

## **Justice Committee**

### **Criminal Justice (Scotland) Bill**

#### **Written submission from Police Scotland**

The provisions within the Criminal Justice Bill represent some of the most significant changes to the laws of criminal procedure in Scotland for at least a generation, arriving at a time when Police Service has undergone its most radical structural change since the 1970s.

Police Scotland is determined to ensure that the challenges of implementing the proposed legislation are embraced and deliver the maximum benefits to the people who live, work, visit and invest in Scotland, further reduce crime and anti-social behaviour and keep them safe.

Police Scotland welcomes and supports many of the provisions within the Bill, including:

- Removal of the separate concepts of arrest and detention and the move to replace them with a power of arrest on 'reasonable suspicion', laid out in statute, will simplify the process and ensure that suspect rights are more fully aligned with prevailing solicitor access provisions;
- The proposal that the police should be given express power to liberate a suspect from detention, pre-charge/report, subject to appropriate conditions, will enable the pursuit of evidence and further investigations whilst minimising threat or risk of harm from any offending related to the matter(s) under investigation;
- A system whereby the police may seek judicial authority to question a suspect further, after the point of charge or intimation of a report being sent to the Procurator Fiscal, but prior to the individual's first appearance at Court would be used when new evidence emerges or other material becomes known. We note the requirement to seek permission from the court provides an independent safeguard to this position;
- The move to redefine the age of a child as in line with most other European jurisdictions, European jurisprudence and emerging European Union Law; and
- We strongly support the proposal that the absolute, quantitative requirement for corroboration should be abolished and believe it is the quality of evidence, not quantity that should be taken into account.

We will revisit some of these issues and others in greater detail within this submission and would welcome the opportunity to further discuss them as part of our oral evidence.

## 1. ARREST

- 1.1 Police Scotland supports the removal of the separate concepts of arrest and detention and replacement with a statutory power of arrest.
- 1.2 Police Scotland understands that despite the abolition of the common law power of arrest, all other current common law and statutory provisions in relation to search and seizure will remain available to the service. These include powers of arrest for non-criminal activity such as Matrimonial Homes legislation, Adult Protection Orders and those reported absent without leave from the Armed Forces etc.
- 1.3 However, it appears that the initial recommendation contained within the Carloway Review that a suspect should be taken to a police station **when necessary** has been superseded by the proposed legislation contained within the Criminal Justice Bill (Section 4) in that when arrested all suspects **must** be taken as quickly as is reasonably practicable to a police station.
- 1.4 This requirement to take an arrested person to a police station on every occasion gives little or no scope to carry out enquiries at the locus to determine whether or not an arrested individual has in fact committed the offence for which they have initially been arrested on suspicion.
- 1.5 Police Scotland would also strongly argue that the wording of Section 4 is unduly restrictive and could lead to persons being unnecessarily or disproportionately detained and taken to police stations e.g. minor offences where they may be subsequently released for report, or where identification is a potential issue or it needs to be established that a prima facie crime has been committed.
- 1.6 This may require the person to remain with officers for a few minutes, the reality of which being that if they chose to leave they would require to be prevented from doing so in the interests of justice and effectively be the subject of some degree of compulsion. Such individuals may therefore be considered to be under arrest and required by Section 4 to be taken as quickly as is reasonably practicable to a police station.
- 1.7 Where officers are able to conduct brief but diligent enquiries at the scene of the incident or crime the suspect's identity and address can often be verified and the facts established that there is no likelihood of repetition of their conduct, making their arrest and subsequent detention at a police station unnecessary and disproportionate.
- 1.8 The current wording of Section 4 would seem to contradict the presumption to liberty enshrined within Lord Carloway's Review. It would be beneficial in minimising the breach of an individual's human rights if there was an ability for an officer to '**de-arrest**' a suspect when grounds for the continued arrestment of their liberty cease to exist.

- 1.9 Operational scenarios which afford examples of such circumstances may be found within **Appendix A**.
- 1.10 It is understood that Section 13 of the Criminal Procedure (Scotland) Act 1995 is to be reviewed and potentially amended. This may afford the opportunity to modify this legislation and enable a constable to require a person suspected of an offence to remain with them while making reasonable enquiries to establish whether an offence has been committed and whether reasonable grounds for suspecting that the individual has committed the offence.

