Justice Committee

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

Written submission from the UK National Preventive Mechanism and HM Chief Inspector of Constabulary in Scotland

We would like to thank you for the opportunity to submit evidence to the Justice Committee’s post-legislative scrutiny of the Police and Fire Reform (Scotland) Act.

As you will know, the UK National Preventive Mechanism was established in 2009 to deliver the UK’s obligations under the Optional Protocol to the United Nations Convention against Torture (OPCAT), which requires that States Parties establish an independent national body or bodies to monitor all places of detention with a view to preventing ill treatment or torture. The NPM consists of 21 existing bodies throughout the UK, which are independent, have powers to regularly inspect or monitor places of detention and share the aim of preventing ill-treatment of anyone deprived of their liberty. Colin McKay, Chief Executive of the Mental Welfare Commission for Scotland, chairs the NPM’s Scottish sub-group and is copied into this letter. Both Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) and the Independent Custody Visitors Scotland scheme (ICVS), coordinated by the Scottish Police Authority, are members of the UK NPM and the Scottish sub-group.

When the Scottish Government consulted on the future of policing in 2011, the NPM collectively (as well as individual members) responded and encouraged the government to use the restructuring of policing as an opportunity to place independent custody visiting on a statutory footing. We welcomed the initiative shown by the Scottish Government and Scottish Parliament in not only including custody visiting in the 2012 Act but also in explicitly referencing OPCAT and its requirements in Chapter 16. Custody visitors in Scotland were the first of the NPM members to have OPCAT mentioned in their founding legislation. The Act was also the first legislation in the UK to provide explicitly for visits to detention by the UN’s Subcommittee on the Prevention of Torture (SPT).

Preventing the ill treatment of people who are detained in police custody constitutes a significant part of the NPM’s work. In Scotland, both ICVS and HMICS have played important roles, through their visits to and inspections of police custody, in building assurance and confidence that detainees are held in appropriate conditions and that our international obligations to respect detainees’ human rights are maintained. The work of ICVS and HMICS shares a common purpose – the frequent visits by ICVS complement the more in-depth, but less frequent, inspections by HMICS to help deliver the OPCAT mandate.

In respect of custody visiting, the 2012 Act resulted in eight legacy visiting schemes being brought together and custody visiting being placed on a statutory footing. It has resulted in strengthened arrangements for custody visiting and a more consistent approach being taken to safeguarding detainee rights across Scotland. In 2016/17, ICVS volunteers carried out over 1,500 unannounced, random visits to police stations throughout Scotland to offer vital independent scrutiny of the way
Police handle detainees and, crucially, to provide feedback that brings benefits for policing.

Police custody is a high risk area of policing business and, as such, has been subject to considerable scrutiny by HMICS. Since 2013, HMICS has published six police custody inspection reports. In 2018-19, HMICS will carry out a series of inspections of custody centres across Scotland focusing on the treatment and conditions in custody. These inspections will not only help to meet HMICS’ obligations under OPCAT but also provide evidence to support a strategic review of Police Scotland’s custody arrangements which will take place later in the year.

In light of the example set by the 2012 Act in respect of custody visiting in Scotland, the NPM is seeking opportunities to strengthen the legislative mandates of other NPM members around the UK to make clear that their monitoring of places of detention fulfils the objectives of OPCAT. We would therefore like to suggest that, as part of its post-legislative scrutiny, the Committee considers recommending the extension of the OPCAT provisions in relation to independent custody visiting (in Chapter 16 of the 2012 Act) to inspection of police custody as conducted by HMICS. This would put the OPCAT related work of HMICS in inspecting police custody on a statutory footing and make clear its purpose.

Such an extension of the provisions in the 2012 Act would be a welcome step forward and ensure that Scotland continues to lead the way in upholding international human rights obligations on the prevention of torture and ill-treatment.

If helpful to the Committee, we would be happy to provide further information about OPCAT, the role of the NPM in the UK and possible legislative amendments to the 2012 Act to put the OPCAT related work of HMICS on a statutory footing.

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