

**Supporting Police, Protecting Communities:
Proposals for Legislation**

COSLA Consultation Response

The Scottish Executive has launched a consultation on 'Supporting Police, Protecting Communities', which will bring forward legislation intended to strengthen and improve policing and law enforcement in Scotland. The paper contains proposals to legislate on a number of diverse elements of police activity. As such there are a number of measures within this document that COSLA does not think it appropriate to respond to given that they relate to technical or operational matters beyond our experience. We are therefore pleased to offer a response on *Supporting the Scottish Police Service, Marches and Parades* and the proposals for an *Independent Police Complaints Body* as detailed below.

1. Supporting the Scottish Police Service – The National Delivery of Services

Background

Our comments under this section of the consultation paper relate to the proposal to establish a service authority which will provide oversight arrangements for Common Police Services. The measures contained in the consultation paper will bring together the Scottish Police College (SPS) and Scottish Criminal Record Office (SCRO) and the Scottish Police Information Strategy (SPIS), Forensic Science services as well as the Scottish Drug Enforcement Agency (SDEA) under one service authority, while recognising that special status would be afforded to the SDEA given its specific operational requirements. Under the proposed model the service authority maintains the SDEA, but it remains as a legal entity, its own director having operational autonomy, with the requirement only to report on an annual basis to the service authority. While the service authority provides the funding for the SDEA, and appoints its director, governance of its operational activities is a matter for the director when appointed by Scottish Ministers

Issues for COSLA

We welcome, in principle, the proposal to establish a single Service Authority Board for the oversight of the Common Police Services, believing that this makes economic sense and simplifies the management arrangements for these services. However, there are a number of political considerations which arise for COSLA relating to the composition and functions of the Service Authority Board.

- **Relationship between the SDEA, Service Authority and Scottish Ministers**

The consultation paper states that there will be no ability for the Service Authority Board or Ministers to interfere in the operational activities of the SDEA. However, it is clear that the Service Authority Board will provide the resources for the SDEA and there will be some form of strategic reporting from the SDEA to the Service Authority Board. This does not suggest to us the independence that is envisaged. If the Director of the SDEA has some accountability to the Service Authority Board then the disproportionate influence of the Lay members (directly appointed by Ministers) inevitably means that Ministers will have some influence on the operational activities of the SDEA, however 'watered down' such an influence might be. The consultation paper also suggests that it is important that there is an appropriate 'buffer' between the director of the SDEA and the proposed Service Authority. However, a lack of detail is provided

in the paper as to what such a buffer might entail. We would wish to seek further clarification of this point.

- **Representation on the Service Authority Board**

The model proposed by the consultation paper indicates that the Service Authority Board will have 10 members. This Board will have overall accountability to Ministers and will be headed by a Lay Chair, assisted by 3 Lay members. 3 other members will be drawn from ACPOS while the remaining 3 will be police conveners. Ministers directly appoint the 3 Lay members and the Chair. The consultation paper states that this ensures equal representation of all parties and is in line with Scottish Executive protocol which dictates that composition of such Boards must include some element of independence. We feel that this model does not achieve parity between parties. Firstly, with the Chair also being a Lay member, influence within the Board is disproportionately skewed to Lay members. Secondly as these Lay members are appointed directly by the Minister, COSLA is of the view that this gives a great deal of scope for Ministerial direction over the activities of the Service Authority Board.

It is clear that the role of the Chair will be significant. As detailed in the consultation, the Chair will be asked to:

- Chair Board meetings.
- Oversee the implementation of board decisions by staff.
- Advise the minister on board appointments and on the performance of individual members.
- Represent the body in links with Ministers and the Scottish Parliament.
- Play a lead role in representing the public body in dealings with the media.

We suggest that the fact that a Lay member will assume such a pivotal role in liaison with Ministers and representation of the Group to the public creates the impression of direct Ministerial control to outsiders, and in reality makes it much easier for any Ministerial policy influences to be exerted and implemented over police authorities, since the Lay Chair effectively becomes the linkage between the two parties. We believe that this model, whether deliberately or otherwise, appears to represent an attempt to secure unreasonable Ministerial control of Common Police Services and as such we cannot support such governance arrangements.

There is a suggestion within the consultation paper that Scottish Ministers must approve those Conveners and ACPOS representatives that sit on the board. It is our view that there can be no justification for instituting such an approval process. Conveners are given a democratic mandate by virtue of their elected member status, and Chief Constables have unparalleled experience in the processes and challenges of operational policing. In this context we can see no reason for responsibility for approving the representatives from these groups falling to Scottish Ministers.