## **2. MAXIMUM DETENTION PERIOD**

- 2.1 The Criminal Justice Bill proposes that a suspect's detention in police custody should be limited to 12 hours. Police Scotland is of the view that this would be an insufficient period of time for a limited number of serious and complex investigations.
- 2.2 The Criminal Procedure (Scotland) Act 1995 (as amended) currently provides Police Scotland with the ability, in exceptional circumstance to detain individuals in police custody for up to 24 hrs without charge. Police Scotland has worked closely with Criminal Justice colleagues to ensure that persons suspected of committing an offence are not detained for any longer than is absolutely necessary.
- 2.3 The decision to grant an extension period beyond the 12 hour threshold to a maximum of 24 hours can only be done on review by a custody review officer. This officer requires to be satisfied that the continued detention is necessary to secure, obtain or preserve evidence relating to that offence in connection with which the person is detained; that the offence with which the person is detained is one that is an indictable offence and the investigation is being conducted diligently and expeditiously. The custody review officer is currently a police officer of at least the rank of inspector and is unconnected to the investigation. Guidance remains that, not only must the offence be indictable, but likely to be prosecuted by indictment.
- 2.4 A recent study (June 2013) has indicated that only 0.4% of all persons detained require to be extended beyond 12 hours, which equates to approximately one case each 2.5 days. Although small in numbers, these can represent some of the most serious matters that Police Scotland is required to investigate.
- 2.5 Such extensions are required to allow the police to complete sufficient enquires to prove a charge and ultimately report the offender to the Crown while at the same time mitigating any risk to victims, and promoting public safety and confidence where such enquiries could not be concluded and the suspect released from custody.
- 2.6 A person's detention in custody is currently reviewed on an ongoing and dynamic basis by Police Scotland Custody Division personnel who are trained to review the necessity of a person's detention. Their conduct and behaviour is dictated by a comprehensive Police Scotland operating procedure relating to

the care and welfare of persons in police custody. The operating procedure explicitly advises that no person should be held in custody for longer than is absolutely necessary to complete all police enquiries and ensures that any persons charged with an offence should appear in court from custody or be otherwise released from custody.

- 2.7 Police Scotland strongly assert that the current parameters for detention should continue. Further, that there should be no diminution of police powers to detain persons for up to 24 hours where it can be demonstrated to be necessary and proportionate.
- 2.8 Operational examples in support of this proposal have been included within **Appendix B** regarding this topic.

### **3. STATUTORY REVIEW OF SUSPECTS DETENTION**

- 3.1 Section 9(2) of the Criminal Justice Bill proposes a requirement for a review of a person's detention when they have been in custody for 6 hours. It is proposed that this would be done by a police officer of at least the rank of Inspector. Police Scotland remains unconvinced as to the necessity for such a review to be enshrined in law.
- 3.2 Currently the review of persons held in police custody is conducted on a dynamic basis during their period of detention. This is undertaken by dedicated officers and staff from Police Scotland Custody Division and governed by comprehensive Police Scotland operating procedures. The appropriateness of individuals remaining in custody is additionally scrutinised by an Inspector during each shift. Details of such reviews are recorded within associated records.
- 3.3 Police Scotland consider formalising such a review is unnecessary and adds no additional value to the protection of an individual's rights. It would create an additional unnecessary layer of management intervention and associated demand on the service. Police Scotland propose that the current operational protocols within Custody Division continue and as such do not require to be enshrined in legislation.

### **4. INVESTIGATIVE LIBERATION**

- 4.1 Police Scotland welcome the inclusion of the concept of investigative liberation within the provisions of the Criminal Justice Bill. This proposal affords the service more operational scope and contributes to the protection of the public. The proposed limitation to the application of conditions to such liberations to 28 days, while reasonable for the simple and more mainstream investigations would however potentially cause significant difficulties in its application to the investigation of a small but significant minority of serious and complex crimes.
- 4.2 These offences often involve, or are heavily dependent on, international enquiries, complex forensic examinations, financial enquiries or acquisition of

digital/communication data and are unlikely to be progressed sufficiently within the 28 day window.

- 4.3 It follows that any conditions placed upon suspects designed to moderate their behaviour or conduct would be lost to investigating officers. Operational examples in support of this position are contained within **Appendix C**.
- 4.4 The Criminal Justice Bill (Section 16(3)) proposes that a Police Inspector review these investigative liberations on a regular basis. It also provides that the suspect may make representations to a court in relation to such conditions.
- 4.5 An option for consideration might be that conditions could be initially applied by a Police Inspector, however could be extended beyond 28 days on the authorisation by an officer of the rank of a Police Superintendent, where it can be shown to be necessary and proportionate.
- 4.6 We note the requirement to keep the necessity and proportionality of investigative liberation conditions under review has no foundation within Lord Carlaway's Review. Police Scotland would wish to identify that the use of investigative liberation will be a new business practice. Its proposed authorisation and review by a Police Inspector is likely to have a clear impact on police resourcing, specifically the role and responsibility of Police Inspectors within Custody Division.

## 5. WRITTEN UNDERTAKINGS

- 5.1 The Criminal Justice Bill proposes some changes to the legislation that currently relates to the liberation of individuals from police custody on a written undertaking to appear at court on some future time and date.
- 5.2 Currently any police officer can grant an unconditional undertaking or undertaking with **standard conditions** when releasing an individual from custody.

**Standard Conditions** (Officer in charge of station or person who charges the accused):

- Not to commit an offence while on the undertaking;
- Not to interfere with witnesses or otherwise obstruct the course of justice in relation to either themselves or any other persons;
- Not to behave in a manner which causes, or is likely to cause, alarm or distress to witnesses;
- Comply with any other special conditions (Imposed by Police Inspector).

