

Justice Committee

Criminal Justice (Scotland) Bill

Supplementary written submission from Police Scotland

I would first wish to thank you for allowing me the opportunity to provide oral evidence to the Justice Committee on 1st October 2013 in support of Police Scotland's submission on the Criminal Justice Bill. During my submission I undertook to provide some additional data to assist you in your on-going deliberations.

The Committee requested that I provide the number of people initially arrested or detained by the police who are ultimately not the subject of any form of proceedings. Unfortunately consequent inquiry has established that this data is not currently collated, nor is it readily available. I regret therefore that I am unable to provide this information.

Members also asked that I provide data in relation to the number of persons detained in custody by the police for more than 6hrs but less than 12hrs.

The figures in relation to persons detained in terms of Section 14 Criminal Procedure (S) Act are not routinely collated by Police Scotland, however during the period between 4 June and 1 July 2013 these figures were collated to assist in identifying the potential resource and financial implications to the police service arising from the details contained within the Criminal Justice Bill. The figures were as follows:

- 2693 persons were detained up to a maximum of 6 hours – 80.4%;
- 643 persons were detained between 6 and 12 hours – 19.2%; and
- 13 persons were detained beyond the 12 hour threshold – 0.4%.

We strongly believe that the facility to extend the current 12 hour provision to one of 24 hours, subject to appropriate review, is required. We were surprised and concerned at the suggestion made by some participants that we could potentially return to a period of 6 hours. Our view and experience, re-enforced by the above analysis, is that such a regressive step would prove operationally unrealistic, unworkable for critical cases and ultimately have a detrimental effect on our efforts to keep people safe.

I am similarly conscious that the Committee were compelled to seek the views of what was a diverse panel of witnesses across a range of complex matters in a short timeframe. I would therefore take this opportunity to provide further information which members may find of assistance.

Your observations in relation to the possibility of establishing a legislative definition for what constitutes an arrest were particularly helpful. As perhaps revealed in my response to Committee, Police Scotland has not sought a specific definition of arrest to be included within the legislation. Our understanding is that this would enable us to continue to work to the current legal understanding and definition of arrest, which, as commentary from the panel re-enforced, is well understood by the Service and will no doubt continue to be informed by evolving case law.

Police Scotland welcomes and supports many of the provisions within the Bill. We do not however consider that in whatever form it is enacted, it was ever intended to denude our existing powers to the detriment of the effective delivery of justice or provision of policing services to communities across Scotland.

Police Scotland currently, and will continue to, operate within the legislative framework set by Parliament. Should that framework succeed common law, and we recognise that emerging jurisprudence and case law increasingly may require that it does so; we will of course accord with the will of Parliament and shape our operational delivery accordingly.

It would however in our view be regrettable if the introduction of this legislation detrimentally affected our well established practices associated with the interview of witnesses or preliminary questioning of suspects outwith a police station, while trying to establish the veracity of a complaint, basic facts or identity of individuals. If such engagement by the police with individuals were to be considered to be a curtailment of their liberty and as such technically an arrest, the potential exponential increase in persons brought into police custody would be detrimental to our efficiency and effectiveness. More particularly, we consider it would undermine the overarching presumption to liberty enshrined within the Bill.

Police Scotland have also sought assurance from Scottish Government that there will be no erosion of our ability at common law to intervene to protect life and enable us to enter premises and detain or arrest individuals who are posing a risk to their own personal safety or by their conduct, the potential well-being of others. We share and wholly support the desire of the Justice Committee to satisfy itself that there will be no diminution of the ability of Police Scotland to adequately protect public safety consequent to the introduction of the Bill into law.

We consider the Bill will have a real and enduring impact on the Service. We fully recognise the need to consider, amongst other matters, evolving and emerging issues associated with effective training delivery and parallel ICT programme development. Foremost in our mind is the overarching requirement placed on the Service to maintain and sustain operational delivery throughout and beyond the introduction of what will represent a large-scale programme.

The timing and manner of introduction of the Bill is therefore significant to the Service.

As stated within our financial submissions to Scottish Government, the costs to Police Scotland associated with the implementation of the proposed Criminal Justice Bill, (c£24m) were broad estimates of the potential costs associated with legislative compliance and adoption of new business practises. The acknowledged reality is that our understanding of costs continues to mature and can only ultimately be established following the implementation of the Act and incorporation of any new ways of working within the operational arena.

We look forward to working with partners as our understanding of these matters continues to improve.

I look forward to the opportunity to continue our discussion at a future meeting with the Committee, when I understand the provisions in the Bill relating to the abolition of the absolute requirement for corroboration and related reforms and admissibility of statements (Part 2 and Section 70) will be considered.

I would also take this opportunity to reassure the Justice Committee that whatever decision is ultimately made in relation to the future status of the evidential requirement for corroboration in Scots Law, Police Scotland is, and will continue to ensure that all reports of criminal conduct are comprehensively investigated.

Police Scotland has an enduring obligation to identify and secure 'best evidence' to the Crown Office Procurators Fiscal Service. This commitment is not lessened by the amendments proposed within the Bill.

I trust this information is of assistance to the Committee.

Malcolm Graham
Assistant Chief Constable
12 November 2013