RESPONSE FROM POLICE SCOTLAND

Legislative Consent Memorandum: Anti-social Behaviour, Crime and Policing Bill

i. abolition of the Police Negotiating Board
ii. dangerous dogs; and
iii. witness protection.

Thank you for your letter dated 20 June 2013 concerning the above subject. I offer you the following views from Police Scotland regarding these provisions.

Abolition of the PNB

Police Scotland had anticipated the provision of the abolishment of the PNB under the Bill following discussions with the Scottish Government and welcomes your correspondence in relation to feedback.

Police Scotland note from your correspondence that the Scottish Government have indicated that there will be provision for a Scottish PNB in the forthcoming Criminal Justice (Scotland) Bill. Arrangements have already been made to ensure that the Scottish Standing Committee can convene until such times as a firm mechanism is taken forward, so there is provision to ensure that Scottish concerns are catered for during this period of change.

It is essential that a robust mechanism exists to ensure effective consultation and negotiations around employment matters especially in a time where the modernisation agenda must progress unhindered to maximise the efficiency of the Service; ensuring the best outcome for the Scottish Public. On this basis, the Service welcomes the indication by the Scottish Government that provision will be put in place.

I would anticipate that there will be further consultation on the details of how PNB Scotland could and should operate when the Criminal Justice (Scotland) Bill is progressed and look forward to further engagement with the Scottish Government at that time.

Dangerous Dogs

With reference to the above and the draft motion to be lodged with the Cabinet Secretary for Justice, clauses 98 & 99:
**Assistance Dogs**

This amendment extends the current aggravation to provide greater protection to vulnerable members of the public and takes into account the social and financial impact on the owner of the dog, the dog itself and the charity providing the assistance dog. Its implementation would be seen as positive move, with the potential to reduce the number of attacks on assistance dogs.

**Whether a dog is a danger to public safety**

Police Scotland sees this as a critical amendment. By taking into account the character of the owner or keeper as well as the temperament of the dog and its past behaviour, the Court would be in a far better position to strike a balance between allowing genuine owners to retain their family pet and the priority of “keeping people safe”.

The further provision to extend this assessment of character to any person who is to be in charge of the banned dog, should it be added to the Index of Exempted Dogs, seems prudent. This measure will allow the Courts to make an informed decision on the risk to public safety.

I see no operational or cost implications on Police Scotland should any of these amendments be passed and wholeheartedly support these minor changes to dangerous dogs law for Scotland.

**Witness Protection**

Intended to mirror legislation in England and Wales, the proposed amendments extend the list of persons eligible for protection under S.82 of the Serious Organised Crime and Police Act 2005.

Current legislation restricts "protected persons" status to witnesses, informants, judges, jurors, police, prison staff and any other persons working within the criminal justice system. This status is only sought where there is a serious threat to life.

The amendment is intended to empower police to put in place protection measures for people whose lives are at serious risk but are not covered by the current legislation, specific examples would include potential victims of forced marriage or 'honour-based' violence, prior to the commission of any crime.

The changes being proposed in the bill would not only maintain the current protection arrangements but also enable the provision of protection measures for any person, where it has been assessed that there is a real and immediate threat to their life.

There is one concern regarding the proposed amendment in that it could be used by persons who are involved in criminal feuds to secure protection measures and as a consequence are able to legitimise criminally derived assets through participation in the witness protection programme. The granting of "protected persons" status could involve the facilitation of sale of such assets and in effect could launder such proceeds. This concern has already been highlighted to ACPO by the Scottish Protected Persons Unit who have proposed that legislative notes stipulate that
persons must co-operate fully with a financial check and that any criminally derived assets will be the subject to Proceeds of Crime Act or Civil Recovery proceedings.

[We] will be able to provide any further detail where required.

It is not envisaged that any of the three amendments will impose a significant burden on existing police resources.

Sir Stephen House  
Chief Constable  
16 July 2013

RESPONSE FROM ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

Views on Abolition of the PNB

Thank you for the opportunity to comment on this matter.

The Legislative Consent Motion (LCM) provides that extending the relevant provisions in the Anti-Social Behaviour, Crime and Policing Bill to apply in Scotland is a sensible and appropriate step to ensure the effective implementation of various policy changes affecting England, Wales and Scotland and consider it is helpful for the changes to be made within the UK Bill as an effective and efficient use of the LCM procedure.

I am aware of the formal consultation taking place in Scotland and will provide a response to that in due course.

Chief Superintendent David O'Connor QPM  
ASPS President  
1 August 2013

RESPONSE FROM SCOTTISH POLICE FEDERATION

The SPF fully supports the provisions and approach laid out in the LCM. Whilst we believe the costs of a Scottish PNB will be negligible, we are however sceptical that they will be as little as indicated.