**Special Conditions** can be additionally applied to undertakings (Imposed by Police Inspector) where the officer considers such additional conditions are necessary to secure that the conditions that are referred to in the standard conditions are observed.

- 5.3 Under the proposed legislation contained within the Bill, the thresholds associated with the application of conditions to a written undertaking have been

revised. As proposed they continue to enable any police officer to grant an unconditional undertaking to appear at court on some future time and date.

- 5.4 Where any further conditions are required to be applied (including a number which are currently standard conditions), this must be authorised by a police officer of at least the rank of Inspector who must believe that they are necessary and proportionate for the purpose of ensuring the person does not obstruct the course of justice in relation to **the** offence for which they are in custody.
- 5.5 This is likely to significantly increase the role and costs associated with Police Inspectors deployed within Police Scotland Custody Division.
- 5.6 The proposed undertaking regime is more restrictive than is currently available to the Service as it only applies to 'obstructing the course of justice' whereas currently conditional undertakings also limit any behaviour which causes, or is likely to cause, alarm or distress to witnesses catering for conduct by an accused which potentially may fall short of a substantive offence.
- 5.7 In addition to this the proposed conditional undertaking would only relate to **the** offence for which the suspect had been charged and would not restrict or potentially moderate further offending behaviour by the accused or protect the wider public interest.
- 5.8 Our support to the overarching presumption to liberty within the Criminal Justice Bill set against our objective of keeping people safe leads us to suggest it would be helpful in striking a balance if more preventative measures were available to the Service when granting Written Undertakings to seek to prevent the commission of further offences. Further, that the standard conditions currently applied should not be diluted.

## **6. VULNERABLE SUSPECTS**

- 6.1 There has been an Appropriate Adult Scheme in place within Scotland since 1990. The Scheme has no legal standing but in following advice from Scheme members, police officers and police staff are able to ensure that they meet their obligations imposed by the Equality Act 2010.
- 6.2 Appropriate Adult Services are expected to follow the guidance and standards issued by the Scottish Appropriate Adult Network (SAAN).
- 6.3 In 2012 cases were brought to the attention of COPFS in which the suspect has had an appropriate adult present at interview but has waived the right to legal advice. There have been subsequent serious concerns that the accused did not understand the caution or terms of the interview and, accordingly, the admissions made during the interview would be held to be inadmissible. Given the significant impact this can have on a case and the quite proper scrutiny of the fairness of the interview likely to be undertaken by any court in such circumstances, the Lord Advocate has considered the matter and issued the following instruction to be issued to all police officers, from 1 October 2012:

***"Any case involving suspects of any age who require the support of an appropriate adult must be provided with access to a solicitor prior to interview. They should not be allowed to waive this right".***

- 6.4 The draft Criminal Justice Bill places the requirement for a vulnerable adult suspect to be provided with the services of an appropriate adult on a statutory basis. Scottish Ministers will have the authority to amend the category of person entitled to support from an appropriate adult, and what that support should consist of. They will also be allowed to specify who may be considered a suitable person to provide support to a vulnerable person and what training, qualifications or experience are necessary to undertake this role.
- 6.5 Provision of Appropriate Adult Services has not been placed on a statutory basis within the Bill. There is therefore some concern, based on limited reporting, that funding may not be secured or maintained within the constraints facing the public sector as a whole.
- 6.6 It is of note that year on year there has been a 23.5% increase in the use of appropriate adults by the police service in 2012 – 2013 which has placed considerable additional burden upon the Scottish Appropriate Adult Network.
- 6.7 The provision of a durable appropriate adult scheme is of critical importance to the protection of the rights of some of the most vulnerable members of society. There are currently 19 Appropriate Adult Services across Scotland in receipt of varying degrees of funding from Local Authorities. Fourteen of these services are provided with appropriate adults from existing social work resources. Given that the provisions of the Bill do not place a duty on Local Authorities to provide Appropriate Adult Services, it is expected they will continue to operate as at present with ad-hoc funding arrangements.
- 6.8 There appears to be no explicit provision within the Bill (Section 33) for the provision of an appropriate adult to a suspect under 18 who is or appear to be suffering from a mental disorder. This is of some concern to Police Scotland as it presents the situation where a vulnerable 17 year old may choose to waive their right to support from a responsible person.
- 6.9 While Police Scotland in such circumstances would be required by the legislation to initiate suspect access to legal advice, there appears no legitimate basis for Police Scotland to instigate the services of an appropriate adult in these circumstances.
- 6.10 Police Scotland would maintain that a properly constituted and resourced Appropriate Adult Network would be better placed to ensure the protection of vulnerable suspects and in many cases expedite their release from police custody.

## **7. CORROBORATION**

- 7.1 Police Scotland fully supports the contents of Section 57, ruling that it is open to the Judge (or Jury) to find any fact established in evidence to be proved,

regardless of the presence of corroboration, effectively abolishing the requirement for Corroboration in material facts.

