Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Highland Council

The Highland Council welcomes the opportunity to provide written evidence to the Justice Committee on the Police and Fire Reform (Scotland) Bill. The Council is keen to contribute to the legislation to ensure that new arrangements for the forces work effectively from their inception. The Council wishes to see continuity and enhancement in the performance of police and fire and rescue services operating in the Highlands. The Council is also to be a pathfinder authority to aid the transition to the new single services.

1. Part 1, Chapter 1, Section 1 and Schedule 1 The Scottish Police Authority

Schedule 1 provides that the Scottish Police Authority (SPA) will have between 7 and 11 members, all to be appointed by Scottish Ministers with appointments held for no more than 4 years. Highland Council is concerned that this membership does not allow adequate regional or local input to Scottish policing arrangements. This is particularly the case where the Bill does not make sufficient provision for local accountability for, or scrutiny of, local policing other than consultation and reporting.

The Council seeks the size of the SPA to increase to 15 members. It also seeks reassurance in the Bill that membership of the SPA makes provision for Scottish rural, island and urban community safety interests. The Council sees the inclusion of local elected members beneficial in this respect, and seeks that they comprise at least 8 of 15 members on the SPA. This would bring a breadth of experience and knowledge of policing across Scotland. The Council supports the appointment of the SPA members through the Public Appointments process.

The use of sub committees may be useful but if the maximum number of SPA members remains at 11, the Council views this as too small for proper consideration of rural, island and urban issues at sub-committee level.

2. Part 1, Chapter 1, Section 2 Functions of the Scottish Police Authority

Highland Council welcomes the inclusion of maintaining the Police Service, promoting and supporting continuous improvement in the policing of Scotland and the accountability of the chief constable and the need for proportionate, accountable and transparent governance in the main functions of the Scottish Police Authority. However the Council seeks assurance that these functions will have regard to the current standard of policing in the Northern Constabulary area. Specifically it seeks assurance that the legislation and/or accompanying guidance will ensure:

- the maintenance of the police service in the Highlands;
- that continuous improvement will be based on current performance in the Highlands and not based on a levelling of performance where that might be lower for other areas of Scotland or for Scotland as a whole; and
- that appropriate local governance arrangements are made for the area which includes mainland and island communities. Community
representation in these areas should have no less weight than community representation in other areas of Scotland.

Highland Council expects that there will be no reduction in service performance in the Highlands as a result of police reform.

3. **Part 1, Chapter 1, Section 3 Maintenance of the Police**

Highland Council notes the provision for the Scottish Police Authority to provide and maintain various assets to carry out its functions. It seeks the inclusion in this Section of a reference to sharing public assets with other public bodies where that would enable best value for the public purse. This could be detailed further in guidance, with reference for example made to shared buildings, shared vehicles or shared maintenance of them, shared land or partnership arrangements for land disposal for best community benefit, shared ICT provision and shared procurement where appropriate.

4. **Part 1, Chapter 1, Section 5 Directions**

Highland Council is keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of police services to ensure either:

- no loss of front-line or back office services currently based in the Highlands or
- for new central services to be moved to the Highlands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements. For example there are shared arrangements with Highland Council Service Points for customers in some rural communities at the moment and with Highland Council for out of hours calls.

Inverness has proven to be a suitable location for the headquarters of another national public body and there is no reason to assume it could not provide a suitable regional base for functions associated with the Police Service for Scotland.

5. **Part 1, Chapter 2, Section 9 Special Constables**

Highland Council welcomes the provision in the Bill to continue with the appointment of special constables. It seeks assurance that the appointment of special constables by the Chief Constable will continue to supplement and not replace the appointment of regular constables in the Highlands. The Council has two reasons for responding in this way:

a. The Council is concerned that the new Authority or Chief Constable may have a perception that serious crime is less of an issue in the Highlands than elsewhere in Scotland (this is not evidenced);

b. The move to a Police Service of Scotland, without careful human resource management, may lead to a drain of talent from the Highlands causing recruitment difficulties for regular constables in the future.
6. **Part 1, Chapter 2, Section15 (Constables: service outwith the Police Service of Scotland) and Part 2, Section 99 sub section 9 and Amendments relating to Part 2.**

Highland Council seeks assurance (through a provision in the Bill or in accompanying guidance) that when consent is given for constables to be engaged in service outwith the Police Service (paid or voluntary) that this does not exclude engagement in another emergency service (paid or voluntary). This assurance is sought because it may be helpful in remote rural and island communities for there to be an ‘emergency first responder’ capability, where skills found in the separate emergency services (police, fire and rescue and ambulance) could be developed across staff with these roles and deployed more quickly to deal with emergencies arising.