Calum Steele  
General Secretary  
5 August 2013
RESPONSE FROM GUIDE DOGS SCOTLAND

Background

1. Guide Dogs provides mobility and rehabilitation services to increase the independence, wellbeing and dignity of blind and partially sighted people in the UK. Services in Scotland are delivered through Guide Dogs Scotland’s two Mobility Teams and Guide Dog Training School. Our core service is the guide dog service which involves the training and provision of assistance dogs to blind and partially sighted people. We work with both guide dog and owner to create a successful partnership through which the person can become independently mobile, getting out and about safely and with confidence. We also work closely with other organisations to train and provide assistance dogs for people who have additional disabilities (such as with Hearing Dogs for Deaf People to provide “dual-qualified” dogs). Guide Dogs Scotland currently provides guide dogs to over 530 blind and partially sighted people. There are over 4500 guide dogs across the UK.

2. We are grateful for the opportunity to submit evidence to the Committee. Alongside our mobility work we campaign to break down physical and legal barriers to enable blind and partially sighted people to get around on their own. Guide Dogs’ work is informed by blind and partially sighted people and we are responding to this as an issue of concern for guide dog owners.

Attacks on guide dogs

3. We know from our report (2011 to 2013) attacks on guide dogs in Scotland were at an all-time high with us being informed of one to two occurring per month. Just under half of these attacks involved an injury to the dog. Some of these injuries incurred vet bills at a financial loss to the charity. Following an attack and injury some guide dogs were unable to work for their owner for a period of time, resulting in that owner being deprived of their independent mobility. We have had guide dogs prematurely retired through dog attacks, recently one of which was on the west of Scotland, with the dog only out working for under a year with the owner. It costs approximately £50,000 to breed, train, and work a guide dog.

4. Attacks on guide dogs are extremely distressing both to the dog and to the blind or partially sighted owner. Attacks on guide dogs have serious consequences for the physical and emotional wellbeing of their owners. We have records of guide dog owners’ confidence being lowered to such an extent, they not only wish to avoid that area where their dog was attacked but in some cases wish not to go out again. Guide dog owners have a serious slight loss, and thus they will be unable to realise fully the exact extent of the threatening nature of a dog in close proximity to them. In a case in Scotland, although hearing a dog being aggressive, it was not until the owner felt their guide dog slump to the ground that they were aware of the physical nature of the attack on their dog.
Amending the Dangerous Dogs Act extending the aggravation to cover assistance dogs.

5. We greatly welcomed the decision by the UK Government to make it an aggravated offence if a dangerously out of control dog injures an assistance dog. Scotland already has in place the Control of Dogs (Scotland) Act 2010 which is helpful in providing measures to bring dogs back under control and prevent events escalating to dogs being dangerously out of control. However, where events do escalate into an offence under the Dangerous Dogs Act it is important that police and the judiciary then have sufficient means within the Act to effectively deal with these situations. This simple measure of extending the aggravated offence to cover assistance dogs, we believe, will bring much needed clarity, and provide the enforcement tools for police and the judiciary. To a lesser extent it will also help in raising awareness within the wider public of the serious impact of attacks and injuries on assistance dogs. The aggravated aspect of an offence will be recorded thus allowing for tracking of repeat offences from owners or dogs or indeed in certain areas.

6. There is one element within the Bill that could be refined to ensure the proposals are as effective as they can be. The Bill advocates using the Equality Act (2010) definition of an assistance dog. This uses descriptions of dogs being trained to provide guiding or assistance to disabled people. We think this is a broad definition that potentially has unintended consequences of including a wider range of dogs than may be intended. We recommend a slightly tighter definition, which is already used, by the UK Government in guidance and protocols for the aviation industry to meet obligations of the EU Regulation (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility travelling by air. This definition focusses on a guide or assistance dog providing guiding or assistance to disabled people and the dogs trained, assessed, and accredited by Member organisations of the International Guide Dog Federation or Assistance Dogs International. Current definitions in full are included in appendix to this evidence.

7. The benefits are that guide and assistance dogs trained by Member organisations will have formal identification. Accreditation ensures that the dogs will meet certain standards of behaviour. It could protect against potential ambiguity in the courts of proving what is meant by “trained” and “assistance”, such as, where a person claims their dog has been trained to provide assistance.

Conclusion

8. We are doing all we can to understand the potential factors behind dangerous dog incidents and have invested time and money into looking into this problem. As a charity, we can only do so much, and we do look towards politicians, police, and the judiciary to help us in guarding the safety, health, wellbeing and independence of guide dog owners and their dogs.