- 7.2 The historical relevance and significance of the Corroboration rule cannot be denied, in the protection of accused persons and the prevention of miscarriages of justice, where a person may have stood accused by a sole witness. However, given the multiple sources of evidence available in courts today, the retention of a requirement for corroboration of every material fact is truly an anachronism. Police Scotland agrees with Lord Carloway where he notes:

***“It is an archaic rule that has no place in a modern legal system where judges and juries should be free to consider all relevant evidence.”***

- 7.3 Police Scotland, through thorough and professional investigation, currently do, and always will, seek to present best evidence to the Crown. Indeed, the rules surrounding Disclosure require that all reasonable lines of enquiry are satisfied, be they incriminatory or potentially exculpatory.
- 7.4 The quality, not quantity, of evidence presented should act as the cornerstone on which the Court and Jury determine guilt or otherwise. In our view, it is the exclusion of such evidence that may deny justice to the victims of particular crime types, such as serious sexual crimes, where, by their very nature, corroboration of all material facts will always present significant challenge.

## **8. POST CHARGE QUESTIONING**

- 8.1 Police Scotland welcomes the proposals for post charge questioning within the Criminal Justice Bill which we see as a progressive addition to our criminal justice processes. Given that this is a new concept it is difficult to anticipate how frequently it will be utilised during criminal investigations. However instinctively it is our belief that it would prove to be the exception as opposed to the rule and carefully employed when appropriate in consultation with COPFS, in relation to more serious and complex investigations.

## **9. POLICE NEGOTIATING BOARD**

- 9.1 Police Scotland supports the proposals to establish a Police Negotiating Board for Scotland and will provide a more detailed response to the Consultation Document in due course.

## **10. WEEKEND COURTS**

- 10.1 A central principle of Lord Carloway’s Review and of the Criminal Justice Bill is that persons suspected of an offence are not unnecessarily or disproportionately kept in custody, making a number of recommendations that provisions within the Bill seek to put into practical effect; e.g. the introduction of investigative liberation and a drive for greater use of written undertaking.
- 10.2 Whilst these will clearly impact on the length of time that persons are kept in custody, we firmly believe that a major opportunity to influence the length of

time suspects are kept in custody after charge has been missed through there being no provision within the Bill for weekend courts. We as a service have no desire to keep people in custody longer than is absolutely necessary but the lack of courts at weekends means that Lord Carloway's desire to minimise the number of persons detained more than thirty six hours has been effectively compromised from the outset. In a modern and efficient criminal justice system the length of deprivation of a person's liberty ought not to depend on the day of the week they are arrested.

10.3 Police Scotland support Lord Carloway's view that individual's rights in terms of the European Convention on Human Rights (ECHR) should not be infringed by being kept in custody for more than 36 hours and believe that the establishment of weekend courts would contribute significantly towards minimising detentions beyond this timescale. We also recognise there remains an opportunity to enhance the use of such a facility through greater use of technology, possibly enabling a limited number of courts to deal with custodies from across the country.

## **11. POLICE AUTHORISATION OF ENTRY & SEARCH OF PREMISES**

11.1 The Criminal Justice (Scotland) Bill might also present an opportunity to update police powers to support law enforcement activity in the contemporary criminal justice landscape. One such area which is worthy of additional consideration relates to police powers of search, both with and without warrant.

11.2 Police officers in Scotland have no general power, either at common law or under statute, to enter and search private premises without a warrant, excepting in exceptional and urgent circumstances, and as subsequently agreed by courts on a case by case basis.

11.3 Currently where a person is arrested without warrant or detained on premises, the police have a common law power to search the premises where the arrestee/detainee was found. However, unless there is a significant degree of urgency, that power would not extend to the home address unless that is the place of arrest. Where police are seeking specific items current practice would be to seek a warrant to search the premises in question through application to a sheriff or justice of the peace.

11.4 Elsewhere in the United Kingdom, legislation within the Police and Criminal Evidence Act 1984 (PACE) provides statutory authority for a police officer investigating a serious offence to enter premises and search for a person and evidence in relation to the offence for which that person is sought. A senior police officer can additionally authorise the search of premises where an arrested person is reasonably suspected of having been immediately prior to his arrest. PACE also enables such searches to be conducted without written authorisation where it is necessary for the effective investigation of the offence. The detail of such conduct would be reviewed and retrospectively authorised and recorded.

11.5 Police Scotland would propose that consideration should be given within the Bill for similar legislative provision, namely, to enable the authorisation of constables to enter premises to search for and arrest suspects and for senior officers to authorise post arrest search activities by constables. Police Scotland considers that this would better support the diligent and expeditious investigation of offences and further contribute to the reduction of time spent by suspects in police custody.

## **CONCLUSION**

Police Scotland welcomes the Criminal Justice (Scotland) Bill and the opportunities it presents to offer a better balance within our criminal justice system to deliver positive outcomes for victims, while protecting the rights of those suspected or accused of crime.