Part 2, Section 99 of the Bill does not make reference to a statutory bar on employment within the Scottish Fire and Rescue Service. This existed in the Section 51 of the Fire (Scotland) Act 2005, but there appears to be no amendment to the prohibition on employment of police in the Amendments relating to Part 2 of the Bill (page 110). The Council is unsure why this prohibition needs to remain and presses for it to be repealed.

By making provision for paid and voluntary employment in more than one emergency service, some recruitment difficulties in remote rural and island authorities may be overcome.

7. **Part 1, Chapter 4, Section 33 Strategic Police Priorities**

Highland Council welcomes the provision (at sub section 3) that before determining the strategic priorities for the Scottish Police Authority, Scottish Ministers must consult with ‘such persons as appear to them to be representative of local authorities’. This may be interpreted as consultation with a national body such as Cosla; however with arrangements to be trialled through local pathfinders for the engagement and scrutiny of local police plans, there may be merit in specifying in the Bill the need for Ministers to consult with locally elected representatives involved in the scrutiny of their local police plans, especially if the strategic police priorities are to be informed (at least in part) by community safety issues and priorities in communities. This approach may also reduce the time required to consult local authorities on the Strategic Police Plan (as set out in subsection 4).

8. **Part 1, Chapter 5, Sections 38 and 39 Best Value**

Highland Council welcomes the duty of the Scottish Police Authority to make arrangements to secure Best Value and for these to be aligned to the duty placed on local authorities. It may be worth noting that arrangements for auditing Best Value (in police and local authorities) may change as the approach to external scrutiny of community planning partners and partnerships in the achievement of outcomes is currently under review. This may be dealt with in the future in accompanying guidance to the legislation (referred to in section 39).
9. **Part 1, Chapter 6, Section 41, Annual Accounts**

Although the Financial Memorandum for the Bill is being considered by the Finance Committee, the Council is concerned that the proposed delivery model means that the new single forces will not be able to recover Value Added Tax (VAT). This will incur additional cost to the public purse and reduce resources for the new services. The Council acknowledges that the Scottish Government is in discussion with HM Treasury and the HMRC seeking exemptions, but the Council seeks assurance that this will be resolved before the legislation is passed.

10. **Part 1, Chapter 7, Section 45 Local Policing**

In subsection 1 reference is made to adequate arrangements being in place for each local authority area. Highland Council would like to see cross reference with the policing principles (Section 32) and the local implementation of the Police Authority functions (especially Section 2 sub section 1 (a) maintenance of the police service and (b) continuous improvement.

Highland Council welcomes the provision at sub section (2) that a local commander must be designated for each local authority area. It does not however specify the rank for the local commander. If this is to vary across local authorities, there is a concern that in rural or smaller local authorities a lower ranking officer will be appointed. This is of concern because in an organisation with a hierarchical structure, they would have a lower level of authority within the Scottish Police Service potentially limiting their capacity to influence the national policing plan and the resources required for the local police plan. The Council seeks provision in the Bill or accompanying guidance that if the rank of a local commander is to vary, that the position of local commander is afforded a particular status which would not be superseded by higher rank in other command areas on matters affecting local command in Highland and the resources for it.

Under sub section (3) the Bill provides that a local commander could cover more than one local authority area. This is more likely to be the case where the local authority has a relatively small population or covers a relatively small geography. With this more likely to affect the Highlands and Islands, Highland Council is concerned that it may not be as well served as other areas with a dedicated local commander. This is of even more concern if the rank of the local commander may be lower than in other areas. Assurance is sought in the provisions of the Bill or in the accompanying guidance, that service delivery, performance and resources will be fairly distributed with no reduction for the Council currently served by Northern Constabulary.

11. **Part 1, Chapter 7, Section 46 Local Authority role in policing**

Highland Council welcomes the provisions in the Bill for the mandatory involvement of the local authority in setting priorities and objectives for policing in the area, in providing feedback on policing in the area and improvements to it and in receiving reports on police functions and complaints made. The Council seeks to strengthen these provisions or include a further provision that the local commander must at least
have regard to the views of local authorities in their involvement in local priority setting and objectives and in their feedback on performance.

This section of the Bill provides little assurance on local accountability and governance for local policing. While arrangements for proper local scrutiny of policing and for community engagement are to be trialled through pathfinders, the Bill should make reference to the principle and value of local scrutiny of policing in its area.