9. To extend the aggravated offence provides improved protection, in law, for guide and assistance dog owners. We thoroughly welcome the Scottish Government’s view in requesting that the UK Parliament extends its amendments to the Dangerous Dogs Act into Scotland. This is a practical move that will save time as
assistance dog owners in Scotland will not be left waiting until an appropriate Bill is introduced into the Scottish Parliament.

10. If the Scottish Parliament is minded to agree with the amendments, we would request that a communication occurs with the UK Parliament seeking clarification on the issue of what assistance dog definition is to be used. If the Equality Act’s definition remains then we would request that they issue guidance on the definition when the Act is introduced.

Appendix

Definitions of assistance dog

The definition of “assistance dog” as defined in the Equality Act 2010. The definition in full states:

“assistance dog” means—
(a) a dog which has been trained to guide a blind person;
(b) a dog which has been trained to assist a deaf person;
(c) a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects;
(d) a dog of a prescribed category which has been trained to assist a disabled person who has a disability (other than one falling within paragraph (c)) of a prescribed kind

Definition used by the Department for Environment, Food and Rural Affairs and the Animal Health Agency in its guidance and protocols to the airport industry to meet obligations under European Regulation (EC) 1107/2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air. The definitions are as follows:

Guide Dog - A guide dog is a dog trained to provide mobility assistance to a blind or partially sighted person. In the UK, the guide dog is trained, assessed and accredited by The Guide Dogs for the Blind Association (Guide Dogs). Outside the UK, a guide dog is a dog trained by an individual or organisation that is accepted by and affiliated to the International Guide Dog Federation.

Assistance Dog - An assistance dog is one which has been specifically trained to assist a disabled person and which has been qualified by an accredited Member of Assistance Dogs International (ADI), the body that sets standards for assistance dog organizations worldwide. Assistance dogs trained by a Member organization of Assistance Dogs International will have formal identification.

Guide Dogs Scotland
29 July 2013
RESPONSE FROM THE SCOTTISH SPCA

The Scottish SPCA welcomes the opportunity to comment on the above Bill and the Memorandum from the Scottish Government dated 29 May 2013.

The Scottish SPCA has long argued that the Dangerous Dogs Act 1991 is fundamentally flawed legislation.

The Act primarily focuses on 3 breeds of dog and 1 type of dog (Pit Bull Terrier) which are designated as banned breeds / type of dog. Section 3 of the Act concentrates on aggravated offences where a person is injured in a public place.

Some of the aspects in the Bill have been addressed in Scotland by the Control of Dogs (Scotland) Act 2010, which applies to any place and not just a public place. The 2010 Act also takes account of any dangerous dog behaviour, not just attacks on humans.

The Scottish SPCA and others have highlighted on many occasions that a large number of dog bite wounds to humans occur when a person attempts to stop two dogs inadvertently fighting. It has also been well highlighted that many of the most serious attacks have occurred in non-public places.

Many of the dog attacks that occur are in reality down to irresponsible dog ownership or the way the dog has been kept.

It has been reported by the Guide Dogs Association that there has been a sharp increase in the number of assistance dogs that have been attacked by other dogs, the Scottish SPCA has no evidence to substantiate this claim, however, we do receive an increasing number of concerns over out of control dogs.

The Scottish SPCA deals with the welfare of the animal, concerns and incidents of out of control dogs are a function for the Police and Local Authorities, however, on many occasions when a dog is seized by one of these agencies, the Scottish SPCA is asked to care for the dog pending court proceedings.

On many of these occasions it is quite evident that the dog has not received even basic training or adequate care which may have contributed to the incident.

Whilst the Scottish SPCA disagrees in principle with the Dangerous Dogs Act 1991, the Society maintains that an aggravated offence should include attacks on animals in any place through the irresponsibility of the owner or person in charge at the material time.

The 2012 High Court judgement also recognises the role of the dog owner or person in charge, in that it is not only the character of the dog that should be assessed.

The Scottish SPCA welcomes section 19 of the Memorandum from the Scottish Government that indicates that if the scheme was redrawn a Court could take into account the possibility of a dog being placed with a person who is neither the owner nor person in charge at the time of the offence.
Given that the Scottish SPCA has cared for many dogs prior to dangerous dog incidents being heard by the Court, we have many examples of dogs being subject to destruction orders that could have been re-homed perfectly safely to a new responsible owner.

Michael Flynn MBE
Chief Superintendent
2 August 2013

RESPONSE FROM VICTIM SUPPORT SCOTLAND

Victim Support Scotland welcomes the opportunity to provide our views on the provisions in the Bill relating to protection arrangements for persons at risk.

