

Supporting Police, Protecting Communities: Proposals for Legislation

The Dumfries and Galloway Police Authority supports the aims of this proposed legislation to strengthen and improve policing and law enforcement in Scotland.

Supporting the Scottish Police Service – the national delivery of services

Question 1: Do you agree that a Service Authority should be created to maintain the SDEA and provide the other common police services?

Clear advantages including scale, direction and focus may be anticipated from the establishment of a single Service Authority for Common Police Services. In considering the definitions provided between maintained services and provided services the Police Authority would agree in principle that a single Service Authority be created to provide oversight to future Common Police Services (CPS). However, so far as possible the structure of the Authority should mirror that of the existing Joint Police Boards and Police Authorities.

It is noted that the SDEA presently reports to Ministers through the Standing Committee of Chief Constables. No mention is made within the paper as to whether this is to continue to be the “buffer” between Ministers and the SDEA.

Question 2: Do you agree with the proposed division of responsibilities between the Director of the SDEA, the Service Authority and the Scottish Ministers?

Further clarification is required before the Police Authority can respond on this. There would appear to be an inference that a change in the role and function of the SDEA is proposed in the future. Any change in operational function in support of Scottish Police Forces would have to be further defined and would require discussion. There are real issues if it was being proposed that SDEA should become a maintained service. The unique support function offered by the SDEA to Scottish Forces should be maintained.

The division of responsibilities is in some instances vague and further clarification is required.

Question 3: Do you agree that, in certain circumstances, it is appropriate that the SDEA should be able to recruit officers directly?

“Officers” appears to be in the wider interpretation as direct recruitment of police officers by the SDEA would obviously raise difficulties. Be that as it may it is noted that the paper anticipates the status quo and direct recruitment only considered as an exceptional, emergency option.

Given the constitutional and legal arrangements in Scotland, for the SDEA to be able to award the office of "Constable" and all attendant powers, to non-police personnel could set a dangerous precedent. The public service ethos in Policing in Scotland should be maintained. The direct recruitment to create new police officers does not appear to be practicable. Probationer training is a nationally agreed programme to provide specific training and experience over a two-year period. The SDEA would not be in a position to provide such inaugural training.

Further detail on the plans for direct recruitment are needed before the Police Authority is able to respond in the fullest terms.

Question 4: Have we identified all the initial functions to be provided by the new Service Authority?

It is noted that the initial functions have been identified. Clarification of any proposals for change as intimated in paragraph 2.21 will be required at the earliest recognising the ongoing pressures on Police Authority budgets.

Question 5: Do you agree with the proposed division of responsibilities between the Service Authority and the Scottish Ministers for the provided common police services?

No.

The division of responsibilities would effectively ensure control of the Service Authority by the Scottish Ministers. Not only would Ministers set priorities and policies for the Service Authority, the Board would be responsible to Ministers for fulfilment of those priorities and policies.

All Common Police Services (CPS) exist solely to support the operational activities of Scottish Forces. Accordingly it would be inappropriate to have decisions relating to CPS strategic priorities taken in isolation from those practitioners who are experienced in the requirements of operational policing.

Surprisingly the proposal is that Scottish Ministers would approve the nominations from Conveners and ACPOS, as well as appoint the lay representatives on the Board. Conveners are democratically elected representatives and of course ACPOS nominees would be experienced senior police officers. Ministers should have no remit to approve these nominations.

In addition the Chair of the Board would be reporting to Ministers on the "performance" of the members of the Board including those representing ACPOS and Conveners.

Under the anticipated composition of the Board, ACPOS and Conveners representation combined would comprise a majority compared with independent members. The possibility therefore would exist of the independent members, including the Chair, being outvoted and the Chair requiring to report this "performance" directly to Ministers.

Transparency and accountability of funding allocation processes should be maintained. The proposals are unclear as to the process envisaged for the allocation by Scottish Ministers to the public body i.e. single block or a separate determination for each of the different service elements.

The Police Authority remains committed to enhancing public accountability on a local basis i.e. through local police boards and police authorities and requires further clarification on the issues raised before being able to comment further on the proposed division of responsibilities.