We look forward to the opportunity of making oral representation to the members of the Criminal Justice Committee and exploring some of the issues raised within this submission.

Malcolm Graham  
Assistant Chief Constable  
29 August 2013

**Appendix A****ARREST & 'DE-ARREST'**

The following are offered as being fairly typical operational examples where the implementation of the Bill provisions may lead to unnecessary and/or disproportionate detentions:

**1. SHOPLIFTING**

Police are called to a retail establishment regarding a female being detained by staff for shoplifting. On arrival, staff identified the suspect to the officers as the person responsible. It was unclear at that stage exactly what the extent of the evidence was, but it related to the theft of a £2 food item. On seeing the police arrive, the suspect stated that she wished to leave because her elderly mother (or a child) was waiting for her within her car at the car park. She also stated that the staff were holding her unlawfully as she has done nothing wrong. This presented the option of arresting her and taking her to the police station for a £2 theft where she would either subsequently have been charged or released (due to insufficient evidence) alternatively; officers could let her leave the locus and then trace her after full enquiry has been made with staff. She does not want to stay at the locus 'voluntarily' and the police have no power to make her do so without arresting her.

In these and similar circumstances it would be helpful if,

- (a) The suspect could be arrested & held at the location to enable brief assessment of evidence to establish a prima facie case. Once established and determined that the removal of suspect to a police station was inappropriate, disproportionate or unnecessary the ability to 'de-arrest' to report or charge and release would be of benefit, and/or
- (b) The proposed review of S 13 Criminal Procedure (Scotland) Act 1995 affords a constable the power to compel a suspect to remain in their presence at the location while brief enquiries as at (a) could be concluded, without having to proceed to formally arrest to do so.

**2. MEDICAL INTERVENTION**

Police officers attended outside a nightclub during due to a report from door staff that a male suspect is sitting over the top of another male and apparently assaulting him. An update has been received that the injured male appears to be unconscious and the attack is continuing. On arrival the police see the suspect sitting across an unconscious male, bodily shaking him. The male is arrested as the officers have reasonable cause to suspect that he has been committing an assault. The suspect is placed within the police vehicle and the officers proceed to administer first aid to the injured party. The male eventually recovers consciousness and asks the officers where his brother is. The male states that he is epileptic and relies on his brother to help when he takes fits. Enquiry reveals that the male suspect is the brother of the male and was merely trying to assist him. The grounds for arrest clearly no longer exist as no crime has been committed. The Bill requires that in these circumstances the suspect should be taken to a police station as soon as is reasonably practicable.

Currently Section 14 CP(S) Act 1995 allows the police to release from detention a suspect where grounds no longer exist without the need to return to a police station.

### **3. MINOR DISORDER**

It is a busy Saturday night in a city centre with several licensed premises open and full of patrons. There is a police presence to keep people safe and these officers are called to an incident outside a bar where two males are having a low level brawl. They are separated, arrested and placed within the rear of two police vehicles. On further enquiry, it is revealed that both are friends and the conflict arose from a brief misunderstanding. Both are now calm and on checks confirm their identity and that they have no previous criminal history. By taking the males to the nearest police station it would involve a 40 minute drive and could be seen as disproportionate in the circumstances.

It would also deprive the general public of a police presence during a busy time due to the apparent requirement within the Bill to take them to a police station. It would be helpful in these and similar circumstances if there was derogation within the Bill to enable the charging of such individuals and their release from arrest without the compulsion to take them to a police station.

### **4. MIS-IDENTIFICATION**

Police attend a report of a householder having disturbed a youth breaking in to his car. The householder provides a detailed description of the suspect, including clothing. Shortly afterwards, in a nearby street, police find a male fitting the description of the suspect. Following brief questioning (in line with current Case Law) he is arrested is being placed in the police vehicle when the householder attends and clearly states although there is a similarity, it is not the person who was breaking into his car. The grounds for arrest no longer exist however the Bill requires that in these circumstances the suspect should be taken to a police station as soon as is reasonably practicable. Currently Section 14 CP(S) Act 1995 allows the police to release from detention a suspect where grounds no longer exist without the need to return to a police station.

Police Scotland believes that it would not be proportionate (in the aforementioned examples) to remove these individuals into custody at a police station and that in doing so it would unnecessarily impinge on their Article 5 human rights. The ability of an officer to exercise discretion and de-arrest in such circumstances would be sought as an amendment to the proposed legislation.

Constables should be able to 'de-arrest' individuals to facilitate their unconditional release, report or charge.

**Appendix B****MAXIMUM DETENTION PERIOD**

The following are anonymised examples where the suspect could not be released back into the community without an extension beyond the 12 hour threshold.

**1. MURDER**

The deceased and male suspect met up and began drinking early in the morning. They made their way to a secluded wooded area where they continued to drink alcohol and met a further suspect. One of the suspects encouraged the other to assault the deceased. The deceased was injured and left lying at locus by both suspects.

