

Justice Committee

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

Written submission from the Crown Office and Procurator Fiscal Service

I refer to Ms Scott's email of 1 April seeking written views on the Committee's post-legislative scrutiny of the 2012 Act. I have now had the opportunity to consider this and provide the following comments.

Whilst my comments focus on the parts of the Act which have most relevance to the core responsibilities of the Crown Office and Procurator Fiscal Service (COPFS); namely the provisions that relate to the Police Service of Scotland (Police Scotland), the Police Investigations and Review Commissioner (PIRC) and the Scottish Police Authority (SPA), I should note that the Scottish Fire and Rescue Service has played a positive role in the wider justice system through its representation on the Justice Board and we welcome this development.

As the Committee is aware the Lord Advocate and Procurators Fiscal acting on his behalf, have responsibility for the investigation and prosecution of crime, of deaths that need further explanation and of allegations of criminal conduct against police officers. Whilst we are entirely independent of all others, including Police Scotland, PIRC and the SPA, we work with them to ensure that our respective duties are discharged in a manner that upholds the rule of law and the effectiveness of the criminal justice system.

Our dealings with the SPA primarily concern the provision of forensic science services in terms of section 31 of the Act. We do not play any role in the SPA functions set out in section 2. We engage with PIRC in relation to their investigatory role. We welcome the increase in the capacity of PIRC. In order that the public have confidence in a justice system where everyone is equal before the law it is essential that complaints of criminality against police officers are investigated with the same thoroughness and rigour as any other alleged offence and that PIRC are able to meet that standard at all times across Scotland.

The Act made no significant change to the responsibilities of the police service in Scotland or to the role and powers of the Lord Advocate and Procurators Fiscal acting on his behalf in relation to the investigation and prosecution of crime: a role that is quite independent from that of the police. It remains the position, notwithstanding the changes to police structure and governance, that we direct the investigation of all crime in Scotland and that the Chief Constable must follow the instructions of the Lord Advocate and Procurators Fiscal (section 17(3)(b)). The Act reformed policing in Scotland without disturbing this important constitutional foundation.

The changes brought about by the 2012 Act facilitated a number of significant improvements which build on this foundation. The reforms offered an opportunity for COPFS and Police Scotland to better align their operational activities and structures so as to allow more effective liaison at the operational and strategic levels. COPFS is now structured in a way which complements the operational focus of policing, with

our casework divided into two broad functions: Local Court (comprising all of our summary casework in the Justice of the Peace and Sheriff Courts and all prosecutions on indictment in the Sheriff Courts) and Serious Casework (comprising our complex and specialist work such as homicide, serious sexual offending, counter-terrorism, organised crime, economic crime and the investigation of deaths).

Each of these functions is led by a Deputy Crown Agent who reports directly to me in my capacity as the Crown Agent and head of the Service. Their responsibilities also broadly align with the Deputy Chief Constables responsible for Local Policing and Crime and Operational Support. This offers advantages over the previous structure. Our experience is that it allows for more constructive and productive professional relationships at a local level between Sheriffdom Procurators Fiscal and Local Divisional and Area Commanders; and at a strategic level between the Deputy officers in each organisation. Looking ahead to the prospect of a refreshed senior leadership in policing, I consider this is something we can continue to build on.

As the Committee has heard, for some years prosecutors have worked increasingly in specialisms such as the delivery of local justice or the investigation of large and complex cases. Police Scotland have complementary specialist units that reflect those in COPFS which has strengthened professional relationships between the organisations and led to better outcomes.

It is also apparent to us that the marshalling of specialist skills and experience within a single police force has enhanced the operational effectiveness of policing in Scotland in relation to the most complex threats, such as counter-terrorism and organised crime, as well as high-profile issues for society such as domestic abuse, sexual offending and human trafficking. The single force structure and the force's ability to deploy a consistent level of expertise across the entire country has contributed greatly to cases such as Operation Escalade, an organised crime case involving the highest level of threat and sophistication in the United Kingdom, which concluded earlier this year in the High Court of Justiciary with the conviction of nine individuals.

One of the reasons that the crime campus facility at Gartcosh, which is unique in the United Kingdom, is such a valuable resource is the fact that the single, national police force works there on a co-located basis with other criminal justice agencies and modern forensic services. While the vision for Gartcosh was conceived before the creation of Police Scotland, it has been clear to us since 2013 that the establishment of Gartcosh and Police Scotland coincided in a way which greatly improved the effectiveness of the other.

Looking ahead to the future, though we and the police face many challenges unrelated to the structure of either organisation, such as dealing with the increase in reporting of serious sexual offences, we are confident that we can continue to improve the strategic working relationship between COPFS and Police Scotland. The development of the 2026 Strategic Plan for Policing in Scotland was undertaken in conjunction with a range of external stakeholders, including COPFS and there were a number of opportunities for us to provide input to the development of this. We welcome this engagement by Police Scotland and look forward to building on the existing relationship to enhance the operational effectiveness of both policing and

prosecution in Scotland, as well as progressing further reform of the criminal justice system.

David Harvie
Crown Agent
24 May 2018