For reasons of accountability, we also find it wholly unacceptable for Lay members to be associated with the oversight of these nationally provided police services. We are of the view that the personal accountability of the electorate is fundamental given the importance of this public function. Lay members are non-stakeholders, yet under this model they will have responsibility for the disbursement of approximately £45 million of public money. We find it unsatisfactory that this power is given when no accountability accompanies it. The proposed board in terms of structure and concept effectively gives independent members the power to direct the strategic aims of these services. This a concept which we do not support given that: firstly they have no accountability; and, secondly they are directly appointed by Ministers, providing scope for direct Ministerial intervention in the strategy and vision around these services. The purpose of the proposed legislation is to 'provide a robust and transparent system of accountability with clear oversight arrangements'. We are not persuaded that the model presented in the consultation paper achieves this.

The consultation paper gives no detail of the characteristics, background or skills that a Lay member might be expected to possess. We are therefore unclear as to what types of people the Executive envisages fulfilling this role. We would welcome clarification on this point, and in addition further information on the appointment and reporting process around Lay members. That said, we are clear that under any arrangements the establishment of a Board, which utilises independent members in exerting control of these police services, will not be supported by COSLA. COSLA therefore rejects the inclusion of a Lay chair and Lay members.

As an alternative to this model we would propose that the Service Authority Board should comprise members drawn from Conveners and ACPOS with the remainder being made up of: a nomination from COSLA -this would ensure that in addition to Joint Boards, the wider interests of local government were represented; a Senior Officer from a local authority with experience in this area; and, finally two subject-specific advisory members appointed by the Board for a specific period of time in response to issues as they arise. In addition, it is our view that the Chair should be nominated from within the authority and should not be an external appointee.

- **Appointment of a Senior Strategic Officer**

The consultation paper proposes the appointment of a Senior Strategic Officer directly responsible to the Service Authority Board. We agree in principle that there could be a Senior Strategic Officer to draw together the diverse elements of Common Police Services to provide vision, leadership and quality of information to the Service Authority Board. However, one issue does require clarification. It is stated in the consultation that the Strategic Officer will be responsible for the activities of the whole organisation. We are unclear as to how this will work in practice given that the Strategic Officer only has autonomy over the 'provided' services and not those that are maintained and are thus under the control of the SDEA. We are keen to receive more detail as to what the roles and responsibilities of the Senior Strategic Officer might be.

- **The future operational arrangements for Common Police Services**

The consultation paper states that the Executive is exploring the case for minimising duplication in police work across Scotland by increasing joint working. The case is also being explored for centralising the provision of support services such as HR, IT and procurement. While the paper is clear that there are no current plans to provide further operational police services on a national basis, the possibility of doing so in the future is not ruled out and it suggests that the new legislative framework will give Ministers the flexibility to add to the operational police services that can be delivered nationally at some point in the future.

We appreciate that there is a need for efficiencies to be secured and that there may be logical reasons in certain areas where joint service provision might be desirable. As the consultation paper accepts, forces are already identifying potential areas for co-operation. However, we are of the opinion that there are many areas of police work which require provision on a strictly local basis. As such we would oppose any central direction on collaboration. We accept, in the context of the Efficient Government Agenda, the aesthetic appeal of sharing services such as HR, IT and procurement between police forces and are aware that discussions have taken place between police forces to this effect with a view to creating economies of scale. We welcome this in principle, but would be against any central intervention in this matter. Forces already co-operate well on a voluntary basis. Any centrally imposed measures in this area could undermine a lot of the good work already undertaken and would be at best distracting and unnecessary, and at worst actively counter-productive.

The consultation document details provisions for legislation which allow Ministers to add or subtract Common Police Services. It is proposed that the legislation will contain an order giving power to allow other aspects of policing work to be transferred by Ministers to Common Police Services as they wish to do so. We argue that the drafting of a legislative framework that confers this power on Ministers is unacceptable. Decisions on operational matters should be taken where

knowledge, expertise and experience exist; this is within police forces. In our opinion there are no grounds whereby a case could be made for Ministers taking powers in this area, this apparent politicisation of the police force being unacceptable.

We do however concede that if all 8 police forces made a case for the national delivery of an operational function, then having a structure that could accommodate such a desire would be helpful. However, we must stress that any changes to Common Police Services must be made at the discretion of the 8 forces, not Ministers. Ministers have stressed that this power is one of last resort, and that they do not intend to use it. We would welcome some clarification of how Ministers expect that this might be used. Our experience suggests that the presence of such a power creates the temptation to create conditions when it might be used. COSLA's main concern lies not with what the present administration envisages its use being, but what any future administration might choose to use the power for. Without appropriate reassurances from Ministers on the proposed application and limits to these powers, COSLA will have no option but to actively oppose their inclusion in the final legislation.

- **Funding of the SDEA**

The consultation paper states that the Executive wishes to move to a system of 50/50 funding for the whole of the SDEA between local and central government. At present local government only meets 50% of the SDEA's **operational** costs. While the amount of money given through the police grant would assist local authorities in meeting this extra cost, it is perfectly conceivable that SDEA costs will rise. If these rise at greater than the rate of inflation (the rate of inflation will be the level at which the police grant given to local authorities will rise) then this will be financially detrimental to local authorities, who will have to provide greater resources to Joint Boards. In the long term this could impact negatively on the delivery of other services by local authorities.