The suspects returned in the early hours of the following day having continued to drink in each others company. They both found the deceased injured at locus and repeatedly assaulted him again, resulting in his death.

The deceased's body was found several hours later and the Major Investigation Team (MIT) took up the investigation.

Both suspects were identified and one detained later the same day. The suspect was still heavily under the influence of alcohol and removed to police station where the SARF process (Solicitor Access Recording form) was completed. The suspect underwent a full medical examination and also had injuries photographed. Given injuries found by the police casualty surgeon, it was recommended that the suspect be afforded an appropriate adult for support during any interview.

The Senior Investigating Officer (SIO) took the decision not to interview at that time given that it was now in the early hours of the following day and to allow the suspect to get a proper rest before being interviewed.

The investigating officers had also undertaken an extended tour of duty over a 24 hour period and were also in need of a rest before interviewing the suspect. The detention period was reviewed and extension beyond the 12 hour period agreed.

The following afternoon the suspect was interviewed by officers who had been fully briefed by the SIO and an Interview Advisor. Admissions were made which identified a further locus which was examined and forensic evidence recovered. The interview last for 4 hours and 20 minutes and the suspect was charged with murder.

Without the ability to extend beyond the 12 hour mark, any interview with the suspect would have been seriously questioned at court given their emotional state due to fatigue, alcohol consumption and vulnerability given the police casualty surgeon recommendation for an appropriate adult to be appointed. There was also the potential for evidence to have been missed due to the fatigue of the investigating officers and matters having to be rushed to interview the suspect within a 12 hour window. The SIO decision to allow the suspect and his interview team time to

recover before interviewing was not only considered best practice and in the public interest, but also in fairness to the suspect.

## **2. REPORT OF MALE IN POSSESSION OF A HANDGUN**

An initial report was made to the Police that a male was observed in the street in possession of what appeared to be handgun. A firearms operation commenced and the accused was ultimately traced and detained but not in possession of any weapon. A search by officers near to the locus of his detention resulted in the recovery of an imitation handgun.

The male was found to be extremely drunk and volatile on being detained. On returning to the police station he was afforded his rights as per the SARF procedure, however when the Police attempted to facilitate his initial telephone consultation the accused became aggressive, threatening to smash the phone. It was apparent at this point that the accused would require a significant period before he was sober and compliant enough to have his rights as a detained person facilitated.

He was also assessed by the police casualty surgeon who supported the custody supervisor's assessment the male was unfit for interview and would require several hours to sober up.

In the interim period further investigations revealed the suspect had been in the company of a number of persons, who would have seen the weapon in his possession. The extension period allowed these witnesses to be sought and further CCTV evidence from nearby business premises to be sought.

As there was not a sufficiency of evidence to arrest the suspect, coupled with his drunken and aggressive demeanour the decision to extend his detention period beyond the 12 hour limit was proportionate and necessary to complete all available lines of enquiry in order to serve the public interest. The male was interviewed regarding the matter on being deemed fit for interview later the following day. He was subsequently arrested and charged with a Breach of the Peace.

## **3. RAPE OF 16 YEAR OLD FEMALE**

Two males were detained in rural Scotland prior to midnight for the rape of a 16 year old who was known to one of them.

The victim was forensically and medically examined by a police casualty surgeon at the nearest medical suite. She was only able to provide a partial statement to a Sexual Offences Liaison Officer (SOLO) trained officer due to the time of night and her traumatic experience. The journey between her home and the police medical suite took approximately 1 hour and 30 minutes.

The locus was stood by for examination until the next day during daylight hours as the circumstances indicated that there may be forensic opportunities on the bed clothes and which is viewed as best practice. A number of witnesses had also to be traced during the detention period in order to corroborate the victim's statement.

Both suspects had to be removed to another police station to be examined by a Police Casualty Surgeon (PCS). The return journey between the detention office and examination suite is a round trip of approximately 2 hours notwithstanding the time necessary to complete the suspect's medical examinations.

It was necessary to extend the detention period beyond the 12 hour threshold to allow further enquiries to be concluded and ensure the safety of the victim.

Both suspects were interviewed once the victim had completed her statement the following day and the other witnesses had been traced. A full forensic examination was also completed under the guidance of a Crime Scene Manager (CSM). Both males were subsequently arrested and charged with rape.

Without extending the detention period enquiries could not have been properly concluded and as a result both accused would have had to be released.

The community impact assessment was such that the victim and witnesses were considered potentially at risk if the suspects had been released. In addition the suspects could also have been at risk given the crime under investigation from reprisals. As a result this would not have been suitable for Investigative Liberation.

#### **4. DOMESTIC ASSAULT - RAPE**

There was considerable history of domestic violence between the victim and suspect with the former at considerable risk from the suspect had officers not been able to conclude all diligent and necessary enquiries.

The victim and suspect were in a relationship residing together at the locus. Both had consumed alcohol throughout the day at home.