Question 6: Do you agree that there should be a Senior Strategic Director for the provided Common Police Services?

No. Commitment to change, innovation and performance management should flow throughout the organisation rather than appear to be imposed by a highly paid functionary who to other members of the workforce may appear to be interfering with day to day operations.

Each Director should be responsible to the Board for budgetary and other monitoring.

Leaving discipline to an overarching manager would diminish the role of the individual Director. It would also run into difficulties in relation to established disciplinary procedures for police officers.

Paragraph 2.26 appears vague and couched in management-speak and sets an expectation of massive and immediate change and innovation. If this is the case the opportunity should be given to discuss proposals fully rather than it be put down to the enthusiasm and drive of the appointed Strategic Director.

Question 7: Do you agree that the Service Authority Board should comprise representatives from ACPOS, Police Conveners and lay members, and do you have any views on the proposed composition of the Board?

No. Although transparency and openness are essential, clear understanding of the issues, continuity and consistency are also important. Scottish Ministers must be fully satisfied that lay membership will evoke transparency and openness without detracting from the other elements. It is suggested that no such case has been made out in the paper.

If lay membership is to be invoked selection will of course be crucial. The individuals chosen by Scottish Ministers, especially the Chair, will have a clear understanding of policing issues without the mindset of police regimen.

The principles of current tripartite arrangements should be preserved with the Service Authority Board comprising members from ACPOS, Convenors and having the power to appoint topic specific Advisory Members, on an Ad-Hoc and time-limited basis and with no associated voting rights.

Question 8: Do you agree that the legislation should include an enabling provision to allow functions to be added or removed?

Although the paper makes a case for functions to be added, no mention is made of the possibility of removal of functions until the last two words of this question. A clear need for the removal of functions by an enabling provision or otherwise should be demonstrated in the same terms.

Question 9: Do you agree that the SDEA's budget should be simplified, provided on a 50:50 basis by central and local government and that Ministers should be able to direct additional funding if necessary?

Yes.

Question 10: Do you agree that the Scottish Ministers should directly provide the whole of the funding for the provided common police services?

Having proposed 50:50 funding between central and local government for the SDEA (see Question 9 and response) it might be prudent to investigate extending this principle to the other CPS.

Question 11: Are there any other comments you wish to make with respect to our proposals to create a single Service Authority, which maintains the SDEA and provides common police services where police powers are not exercised?

The importance of the tripartite process of governance and oversight of the police service and of their importance in ensuring that no-one of the constituent parties can exercise undue control in terms of the oversight of the process as a whole should remain paramount.

Knife crime

Question 12: Do you agree with the proposal to double the maximum penalty for carrying a knife (or other articles with a blade or point)?

It would appear sensible to equate the penalties for possession of an offensive weapon in public and for possession of a knife or other bladed weapon in public. It would also appear sensible to increase the

penalties relating to the knife crime rather than reduce the penalties for possession of an offensive weapon.

However, such a change will require robust application of sentencing procedures within the judicial system.

Question 13: Do you agree with the proposal to give the police the power to arrest a person whom they reasonably suspect has committed or is committing an offence of carrying a knife (or other articles with a blade or point) or an offensive weapon?

Yes. There is an opportunity to ensure that a strong message is sent to alleged offenders that knife crime will not be tolerated.

Question 14: Do you agree with the proposal to increase the minimum purchase age for knives (and other bladed and pointed objects) to 18?

Yes. Recognise need for clear definitions of bladed and other pointed objects.

Football Banning Orders

Question 15: Do you agree that football-banning orders as described above are an appropriate and effective response to the problem of football-related violence and disorder?

Yes. It should over time prevent attendance of those at football matches who are there to cause trouble. This will enhance the enjoyment of the sport by spectators especially family groups.

Question 16: Do you agree that courts should be able to impose banning orders *on conviction* for a football-related offence and *on summary application* by a Chief Constable?

These parallel systems should cover most instances. However if an accused person pleads not guilty there will be a period required for preparation for trial. During this time the individual would be free to attend the football matches unless another means of banning him could be imposed. It may be that this could be covered by an interim banning order or an appropriately worded condition of bail imposed by the criminal court. Difficulties might be raised if in those circumstances the Chief Constable applied for a civil banning order as the matter would be *sub judice*.

