Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from the Scottish Police Federation

Thank you for the opportunity to comment on the Bill. The Scottish Police Federation (SPF) represents over 98% of all Scottish Police officers from constable to chief inspector and what follows are the views of their elected representatives.

In summary, the SPF’s view of the Bill is that it proposes changes to accountability and governance which would adversely affect operational independence. The SPF accepts that the current tripartite arrangement needs amendment to accommodate a single force and to provide balance between local and national interest, but it is vital that the chief constable’s operational autonomy is not unwittingly diminished by that amendment.

Part 1 Police Reform

Chapter 1 – The Scottish Police Authority

S. 5(2) – SPF has asked Scottish Government if this sub-section means:

“A direction may not be given in respect of any operation or on any issue which may affect an operational matter.”

SPF received a positive response that this was the meaning and therefore the Bill should be amended to state that precisely. It is vital that the unique position of the police in relation to operational independence is taken account of here.

Chapter 2 – The Police Service of Scotland

S. 11(5) – The Inquiry into Police Responsibilities and Rewards \(^1\) proposed the removal of the ranks deputy chief constable, chief superintendent and chief inspector despite opposition from every section of the service. The deputy chief constable rank was removed and replaced by an assistant chief constable designate for a period but was reinstated. The chief superintendent rank was replaced grades of superintendent temporarily, and the chief inspector rank was, in the event, left untouched. Change of this nature should be fully considered and factored through primary legislation not regulation. The explanatory note cites a potential reason for change as ‘operational efficiency’ but this is for chief constables to determine and they can already choose to use or not use ranks.

S. 17(2)(c) – The chief constable should prepare the strategic police plan not merely be ‘involved’ in its preparation. The strategic police plan should be subject to the approval of the Scottish Police Authority (SPA).

\(^1\) The Sheehy Report 1993
S. 17(4) & (5) – These sub-sections are superfluous. To some extent they express the obvious but they also impinge on operational independence. Lord Denning said the chief constable was “not the servant of anyone, save the law itself.”

S. 20(a) – SPF would wish to see the iconic and memorable “guard, patrol and watch” inserted here.

S. 20(e) – SPF believes police should be responsible for the execution of warrants but not for service of citations or other legal documents.

S. 22(3) & (4) – SPF proposes that these sub-sections be removed. A new law in statute would achieve nothing that common law does not already accommodate. "It is a crime at common law for a public official, a person entrusted with an official situation of trust, wilfully to neglect his duty, even where no question of danger to the public or to any person is involved."  

Chapter 3 – Forensic Services

S. 31 – The operational side of forensic services (scenes of crime/gathering of evidence) should be under control and direction of the chief constable as that is clearly part of constables' duties with the analysis side of forensic services being a matter for the SPA. It should be noted that criticism of forensic services following the McKie Inquiry was not as a result of the chief constable having authority over scenes of crime/gathering of evidence. SPF is concerned about quality of service and bureaucracy and the costs incurred by the police if forensic services are not delivered properly and timeously.

Chapter 4 – Principles, Priorities, Objectives and Plans

Understanding precisely what this Chapter means depends largely on what is understood by, and the relationships between, the words in its title, “Principles, Priorities, Objectives and Plans” and also the phrases “strategic police priorities”; “strategic police plan”; “annual police plan” and “local police plans”. Fine differences in understanding can lead to confusion over who should do what, who or what has primacy and whether that amounts to appropriate change in the tripartite structure.

S. 32 – Wording here is largely non-police specific and seems to avoid core duties as expressed in S. 20.

S. 33, S. 34(5), S. 35, S. 36 & S. 37 – As stated above, these sections can be read as enabling a shift towards direct political control of policing. Effectively they cover setting priorities and various plans and prescribe how bodies should consult, submit, approve and publish these priorities and plans.

SPF believes these sections shift the mechanics of accountability and governance to the detriment of operational independence. Specifically, at:

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2 R v Metropolitan Police Commissioner, ex parte Blackburn [1968] 2 Q.B. 118 at 136
3 Gordon, Criminal Law, 3rd Ed. Vol. II Chapter 44. q.v.
4 Section 20 (1)
S. 33(3) - It should include ‘chief constable’.
S. 34 – It should be the responsibility of the chief constable not the SPA to prepare the strategic police plan. It should be subject to the approval of the SPA.
S. 35 – Same comment as above.
S. 36 – As above.

**Chapter 7 – Local Policing**

The relationship between the SPA and local authorities and national policing priorities and local police plans must be clearly described or the police will be left in the middle uncertain as to how to balance and prioritise the two responsibilities.

S. 46 – Does this mean the local commander has primacy in setting priorities and objectives? Again, our concern here is operational independence. There is no provision for resolving disputes.