The victim was woken by the suspect in their bed who then raped her. Afterwards she went downstairs and phoned the Police. On police arrival, in addition to being visibly distressed, the victim was found to be under the influence of alcohol.

The suspect was detained and the locus secured and arrangements for forensic examination instigated with the assistance of a Crime Scene Manager (CSM), Forensic Services and a biologist. A forensic medical examination took place of the complainer at Archway while additional enquiries such as door to door, forensic examination of locus, etc were undertaken.

The victim was still clearly distressed and suffering from fatigue and the effects of alcohol in her system. The victim also requested that she be allowed to rest between her forensic examination and her statement being noted.

The suspect was also under the effects of alcohol and police casualty surgeon opined that he was unfit to be interviewed at that time.

As such the decision to extend the detention period beyond the 12 hour threshold was made. Without this ability to extend there would have been insufficient time to complete the necessary police enquiries with the victim and attempts to trace other

potential witnesses. The suspect also required to sober up prior to interview and completion of the Solicitor Access process.

Investigative Liberation would have been unsuitable in these circumstances given the gravity of the crime and relationship of those involved.

The victim subsequently provided a full statement to the police allowing the suspect to be interviewed once deemed fit by a police casualty surgeon. He was subsequently interviewed and charged with rape having been arrested.

## **5. ABDUCTION AND RAPE**

The victim and witnesses were within their home address and had retired to bed at various times over the evening. The following morning the victim heard creaking on the stair outside her bedroom and was confronted by the male suspect who was in possession of a knife.

A struggle ensued during which an adult male and his child left their bedroom. All parties were threatened by the accused. The accused cut telephone lines, collected mobile phones and pulled down blinds. A male witness and child were told to stay within their bedrooms or the victims would be killed.

The accused thereafter indecently assaulted and raped a female victim repeatedly before he fled the locus.

Police were called and enquiries commenced. The crime scene was secured for forensic examination by a CSM, assisted by a photographer and Scene of Crime Examiner. The victim underwent a forensic medical examination and provided a statement via a SOLO trained officer.

The male and child were also provided with medical assistance and provided statements over what was a prolonged period as the victims of the crime were extremely traumatised and required a period of rest during their interviews.

A male was identified as a possible suspect and a warrant sought and granted to search his home address. During this search distinctive clothing was found, believed to belong to the suspect.

He was subsequently detained in terms of Section 14 of the Criminal Procedure (Scotland) Act 1995. During his detention period extensive enquiries were still being undertaken at the locus and with the witnesses. An extension was sought beyond the 12 hour threshold to allow sufficient police enquiries to be completed prior to any interview with him. It was necessary to photograph him whilst detained in order to have him formally identified, as at this stage there had been no identification.

Had there have been no opportunity to extend the detention time to allow the identification, and if the accused had made a 'no comment' interview, then he would have had to be released for further enquiries to be completed.

This case would not have been suitable for Investigative Liberation due to the seriousness of the offence, public safety and reassurance issues and the danger of reprisals in the local community.

The male was subsequently arrested and charged with several offences including abduction and rape. He has since been convicted at Edinburgh High Court receiving a substantial custodial sentence.

## **6. TRAFFICKING**

A property landlord reported a possible cannabis cultivation at one of his city properties. Uniform officers attended at this address as a 'routine' call and found 3 foreign national females working as suspect prostitutes. They also found 4 foreign national males (of different nationalities), two of whom were to be later identified to be involved in the trafficking, rape, prostitution of the females.

The detention of 5 persons was extended past 12 hours to allow a proper investigation/ assessment to be carried out, particularly to determine the status of the females involved i.e. if they were victims or suspects. A lack of appropriate interpreters for witness and suspect interviews was largely a contributory factor in the extension, as was allowing the suspects adequate rest time.

During one interpreter-assisted interview, one of the females disclosed that there was another 2 brothels in the city and a pregnant female was possibly being held against her will. Enquires ultimately identified a network of foreign national males who were trafficking European females up and down Britain for prostitution.

The extended detention period allowed the Senior Investigating Officer to thoroughly complete the initial investigation as well as identification of additional victims of trafficking/sexual abuse. If the detention time had been limited the 3 females may well have been arrested for management of a brothel based on the witness testimony and would not have disclosed their trafficking and sexual abuse to the police. As a consequence, the males responsible for the human trafficking offences would have been released and the offences gone undetected.

**Appendix C****INVESTIGATIVE LIBERATION**

The following anonymised examples serve to highlight where the proposal to limit the operation of investigative liberation to 28 days, would potentially cause significant difficulties, as any conditions placed upon suspects and designed to moderate their behaviour or conduct would be lost to investigating officers.

**1. DOMESTIC ABUSE CASE STUDY**

In June 2010 a third party report was made to Police re a female having been assaulted by her partner. They were also informed that the male had stabbed the female's pet dog twice, killing it. On police arrival the female was found to have been slashed on her foot and was taken to hospital where she received six stitches. Her partner was arrested; however the case was marked as no proceedings by the Procurator Fiscal due to a lack of corroboration.