Question 17: Do you agree that the courts should be able to make a banning order if they are satisfied that it would help reduce football-related *disorder*, specifically the stirring up of hatred against others or threatening, abusive or insulting behaviour at or in connection with a football match?

Yes.

Question 18: Do you agree with the proposed length of a banning order and the proposed penalty for breach of a banning order?

Yes.

Question 19: Do you agree that banning orders should apply to all competitive and friendly games involving the Scottish national team and SPL and SFL clubs? If not, which games do you think they should apply to?

Yes. If, for example, local league matches were not included there is a likelihood that individuals banned from other matches will merely downgrade to lower leagues to continue violent abusive behaviour. This would greatly reduce the enjoyment of spectators there to watch their local community teams and would also increase policing requirements.

Question 20: Do you agree that the Scottish Police should take on the administration of the banning orders?

Notwithstanding that the police have a crucial role to play in enforcement of banning orders they should not be called upon to make decisions in relation to exemptions, variations and reviews of banning orders which would be judicial functions. The benefits of a single agency administering banning orders is recognised.

Marches and Parades

Question 21: Do you agree that organisers should be required to give local authorities and the police 28 days notice of their intention to hold a procession?

Yes, the period of notice should be increased from 7 days to 28 days.

Question 22: Do you agree that the 28 days notice period should be dispensed with in limited circumstances?

Yes. However "limited circumstances" should not be restricted to the situation suggested within the Review Report - reason for procession could not have been foreseen.

Instead it should be for the local authority to decide whether to waive the full notification period taking into account relevant factors such as the reason for lateness, the type of march, the likelihood of public disorder and disruption and previous instances of lateness of notification.

Flexibility is particularly crucial if all marches, parades and processions are to be subject to the notification requirement and regulatory framework recommended by Sir John. Public support for what may be

seen, as a rigid layer of purposeless bureaucracy will not be enhanced by cancellation of community centred events due to hard working volunteers unfortunately forgetting to give the full 28 days notification.

Question 23: Do you agree that organisers of all marches and parades should give notice of their intention to local authorities and the police?

No. When the present legislation was being introduced in 1984 the Scottish Development Department Circular suggested that the exemption provisions would ensure that "a number of processions which are unlikely to cause any problems of public order can continue without undue formality." It appears that this remains the position and that the Review Report does not produce evidence indicating that all or even a substantial number of processions are causing difficulty or disruption.

The widening of notification to all marches and parades would effectively withdraw the present exemptions - processions by organisations specifically exempted by the local authority or processions commonly or customarily held. The notification requirement would therefore extend to events that presently proceed on an annual or otherwise regular basis such as local riding of the marches, fun days, galas, parades and indeed even Remembrance Day Parades.

No case is made out for formal regulation of these processions. Public perception would likely be that in all but the most controversial events that it was regulation without purpose. It would also jeopardise the close bonds, which local authorities have developed with their community partners and be seen as interference in activities, which have been undertaken and allowed to develop without threat to public order or public safety, but with recognised enrichment of local communities.

This likely perception must also be seen in the light of the proposals outlined in question 24: the notification would merely be the means which would set in motion a series of strict, time consuming and resource laden key steps, primarily for the local authority and police but with knock on effects for organisers.

Question 24: Do you agree there should be regulations setting out the key steps and timetable for taking decisions on notifications?

No. The requirement for all organisers of processions to notify the local authority and the police at least 28 days in advance would in itself involve the local authority in a vast amount of additional paperwork.

This additional workload appears to spiral out of control when consideration is given to implementing the key steps proposed. Every event would require to be advertised by the authority, meetings held,

consultation undertaken, risk assessments and impact analyses prepared by the local authority, down to publicising the authority's decision, anticipated level of disruption, and finally a debriefing meeting to discuss issues relating to the event.

The resource implications for local authorities would be vast; staffing up due to the additional workload, the not inconsequential cost of local newspaper advertisements, and enhancement of IT provision (especially with the Review Report's passion for detailed statistical information).