In addition it would be helpful if the accompanying guidance could refer to:
- the support for joint strategic assessment with the local authority to understand needs and priorities for policing and
- the performance standards and performance framework to be used for reporting on how police functions are being carried out. This would support one of the Government’s four pillars of public service reform; strengthening the performance culture of public bodies.

The Council is concerned that the Bill does not make clear the alignment of arrangements for local policing with community planning arrangements. Community planning should reduce the need for separate plans for local policing and fire and rescue services and instead support the production of a joint public protection and community safety plan for each area as agreed with other partners especially local authorities, local health boards and the Scottish Ambulance Service locally. The Council accepts that some CPPs may be more able to proceed with this joint planning than others, but it seeks provision in the Bill for those partnerships to proceed in this way if they are ready to do so.

Community planning is also the process for agreeing joint operational working and tasking. More explicit reference to building on current community planning arrangements at the planning and operational levels would support the integration and prevention agendas better as well as finding potential efficiencies in service planning. This point relates to the provisions in the Bill relating to community planning and the local policing plan below.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The Council seeks assurance that these costs are netted against the transfer of grant from local to central government.

12. Part 1, Chapter 7, Section 47 Duty to Participate in Community Planning

Highland Council welcomes the inclusion of the local commander to participate in community planning. The Council seeks the same duty to apply to the Local Senior Officer for the Fire and Rescue Service. There are four further provisions or assurances requested by the Council:

a. The Council seeks greater clarity either in the Bill or in its accompanying guidance on the extent of local joint working expected of the new Scottish Police Service. This is required because the Council fears that current effective joint working in key public protection and community safety areas (child and adult protection, dealing with violent offenders, violence against women, tackling alcohol and drug misuse,
anti-social behaviour, youth re-offending and road safety) will be undermined if current policing input is reduced in any way. Joint working is effective if those taking part have authority to task resources decisively, quickly and within the local command. Delegated authority for local commanders in deploying their local resources needs to be assured for effective police participation in community planning.

b. The Council seeks clarity on how protocols for joint working can be maintained and improved in the change to a Scottish Police Service.

c. The Council seeks to extend the provisions for the duty to apply also to the Scottish Ambulance Service, given the need to align its resources with other emergency services and local partnership arrangements.

d. The Council is aware of the current detailed review of community planning and any implications arising from that for the Scottish Police Service will need to be reflected in the Bill or in accompanying guidance.

13. Part 1, Chapter 7, Section 48 Local Police Plans

The Council welcomes the provisions in the Bill for the local commander to prepare and submit a local police plan to the relevant local authority for approval, but sees these provisions as limiting. This is because:

1. It is not clear what the process would be if approval is not given. Some positive process of resolving any lack of agreement would be required.

2. It is less likely to support the approach to achieving public protection and community safety outcomes. Outcomes require partnership or integrated working with other relevant partners, not the development of a separate plan by one organisation for consultation with others. It would be more helpful instead to at least allow for the local police plan to be developed jointly with the local authority and for it to be subject to public consultation. Even better would be the acknowledgement in the Bill that outcomes mean the involvement of other partners, notably the local fire and rescue service, the Health Board, Scottish Ambulance Service locally and the third sector. Having a joint public protection and community safety plan could be achieved within a framework of national outcomes, national policing priorities and the fit with local outcomes and local resources. All of this can be supported by the development of the Single Outcome Agreement, especially in relation to partnership performance. This joint approach would enable local solutions to be developed for integrated and preventative services, two of the Governments four pillars of public service reform.

Subsection 5 refers to a review of the local police plan at least every 3 years, but this is not well aligned to the requirement for an annual police plan (Section 35). The Bill or accompanying guidance should enable an annual review of the local plan.
14. **Part 1, Chapter 10, Section 62 and 63, The Police Investigations and Review Commissioner**

The Council seeks further information on the implications in the Bill on the change proposed for the Police Complaints Commissioner for Scotland to become the Police Investigations and Review Commissioner. In addition the Council seeks provision in the Bill for there to be an opportunity for the local scrutiny of local complaints handling.

15. **Part 1, Chapter 11, Sections 71 and 74 Her Majesty’s Inspectors of Constabulary in Scotland**

It is not clear how the Bill makes provision for reducing external scrutiny and making it risk based and proportionate as required following the Crerar Review. In addition it does not take into account the current review of external scrutiny of community planning partnerships. The Council emphasises this point given the provisions in the Bill for a separate Chief Inspector of the Scottish Fire and Rescue Service (Section 117).