The Domestic Abuse Task Force (DATF) instigated an investigation to trace previous partners of the perpetrator. This resulted in 5 other victims providing statements which detailed serious sexual and violent assaults by the male over a twenty year period. Their medical records were also traced covering the crime period.

In total, 23 charges ranging from rape, abduction, serious assault and sexual assault to breach of the peace were libelled following a 7 month investigation.

The perpetrator appeared at the High Court in Glasgow in March 2012 and was given a Life Sentence in the form of an Order for Lifelong Restriction and is not eligible to apply for parole for a minimum of six years.

This type of domestic abuse investigation is not uncommon for the DATF and records show the average length of enquiries carried out by the DATF is 3 months to bring a perpetrator to the point of charge. The 28 day Investigative Liberation period would not be beneficial in complex and lengthy enquiries such as this given that the perpetrator will know the victims and their whereabouts. The perpetrator may also be at risk of reprisals once the true extent of their crimes is known in the community.

**2. COMPLEX FINANCIAL AND TELECOMMUNICATION ENQUIRIES**

Police Scotland have and continue to investigate Serious and Organised crime groups operating throughout the United Kingdom and abroad. These groups area of criminality primarily involve large scale social engineering fraud whereby through complex methodology and group tiers the banking sectors security systems are overcome, resulting in multi millions of pounds being transferred into bank accounts controlled by the group. These receiver accounts can be situated anywhere in the world.

### **3. SERIOUS AND ORGANISED CRIME GROUP (MONEY LAUNDERING)**

During December 2012 executive action was taken against one of the principal subjects of the crime group who at that time was suspected of receiving and transferring £40,000 of criminal money for the group. A Proceeds of Crime warrant was executed at the home address of this subject and substantial amounts of criminal money and telecommunication devices seized.

This subject was detained at this time and interviewed in relation to the above £40,000 Money Laundering.

During his detention a forensic download of numerous telecoms and computer devices was conducted. These contained extensive detail of the subject's involvement in multi million pound world wide fraudulent activity. Due to the extent of the additional evidence uncovered the subject was interviewed and released from detention to allow the further enquiry to be conducted.

This enquiry identified a complex criminal financial network involving hundreds of members operating all over the world. The investigation required obtaining detailed financial evidence from a high number of financial institutions in addition to extensive forensic evidencing of the telecommunications devices.

As a result of these protracted enquires the police were not in a position to re-interview or charge the subject until August 2013.

This case highlights the timescales involved when conducting enquires into Serious and Organised financial crime. The enquiry team would not have been in a position to re-interview the subject within a 28 day period after the initial detention, with the investigation likely to have been seriously jeopardised if required to meet this time restraint.

### **4. FIREARMS AND DNA EXAMINATIONS**

During November 2012 intelligence was received to the effect that the controlled drugs were being transported to Scotland from England within a van. A male (A) was subsequently detained under terms of the Misuse of Drugs Act 1971 in Scotland. Within the rear of the van there was a brown barrel which was found to contain a large quantity of white powder. The van was searched and a quantity of controlled drugs recovered. The driver was then detained under terms of the Criminal Procedure Scotland Act 1995 s14.

As a result of enquiries, a house in Glasgow was searched under powers granted by a Justice of the Peace warrant. One person (B) was within the house at this time and was detained under the Misuse of Drugs Act 1971 s23.

The search uncovered what appeared to be ammunition and a firearm. As a result of which, the search was stopped and the Procurator Fiscal contacted, seeking a warrant issued under the Firearms Act 1968.

In relation to the items recovered two persons (A & B) were charged in relation to offences under the Misuse of Drugs Act 1971 and the Firearms Act 1968.

The householder (C) was not present at this time. She was subsequently traced during April 2013, arrested and charged.

The items recovered during the initial searches of the van and houses were subject to forensic examinations which were requested at the time of the incident.

During January 2013, DNA analysis of tapings taken from the firearm were received and identified a further suspect (D) from the Liverpool area with a DNA package received that same month. Instruction was consequently made by the Procurator Fiscal in February 2013 to detain this male.

In April 2013, the suspect (D) was traced as a remand prisoner within a prison in England. He was detained under terms of the Criminal Procedure Scotland Act 1995 s14 by officers from Police Scotland. He was then arrested and charged in relation to offences under the Firearms Act 1968.

The case proceeded to trial at the High Court of Justiciary in Edinburgh against A & B only. There were no proceedings against C & D.

Forensic examinations and specifically those in relation to the DNA analysis of the firearm, were crucial to the inquiry and identified a previously unconnected suspect. As revealed, even had Investigative Liberation been available and utilised, the 28 days would not have been sufficient to enable full enquiries to be carried out. If however this period could have been extended and the Police allowed to re-interview the accused in light of new/further information, all four would have appeared on indictment for this incident.