

Justice Committee

Criminal Justice (Scotland) Bill

Written submission from Her Majesty's Inspectorate of Constabulary for Scotland

HMICS welcomes the opportunity to comment on the provisions in the Bill and recognises that these propose significant change to criminal justice processes and police procedures and powers. We believe that the provisions will help to safeguard the rights of individuals who are subject to police investigation but will also provide opportunities to prevent harm to victims and communities in Scotland.

In accordance with the call for written submissions we have structured our comments based on the five themes.

Police powers and rights of suspects (Part 1 of the Bill)

It is this aspect of the Bill that will have the biggest impact on policing in Scotland. In general we welcome the provisions as they set out to clarify police powers and procedures governing the arrest and detention of individuals subject to criminal investigation.

We consider that there are a number of areas within Part 1 that would benefit from clarification in terms of the intention of the provisions including:

- The implications of the abolishment of common law powers of arrest on other common law powers e.g. powers of entry and powers to search.
- Section 9 of the Bill makes provisions for reviews of detention after 6 hours but doesn't explain how that should be done.
- Section 19 (2) (c) allows the police to refuse to release a person from custody once charged with an offence, but does not give any indication of the reasons for such a decision.
- Sections 14 to 17 introduce the concept of Investigative Liberation. Clearly the service will welcome this power as a useful aid to preventing further crime and protecting victims and witnesses. However the restrictions that are proposed weaken the provision. For example in more serious cases police inquiries will last longer than 28 days, e.g. historic sexual abuse, homicide etc. In such cases the value of any conditions would be meaningless if lost after 28 days. Additionally the introduction of a review process with no details as to frequency or how they are to be conducted introduces a level of bureaucracy that may result in the provision being inefficient and ineffective. It may be more appropriate to remove the 28 day limit for solemn cases and introduce provisions for formal reviews to be conducted e.g. every fourteen days with the outcome of the review being noted in the person's custody record.
- Sections 30 to 36 set out the rights of individuals taken into custody with particular reference to safeguards for children and vulnerable people and widened access to legal advice. We welcome these measures as a means of ensuring the fair and just treatment for all individuals that are taken into custody. However, with such provisions comes additional bureaucracy to

ensure that the rights have been delivered correctly. These will introduce additional delays to prisoner processing and the overall investigative process, which may impact on the police's ability to conduct relevant inquiries within the 12 hour time limits. We consider that it would be in the interest of the efficiency and effectiveness of the service and the interest of justice to suggest that provisions are made in serious cases for the extension of the 12 hour detention limit to 24 hours.

We recognise that the Bill itself may not be the appropriate place to specify the detailed intentions of the provisions and how they are envisaged as working. We suggest therefore that consideration is given to the development of a form of Codes of Practice to accompany the legislation that clearly articulate its meaning, intent and the processes and procedures required to achieve that.

Finally we suggest that the order in which Part 1 of the Bill is laid out may benefit from restructuring to follow the natural stages in the arrest and detention process as follows:

CHAPTER 1

POLICE POWERS AND DUTIES

Sections 1 – 2 *Arrest without warrant*

Insert here –

Sections 37 – 42 *Powers of police*

Sections 3 – 6 *Procedure following arrest*

CHAPTER 2

CUSTODY: PERSON NOT OFFICIALLY ACCUSED

Sections 7 – 13 *Keeping person in custody*

Remove and insert at * below -

Sections 14 – 17 *Investigative liberation*

Insert here –

CHAPTER 5

RIGHTS OF SUSPECTS IN POLICE CUSTODY

Sections 30 – 36 *Intimation and access to another person; Vulnerable persons and Intimation and access to a solicitor.*

Insert here –

CHAPTER 4

POLICE INTERVIEW

Sections 23 - 29 *Rights of suspects*

Followed by –

* Sections 14 – 17 *Investigative liberation*

Insert here –

CHAPTER 3

CUSTODY: PERSON OFFICIALLY ACCUSED

Sections 18 – 22 *Person to be brought before court and Police liberation*

CHAPTER 7
BREACH OF LIBERATION CONDITION
Sections 43 - 49

CHAPTER 8
GENERAL
Sections 50 – 56 *Common law and enactments*

Corroboration, admissibility of statements and related reforms (Part 2 plus section 70 of the Bill)

We have no comments on this aspect of the Bill.

Court procedures (Part 3 plus section 86 of the Bill)

We have no comments on this aspect of the Bill.

Appeals, sentencing and aggravations (Parts 4 and 5 and sections 83 to 85 of Part 6 of the Bill)

We have no comments on this aspect of the Bill.

Police Negotiating Board for Scotland (Part 6 (section 87) of the Bill)

We have no comments on this aspect of the Bill.

HM Inspectorate of Constabulary
29 August 2013