

## Justice Committee

### Criminal Justice (Scotland) Bill

#### Written submission from Scottish Police Federation

##### Part 1

**Chapter 1** - Essentially removes Detention and replaces it with a general power of arrest. Whilst this may appear relatively straightforward it will have significant training implications for the Service. Every police officer and special constable will require to be trained which will present a major resourcing challenge. There will be cost implications in relation to this training and may also be a requirement for some work to be done on IT systems to accommodate the proposed changes at a time when the service budget is under extreme pressure.

Some clarity is required as to the requirement to obtain warrants for arrest and questioning, given the high volume of low level crime not punishable by imprisonment there may also be resourcing implications for the Courts which as we know are reducing in number. If as a consequence vast numbers of warrants are sought.

**Chapter 2** - The issue of police bail will also have significant training implications and may well be an area of significant challenge in the Courts. The release and requirement to return will also present some challenge in managing times around officer's shifts and other duty commitments etc may well prove to be an administrative nightmare and again may require some investment in IT to manage the proposed changes.

The capacity of both the service and the Courts to cope with this demand is also questionable.

The requirement for investigative liberation not to exceed 28 days will also present a significant challenge, what happens when this cannot be accommodated?

**Chapter 3** - There does not appear to be any provision to add further conditions to an undertaking which may be required if circumstances change after the undertaking was made. If this is not in place undertakings are likely to have a vast number of conditions attached, just in case!

**Chapter 4** - If a solicitor is requested the time taken for their attendance at a police station should be discounted from the 12 hour period.

Again these provisions will have significant training and resourcing implications and will be an administrative challenge and burden.

**Chapters 5 - 8** - No specific comments.

**Part 2**

Corroboration - The SPF are not opposed to making some amendments in relation to corroboration and its application but hold the strong view that there should be no blanket abolition of the requirement for corroboration.

In relation to some matters such as the service of legal documents or evidence relating to the transportation of productions or forensic and medical evidence the requirement for two witnesses may be unnecessary and costly.

Corroboration serves as a safeguard for the general public who come under suspicion of committing a criminal act, the accused and also for police officers who are on occasion subject to false or malicious complaints as a consequence of executing their duty.

Blanket removal of corroboration would risk exposing police officers to more spurious and malicious allegations which would be harder to refute and similarly so for every other member of the public.

Corroboration is an important safeguard against miscarriages of justice or wrongful conviction; a witness who is convinced their evidence is accurate may be mistaken. This is particularly pertinent to issues surrounding identification.

In other countries where corroboration does not exist there is a greater use of technology to enhance the quality of cases reported and to protect the police and suspects from injustices and oppression. This would require to be addressed here. Corroboration is also particularly important in maintaining public confidence in the criminal justice system.

The quality of evidence may be reduced and as a consequence the scrutiny applied to a single source of evidence must be increased. Other jurisdictions have established methods of weighing and scrutinising this type of evidence and it is possible that miscarriages of justice may occur in the interim while we adjust.

The abolition of corroboration will inevitably result in the lower end cases being subject to appeal. This could cause practical difficulties for an already stretched appeal court.

Under our system evidence from a single witness would receive far greater focus from defence agents. Greater effort will be made to discredit these witnesses and undermine their testimony. This could result in reluctance for witnesses to give evidence willingly.

The assertion that there is a link between corroboration and low conviction rates is something that in our view needs further detailed research and analysis before a decision to make a critical change in Scots Criminal Law and that this should be made publicly available. In the Carloway Review Report it was 'accepted and agreed that the number of areas which could be examined in detail was limited.' We would therefore encourage much more detailed analysis on the wholesale abolishment of corroboration.

In England where there is no requirement for corroboration, conviction rates are only fractionally higher. The Scottish Law Commission also rejected the proposal to remove corroboration for sexual offences in its 2007 report which culminated in the Sexual Offences (Scotland) Act 2009.

The majority verdict of juries would in our view have to be reconsidered as a removal of the requirement for corroboration would undermine and weaken our jury system.

In the civil system where there is no requirement for corroboration there is widespread use of skilled (and expensive) expert witnesses to substantiate uncorroborated claims in relatively modest actions.

The fact that our system is unique among other systems is of no relevance. All legal systems have procedural rules developed over time to fit within their specific requirements.

It is unsafe to look at the European model as these are inquisitorial systems and their approaches to corroboration are distinct to the adversarial system in Scotland.

Fundamentally the principle of corroboration provides some balance between the protection of individuals from wrongful prosecution and/or conviction and miscarriage of justice by the Crown who has significant power and resources at its disposal.

There is no doubt that there is a scope for change but not the wholesale abolition of one of the key safeguards in Scots Criminal Law.

**Part 3** - No comment

**Part 4** - We support the increase of sentence for carrying of offensive weapons and the provisions relating to offences committed by persons on early release.

**Part 5** - No comment.

**Part 6**

**Chapter 1** - We support the introduction of aggravations of offences relating to people trafficking.

**Chapter 2** - Traditionally it was understood that PNB dealt with negotiable subjects and the Police Advisory Board (PAB) dealt with non-negotiable subjects. But as it states in 55B(4)(c), the issue, use and return of police clothing and equipment, was in legislation covering the PNB UK. However it was never discussed at PNB as it was not considered a negotiable subject.

There is an important principle here that there should be no connection between negotiable subjects and non-negotiable subjects. For example, a situation where improved safety equipment was offered in return for a reduced pay award would be entirely unacceptable.

SPF believes this should be removed from the PNB remit and placed on the agenda of whichever body takes over the role of the PAB.

**General Comment** - Whilst supportive of some of the proposals laid out in the Bill we believe that some have significant practical, cost and resourcing implications not just for the Police Service but also for COPFS and the Courts.

We are not convinced that there will be significant benefits from the introduction of these proposals and when balanced against the costs and other implications believe that their introduction may cause significant difficulties for all partners in the Criminal Justice System and require much more detailed analysis before progression.

Scottish Police Federation  
30 August 2013