**Chapter 8 – Governance and Administration of police**

S. 53(2)(a)(iii) – References to performance and inefficiency should be removed as these are covered in efficiency regulations not conduct.

S. 53(2)(b) – The provision for suspension should extend to senior officers.

Insert after S. 53(2)(b),
- About the form and procedure of an investigation
- Imposing restrictions on the extent of any investigation
- Setting time limits within which matters must be investigated

S. 53(2)(d) – This should read ‘serious’ misconduct and should not include unsatisfactory performance. It should also be clearly separated from the arrangements for senior officers.

S. 53(3) – Add, ‘should include the sanctions at 53(2)(c)’.

S. 55(2)(a)(iii) Should read ‘the Joint Central Committee’.

**Chapter 9 – Police Appeal Tribunals**

S. 58(1)(a) Insert the word ‘and’ between the words ‘submissions’ and ‘or’.

S. 59(4) Remove the words from “to such extent…..for the purpose of”.

S. 59(4) & (5) – We are concerned this may introduce the concept of suspension without pay?

Schedule 3, paragraph 4, should have added;

- (d) the time within which the decision has to be delivered’.
Chapter 10 – Complaints and Investigations

S. 62 – Concerns over cost and staffing. The clamour for independence should not knock out the need for efficiency and effectiveness.

S. 63(1)(d) – Change ‘Commissioner’ to ‘Lord Advocate’.

S. 66 – Seems to be covered at S.63 – 33A(1)(d) and should be removed.

S. 67(2)(c) – Add after the word ‘procedure’ add ‘and reports’.

S. 67 41D(3) – Add Joint Central Committee and reference to other staff associations

S. 68 – Add new sub-section 4, “the Commissioner must not act in a manner which is likely to provide the name of any person or particulars which could identify any person without providing to that person or persons not less than seven days notice of that intention so to do.”

S. 70 – This seems anomalous when independence of investigations is considered.

Chapter 13 – Provision of Goods and Services

S. 83 – Add to this Section, “police services provided at a charge must not be provided to the detriment of normal public police services.”

Chapter 15 – Offences

S87 – Assault, resist, obstruct or hinder should be treated as three separate individually identifiable offences, given sub-sections of their own because, (a) they are different offences, and (b) separate sub-sections would allow a true record of assaults on police officers to be kept.

Chapter 17 Miscellaneous and General

S. 94 – The facility to discuss non-negotiable terms and conditions with other stakeholders is valuable. What is to replace PABS in this regard?

Schedule 1 The Scottish Police Authority

Part 1 Status, Structure and Governance (page 66 of the Bill)

Membership (page 66 of the Bill):

2(1) – To provide resilience and the capacity to service the Authority and its committees there should be 15 not 11. There should be elected representatives (no more than seven) and they should be selected through the same process and against the same criteria as other members.
Tenure (page 67 of the Bill):
4(3) – Add ‘subject to a maximum of two terms’. There should also be provision for suspension.

Committees and sub-committees (page 69 of the Bill):
10(1) – Replace ‘for any purpose’ with ‘in connection with its functions and roles’.

10(5) – Details of remuneration, allowances and expenses should be published.

Schedule 3 Police Appeals Tribunals (page 73 of the Bill):

Constitution and Membership
1(1) – After the word ‘appointed’, insert the words, “from the faculty of advocates”. The SPF believes the chair of the tribunal should be from the Faculty of Advocates as this would ensure it had a sufficiently high standing.

Add “1(d) timescales within which decisions have to be delivered.”

Schedule 4 Transfer of Constables, Staff and Property etc. (page 78 of the Bill):

Limitation on mobility of transferred constables
9(4)(b) – This condition was not included in the last round of police force amalgamations in 1975 and should be removed. Our members are clearly considering how the Police Service of Scotland will affect them and, overwhelmingly, their main concern is that they might be transferred to other parts of the country against their will. SPF has no difficulty with Schedule 4, paragraphs 9(4)(a) or (c) but (b), “is promoted to a higher rank”, would effectively mean that constables accepting a promotion to sergeant would lose their protection and could thereafter be transferred to any other in place in Scotland against their will. Of course movement will be necessary and will occur voluntarily but this reasonable protection should not be lost on promotion.

Equality Impact Assessment (page 32, paragraph 166/167 of the Policy Memorandum)
The Equality Impact Assessment addresses only the six strands of diversity. These have been replaced by the nine protected characteristics. The lack of detailed statistics is evidence of the poor compliance of recording within Forces and fails to address basic principles such as part-time workers.

Calum Steele
General Secretary
21 February 2012

5 Equality Act 2010