Sir John's recommendations 23 (organisers should not be required to pay a fee) must be borne in mind. Local authorities will wish assurance that any necessary additional resources will be made available in good time for the lead-in of any new legislation.

Question 25: Do you agree that local authorities should be able to take into account wider views, including community views, when taking decisions on processions notifications and that they should put in place transparent procedures as to how those views will be considered?

It should be at the discretion of the local authority to make such enquiries as it sees fit taking into account the type of march, its previous history, the likelihood of public disorder and threat to public safety and the anticipated level of disruption to the community.

Question 26: Do you agree that local authorities should be able to take into account wider issues when taking decisions on procession notifications?

Yes, if this will enhance the local authority's full consideration of notification and the level of information before it during the decision making process.

Question 27: Do you agree that local authorities should be able to impose wider conditions on procession notifications?

Yes. For consistency of approach it is suggested that national guidance on conditions would be of benefit.

Question 28: Do you agree that there should be a code of conduct prepared by the police and local authorities?

No. Although the merit in having a code of conduct is manifest it is suggested that to avoid vast inconsistency between local authority areas, any model code of conduct should be prepared nationally following due consultation. That model can then be adopted subject to tailoring to reflect local circumstances.

Question 29: Do you agree that organisers and participants in breach of the new statutory requirements remain subject to the same penalties as currently?

Yes. It is noted that the present penalties relating to organisers are a fine of up to £2500 or imprisonment not exceeding 3 months or both, and for participants a fine of up to £1000. However this question clearly points to the dangers of including all processions within the notification framework including those presently exempted by the legislation or by decision of the relevant local authority. The possibility of local organisers for fun days and town parades inadvertently contravening the law for an event which has peaceably gone ahead year upon year and enjoyed by the community and visitors, should not be underestimated.

Mandatory drug testing and assessment

Question 30: Do you agree that police should have powers to require persons arrested for certain trigger offences to undergo a drug test?

Yes. These proposals have to be seen in the context of widespread illegal drug use and the impact that this has on communities, families of drug abusers and the drug abusers themselves. Whenever the word "mandatory" is used the proposals must be recognised as controversial. Subject to a detailed Human Rights audit many of these proposals have merit especially if their introduction would make individuals recognise their drug misuse, the impact which this has on themselves and others including the link with criminal behaviour, and also advises them of the facilities locally available for treatment. However as with all proposals relating to "drugs" the Scottish Ministers elsewhere recognise that although alcohol is perfectly legal, misuse of this substance still causes more harm to families and individuals than illegal drug use.

It is vital that the addition of these powers be matched with local investments in health treatment facilities and support arrangements.

Question 31: Do you agree that drug testing should be applied to those arrested for certain offences rather than *on charge*?

Yes.

Question 32: Do you agree that powers should be taken to enable the police to require those who test positive for a class A drug to attend an assessment of their drugs use?

Yes. See response to Question 30 in respect of ensuring that assessment and treatment facilities are accessible.

Question 33: Do you agree that theft and drugs offences should be the main trigger offences for testing? Should any other offences be included?

Yes. Perhaps offences involving violence especially in the domestic environment should be included particularly if a similar system is to be considered in cases where serious alcohol misuse is involved. Other crimes may be linked to the funding of drug abuse for example fraud, embezzlement. It would be appropriate to be able to authorise testing for any crime or offence that has led to an arrest that can be associated with the drug trade.

Question 34: Do you agree that there should be a power for a senior police officer to authorise a drug test where there are reasonable grounds to suspect that the misuse of a Class A drug has caused or contributed to a non-trigger offence?

Yes. Although this seems worthwhile as a practical step it does give a great deal of discretion to the senior police officer. However if this proposal passes a Human Rights audit it should be supported.

Question 35: Do you agree that the minimum age at which these proposals take effect should be 16 or should a lower limit be set?

This issue requires a comprehensive analysis of the legal and social issues involved relating to age of the offender. Where a child, under the age of 16 years, is suspected of abusing a Class A drug, this would indicate the child to be at risk and intervention should be achieved through the Child Protection Route.