Victim Support Scotland supports the amendment extending statutory entitlement to protection arrangements to anyone considered to be at risk from another person’s possible criminal conduct, without being dependent on an individual being a person specified in Schedule 5 of the Serious Organised Crime and Police Act 2005 (SOCPA).

Victim Support Scotland views this amendment as a progressive step, recognising that the presence of risk resulting from another person’s possible criminal conduct often extends beyond those directly involved in legal proceedings. The particular nature or complexity of some cases, such as cases involving domestic abuse, stalking, harassment and potential honour-based violence, may preclude the initiation or continuation of legal proceedings, yet there may nevertheless be a serious risk to the safety or lives of the victims or potential victims involved. In addition many victims and witnesses choose not to report a crime, often due to very real or perceived risks to their safety. Widening statutory entitlement to protection provisions to anyone whose life or safety is at risk may empower more individuals to seek and receive protection from the state. It should also help to ensure the individual circumstances and concerns of the person at risk are properly acknowledged, on a case-by-case basis, and that people are not unfairly excluded from receiving formal protection due to their not being directly involved in the legal process.

While widening statutory entitlement to protection arrangements is to be welcomed, of greatest concern to Victim Support Scotland is how any protection scheme actually operates in practice and the implications for those involved / affected. Signing up to a protection scheme often necessitates and binds a person to drastic compromises in lifestyle and in some cases access to friends and family. Separation from family and friends is inevitably a huge source of distress for most people. It is therefore imperative that protection arrangements are embedded within a robust framework of information provision and ready access to support. A steady flow of information and support throughout the process is vital to ensure people have a clear understanding and expectation of what is involved and the implications for them and their family, and ultimately so that they feel empowered and supported to make a decision about whether it is in their best interests to sign up to a protection scheme.
Victim Support Scotland believes it is also critical that protected individuals are given sufficient and realistic information and assurances about the standard of living they can expect under any protection arrangements. Victim Support Scotland recommends that this should be underpinned by a clear policy from the protection provider to create, as far as practicably possible, an equivalent lifestyle for the protected person as they had before.

Another critical component to an effective protection scheme is robust mechanisms and safeguards to ensure that any information that could identify protected individuals and their whereabouts does not fall into the hands of those from whom they are being protected. This is critical, particularly in relation to those who, whether or not through their own choice, are not given a change of identity as part of the arrangements. It is vital that any identifiable details about the protected individual can be readily removed from all publically accessible databases, registers etc. from where they could be traced.

Victim Support Scotland recognises the necessity in some cases of imposing strict requirements, for instance preventing individuals from making contact with family or friends, or preventing children of protected families from using social networking sites. Victim Support Scotland would however wish to seek reassurances that breaches of such conditions does not result in unnecessarily harsh or punitive consequences for the protected individuals. It is quite understandable, for instance, that a protected person might feel compelled to make contact with their children. Rather than simply expelling a person from a protection scheme following a breach of any protection conditions, this is where we believe a sensitive response and system of support is crucial.

If protection arrangements are not embedded within a robust framework of information and support, underpinned by clear policy and training, there is a risk that protected individuals will become isolated, lonely and traumatised as a result. Ultimately, they may be left with a sense that it is they who are being punished, rather than those who pose the danger. Access to appropriate support to help people cope with the consequences of being a ‘protected person’ is therefore vital to limit the impact of the conditions and lifestyle changes associated with ‘protected person’ status. Victim Support Scotland would welcome further discussion regarding the support provided to individuals under witness protection arrangements.

Victim Support Scotland
26 July 2013

RESPONSE FROM THE ASSOCIATION OF CHIEF POLICE OFFICERS (ACPO)

ACPO envisage the proposed legislative changes in clause 134 of the Bill\(^1\) being UK wide. This would be in support of the UK Protected Persons Service which goes live in October and to which the resources of Police Scotland are aligned.

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\(^1\) As introduced.
RESPONSE FROM THE LAW SOCIETY OF SCOTLAND

The Law Society of Scotland’s Criminal Law Committee considers the reasoning in the Legislative Consent memorandum for witness protection, as set out in paragraph 29, to be sensible.

The committee notes that the reference before paragraph 20 of the memorandum to “clause 134” refers to the Bill as introduced. The same clause in the most recent version of the Bill is now clause 145

Law Society of Scotland
7 August 2013

RESPONSE FROM SCOTTISH WOMEN’S AID

Scottish Women’s Aid supports the provisions in relation to witness protection, given that there appears to be a gap in protection offered to those who do not fall into the existing categories of eligibility and the proposals will remedy this.

Louise Johnson
Legal Issues Worker
19 August 2013