2. Marches and Parades

Background

In January 2004, the Executive published the findings of Sir John Orr's report into Marches and Parades. His report made 38 recommendations, all of which were accepted by the Executive. The Consultation contains proposals to legislate on some of these recommendations. The recommendations which do not require legislation are being taken forward by the Executive Working Group on Marches and Parades, of which COSLA is a member.

We will be responding in due course to this agenda through our representation on this Group, with due diligence to the views of our political leadership. However, we are pleased to offer the following comments on the measures that are proposed for legislation.

Issues for COSLA

- **Extension of Notice Period**

COSLA welcomes the extension of the notice period from 7 to 28 days. We are, however of the opinion that there should be flexibility to dispense with this when impracticalities can be proven.

- **Exemptions to Giving Notice**

The proposal to require all organisers of marches and parades to give notice with no process in place for exemptions seems for us to be burdensome and overly bureaucratic. This problem will be particularly acute in some councils where the sheer volume of marches particularly over the summer months could make such a system unworkable without increased staff resources. COSLA's position is that the Executive must make financial provision available to councils to assist them in dealing with this increased workload. We suggest that alternative measures should be put

in place for local authorities to decide on the merits of undertaking the process outlined by the Executive. If it is decided that local authorities can examine the situation and respond without reference to the process, then the channel for them to do so should exist.

- **Regulations setting out the key steps and timetable for taking decisions on notifications**

We are not of the view that the potentially complex and overly bureaucratic process as detailed in the consultation paper is justified, given that on the whole there are relatively few marches and parades that cause significant problems. While we accept that it is useful to set out some overarching steps for considering notifications, the approach outlined is overly prescriptive, representing a one-size fits all model which is unnecessary and unworkable. We would wish to stress that local decision-making and scope for flexibility are key.

- **Community Consultation**

COSLA welcomes the proposal to extend the notice period with the effect that this enhances the scope for community consultation. However, we consider that there are a number of issues that must be taken into account with this:

- Gauging community views – We are unsure as to how a ‘community view’ can be achieved and how can it be ensured that the views presented are representative of the wider community.
- Costs of consultation – depending on the number that might require to be consulted, the costs involved with this could be substantial.
- Human rights – There is an issue over whether a change to the law to give a statutory footing to community consultation in the area of marches and parades will be effective. Past cases brought on the grounds of infringement of human rights have shown that it is impossible to overturn a decision to allow a march or parade simply on the grounds of public opinion. Thus COSLA would suggest that the right of consultation without having genuine discretion to prohibit marches risks raising expectations that cannot ultimately be met.

- **Considering wider issues**

COSLA welcomes this extension, the current focus on public safety/order issues is not wide enough and thus the suggestion that other issues such as serious disruption to the community should be taken into account is helpful. However, this measure is not a substitute for the provision of statutory grounds for refusal or the imposition of national conditions that would assist local authorities in achieving consistency and avoiding the perception that decisions were taken on the basis of disapproval of a particular lawful organisation. We have a sense that the burden of responsibility in taking such contentious decisions is falling solely on local authorities, and as such this is of concern to COSLA.

- **Imposition of wider conditions**

COSLA welcomes the idea that local authorities should be able to impose wider conditions on process notifications, but again suggests that it should be underpinned by statutory guidance for restriction or refusal. Under the model being proposed it seems to us that local authorities might be left to ‘carry the can’. We reiterate our belief that a disproportionate burden is being placed on local authorities.

3. Independent Police Complaints Body

The consultation paper outlines the establishment of a new body to deal with non-criminal complaints. A Commissioner and Deputy Commissioner will head the new body. Criminal complaints will still continue to be heard by the Procurator Fiscal.

Issues for COSLA

COSLA is supportive of the general proposal to establish the body and its potential powers and duties. However, there are still a number of unanswered questions. We are not yet clear as to the background or skills envisaged for the Commissioner and Deputy Commissioner; specifically whether they will require having a police background or not. We suggest that both should be selected from other disciplines to ensure that the body is - and is perceived as being - completely independent. It is also not clear from the paper what staff the body will require and the composition of such staff.

The consultation paper suggests that the body will have the power to 'get involved' with complaints against chief officers. There is no further information provided. However our understanding is that the new body will be able to 'suggest' to a police board that they investigate the complaint if they are unwilling to do so. The Executive is keen that this is not seen as a power of direction, but we are sceptical about this. The power seems to be widely defined, and as such we have not yet had sufficient reassurance that it could not be used as a power of direction if so desired.

We wish to reserve further comment until the structure and processes around the body have been more fully defined.

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