Question 36: Do you agree that mandatory drug testing will provide access to a key group of clients that might not otherwise engage successfully in treatment services?

It is hoped that this will prove to be the case. However it is extremely likely that for many dedicated drug users/offenders it will fall into misuse as a revolving door process.

Police power to take fingerprints at a place other than a police station

Question 37: Do you agree that the police be given the power to take fingerprints outside of a police station in order to confirm a person's identity?

Yes, but only in extremely limited circumstances and the rights of the individual should be safeguarded. Perhaps limited to a course of serious crime and where there is reasonable doubt in the officer's mind as to the true identity of the suspects; false ID is suspected; if finger printing is not undertaken immediately the chances are that evidence will be lost and suspects and associates will flee.

Question 38: Do you agree that officers should also be able to conduct on-the-spot checks, other than for identity verification, in specified circumstances?

The example given of an officer deciding whether to offer a fixed penalty would allow police officers to fingerprint a vast number of people in town centres every weekend after 11pm. The present legislative provisions were purposively restricted by parliament. The extension of the power to fingerprint has to be well thought out and a clear substantiated case made to justify such an extension.

Date and place of birth

Question 39: Do you agree that the police should be given a power to ask for date of birth and place of birth information from suspects?

Yes. However it may on occasion be difficult to prove that failure by giving details contrary to birth certificate information, was wilful. Name and address are known to each individual but unless that individual has seen his own birth certificate he is relying on the recollection of others for his date and place of birth.

Independent Police Complaints Body

Question 40: Do you agree that the proposed measures at paragraph 9.11 are the most effective ways in which to raise the profile of the role of the Procurator Fiscal in investigating criminal complaints made against the police?

Although the proposals will never be perfect, they do go some way to removing the spectre that complaints are not properly investigated, and the proposals will ensure independence both actual and perception. There is no detail provided to indicate the possible demands on individual forces.

Question 41: Are you satisfied that the powers and duties outlined at paragraph 9.15 will be sufficient to allow the new body to play an effective role in ensuring that Scotland has a modern and transparent police complaints system?

The powers and duties are expressed in vague terms. It is difficult to see how exactly the new body would operate in practice. For example it is proposed that it gets involved with certain matters and to receive complaints and reports. Further details are needed to give the careful consideration this crucial issue merits.

Question 42: If not, what alternative or additional powers do you think are needed?

Refer to the response for the previous question.

Incentives for providing information or evidence for use against others

Question 43: Do you agree that a statutory system should be established to seek to increase the number of accused who plead guilty and provide co-operation against other accused in return for a reduced sentence?

If a system is to be introduced it will be more open and transparent if it is set down in statute. This however would not be a simple drafting task, as it would involve an extremely pragmatic issue. The Procurator Fiscal's role as "Master of the Instance" as an independent prosecutor acting in the public interest must be recognised and must not be impinged upon. These matters are particularly important when taking into account the vagaries of the parliamentary process whereby the draft Bill and the Act passed, may bear little resemblance to each other.

A further concern is the need to balance encouragement of increased cooperation for reward with the increased likelihood of a miscarriage of justice, the unfurling of which is still a protracted and ultimately costly procedure.

Question 44: Do you agree with the features of the system proposed?

Yes. The allowance for appeal if the cooperation of the accused was later found not to be in good faith would be a valuable reassurance to the public interest.

Question 45: Do you agree that the prosecutor in Scotland should be able to inform the trial judge in confidence of unrelated co-operation which an accused has provided in the past and for the judge to be able to take that into account in sentencing?

Yes. However if this is taken into account and a greatly reduced sentence is imposed, public and media perception in ignorance of the cooperation may feel that the sentence was unduly lenient. In these circumstances this might, unjustifiably, have a deleterious impact on the reputation of the criminal courts and the Crown.

Question 46: Do you agree that the prosecutor's power to offer immunity from prosecution in return for co-operation should be put on a statutory basis and that the prosecutor should be able to commence or recommence proceedings where the degree of co-operation has not been provided?

Inline with the responses to questions 43 – 45 these proposals should be supported.

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