employee is to be a member of staff under the control and direction of the Chief Constable, or under the control and direction of the Authority. At this time there is no information available as to when such decisions may be taken, or to otherwise indicate the numbers, roles or functions of any staff under the control and direction of the Authority.

3. Conclusion.

In setting out the general powers of the SPA within the Bill, it is clearly limited in function and legal identity in comparison to the police authorities which it replaces. To fully reflect the tripartite safeguards currently enacted in legislation the Authority must, as an underlying principle, be wholly separated from government by virtue of having a stand-alone legal identity and not merely exist as a governmental, arms length body. The proposed lack of treasury function, ability to carry-forward reserve funding, constraints on borrowing capabilities, potential inability to recover VAT and being subject to general or specific Ministerial direction clearly do not achieve the essential separation from Scottish Ministers and the Authority will therefore remain too closely linked to government.

There are a number of high-level principles within the Bill that many will support. However the Bill is, in essence, merely enabling legislation. The concern at this time is the complete lack of practical detail as to how the proposed new Authority will actually function, in terms of structure and staff, and how it will practically conduct its business. With organisational and operational detail for the Authority to be considered and agreed upon at a later date in conjunction with a designate Chief Constable and Authority members, the Authority has the potential to be an entirely
different entity from that of police authorities as they are known and understood at present.

While understanding that a number of workstreams and projects are commencing to determine functional and operational details regarding the Police Service and Authority, there is real concern in regard to the extremely short timescale involved. This is particularly relevant in regard to achieving suitable arrangements around local policing and meaningful local democratic accountability. The Police Reform Sub-Group has a role in monitoring the progress of the various workstreams and efforts will be directed through this sub-group on an ongoing basis to alleviate the concerns and issues raised within this response.

Scottish Police Authorities Conveners Forum
28 February 2012