16. **Part 1, Chapter 17, Section 95 and Schedule 4 Transfer of constables, staff, property etc**

Highland Council will consider the potential impact of a staff transfer scheme for staff who are to be treated as police employees but are employees of the local authorities involved in the NJPB. It would be helpful to have further guidance available on this matter in advance of the appointed day.

This is important because Highland Council provides services to the Joint Northern Police Board in terms of clerking and administration, policy development and finance services. Similarly Highland Council has shared services for procurement, out of hours call handling and some co-located customer services within some remote and rural communities. The Council therefore needs to understand the implications, if any, for staff involved.

17. **Part 2, Fire Reform, The Scottish Fire and Rescue Service, Section 99 Schedule 1A**

Schedule 1A provides that the SFRS will have between 7 and 11 members, all to be appointed by Scottish Ministers with appointments held for no more than 4 years. Highland Council is concerned that this membership does not allow adequate regional or local input to Scottish Fire and Rescue Service arrangements. Highland Council requests that further consideration is given to make provision for Scottish rural, island and urban community safety interests to be included. One way of achieving this would be to include the appointment of local elected members, and to increase the size of the SFRS Board.

Unlike the provisions in part 1 of the Bill relating to Special Constables, Part 2 does not appear to make reference to the role of retained or volunteer staff and their entitlements as part of the SFRS. This is of concern in the Highlands where there is some reliance on these arrangements. The Bill should make reference to these
roles, but in keeping with the evidence at paragraph 5 above, their use should complement the role of SFRS’s full time and paid employees.

18. Part 2, Section 111, sub section 39A Best Value

Highland Council welcomes the same duty on SFRS to secure Best Value, as it applies to local authorities. It seeks inclusion of a reference to shared services with other public bodies, including local authorities and the Scottish Police Service where that will support best value.

19. Part 2, Chapter 8A, Section 112, sub section 41A Scottish Fire and Rescue Service Strategic Plan

Highland Council recommends that in preparing the strategic plan the Scottish Police Authority is named along with local authorities as a mandatory consultee.

20. Part 2, Chapter 8A, Section 113 Local Fire and Rescue Plan

Highland Council recommends that at least the local police commander is included as a mandatory consultee for the local fire and rescue plan.

However, as stated at paragraph 12 above, to achieve public protection and community safety outcomes, provisions should be made in the Bill for the production of a joint public protection and community safety plan involving not only fire, police and local authorities, but also the ambulance service locally and NHS. This would support the Single Outcome Agreement better and develop community planning arrangements further.

This integrated community safety approach would enable the provision in the Bill (41E, (2) (d)) for the local plan to refer to outcomes and how they can be measured. Specifying and achieving outcomes normally requires a partnership or integrated approach to service planning and delivery.

No specific reference to the SFRS having a duty to participate in community planning appears to be made in Part 2 of the Bill. It would be helpful to clarify whether this is a standing provision in the 2005 Act or if it has been omitted purposefully as a duty in this Bill.

21. Part 2, Chapter 8A, Section 113 (41K) Monitoring by local authority

With the monitoring of the local police plan by the local authority also a provision of the Bill, with the similar provision for the local fire and rescue plan, it would be more effective if separate plans are to be produced for them to be monitored together or simultaneously given the connections and dependencies across both emergency services.

However, if the Bill is amended to enable the production of a joint public protection and community safety plan for each local authority area, then each contributing partner would need to be accountable for its performance against the plan. This can be facilitated locally through joint scrutiny arrangements (which could be trialled
through local pathfinders) and it can be reported nationally through the arrangements for the single Outcome Agreement.

Provision should be made for the additional costs associated with setting up new committees in local authorities. The Council seeks assurance that these costs are netted against the transfer of grant from local to central government.

22. **Part 2, Chapter 8B, Section 116 (42A) Directions by Scottish Ministers**

In keeping with the response at paragraph 4 above, Highland Council is keen to see reference made to a general or specific direction from Scottish Ministers on the maintenance or re-location of fire and rescue services to ensure either:

- no loss of front-line or back office services currently based in the Highlands or
- for new central services to be moved to the Highlands to support local economies and rural communities.

This can be enabled by ICT or supported by further shared services arrangements.

23. **Schedule 5 (introduced by section 118) Transfer of staff, property etc**

Highland Council will consider the potential impact of a staff transfer scheme for staff who may be treated as SFRS employees but are employees of Highland Council. It would be helpful to have further guidance available on this matter in advance of the appointed day.

Highland Council
6 March 2012