



Law Society
of Scotland

Consultation Response

Post –legislative scrutiny of the Police and Fire
Reform (Scotland) Act 2012

23 May 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the call for written views for its post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (2012 Act). This scrutiny is taking place as required under section 124 of the 2012 Act.

We note that the remit of the 2012 Act was wide-ranging in that it introduced a significant number of reforms which brought in a single police service, Police Scotland and a single fire and rescue service, Scottish Fire and Rescue Service. It also provided the framework for the Scottish Police Authority (SPA), the Police Investigations and Review Commissioner (PIRC) and Her Majesty's Inspectorate of Constabulary in Scotland. The 2012 Act also set out powers for local authorities in relation to the provisions of fire and rescue services and the policing of their areas and included the transfer of existing officers and staff, the appointment of new officers and staff to both services as well as the setting out of the complaint and investigation procedures.

We note that the background to this post-legislative scrutiny refers to the three main policy intentions in the 2012 Act:

- To protect and improve local services despite financial cuts, by stopping duplication of support services eight times over and not cutting front line services
- To create more equal access to specialist support and national capacity - like murder investigation teams, firearms teams or flood rescue - where and when they are needed
- To strengthen the connection between services and communities, involving many more local councillors and better integrating with community planning partnerships.

We mainly confine our comments to the questions relating to the police service (questions 1-2) as the interplay between the operation of the fire service and the criminal law is much more limited. Additionally,

the committee is not in a position to comment on the community planning aspects. The committee has the following comments to put forward for consideration.

Police Service

- 1. In your view, what have been the consequences of the 2012 Act for the police service?
Please set out your views on (a) any benefits and (b) any negative consequences of the 2012 Act for the police service.**

The 2012 Act has provided for the centralisation of resources of the police service with eight forces becoming one. That has provided clear benefits to the public in the investigation and co-ordination of complex and high profile cases where the flexibility of access to specialist support and national capacity is vital. We suspect that this was demonstrated by the Glasgow Bin Lorry case which would have involved significant manpower from both services.

(a) Benefits

These benefits have included enhanced access to specialist resources through the central body of Police Scotland where cases previously would have involved evidence gathering from different police force areas. That would inevitably have engendered delay and duplication of efforts. Having control exercised by a central body with a recognised and easily understood command structure provides a number of opportunities to deliver benefits when such cases do arise. It should provide services that can be focused as patterns of crime alter and shift over time. Examples of these can include murders, the increase in multiple historic sexual offences allegedly committed over a long period of time and at different places, human trafficking, cross-border drug supplying, money laundering and serious and organised financial crimes.

Looking too to international co-operation in matters of crimes outside Scotland and the UK with crimes such as terrorism, though there may have been some centralisation of specialist services prior to the merging of the police forces, there is merit for international and European agencies to be able to correspond and deal with one central and recognised unit within Police Scotland. The operation of the European Arrest Warrant provides one clear example.

No doubt the centralisation of police services should allow for benefits to be identified and achieved in saving of time and resources. This should also be capable of being achieved when required new training is required on new areas of legislation and the police standard operating procedures. The implementation of the Criminal Justice (Scotland) Act 2016 that involved detailed changes to the police station procedures affecting suspects should be an example where the improvement in service could be measured.

Such benefits should also be capable of being demonstrated and achieved where a unified policy focus is required in relation to campaigns such as relating to domestic abuse and Christmas drink driving.

(b) Negative Consequences

It should be recognised that there would always be challenges to meet in the rationalisation of the Scottish police services. As Margaret Mitchell MSP recognised, in announcing this post legislative scrutiny, she said that it was to:

‘..... establish whether the issues faced by the services are to be expected as ‘teething problems’ or whether legislative changes are needed after five years.’¹

The negative consequences of the 2012 Act, though, are probably felt most at the lower levels. There has perhaps been a lack of recognition that the problems within one locality are necessarily mirrored across the whole country. One size does not necessarily fit all. It might be perceived that some matters may best be dealt with locally rather than nationally.

The majority of offending is summary in nature and so not necessarily high profile where we have already identified that benefits will have arisen as a result of the 2012 Act. These summary crimes may rarely involve or require complex forensic or scientific inquiry. In these sorts of cases, issues of duplication of services rarely arise since they arise and are prosecuted within one sheriffdom, but issues will still remain in respect of the provision of funding and adequate resources to investigate such crimes. Savings from the centralisation of police services should therefore be able to be utilised for local community benefits.

We are also not convinced that the role of local police officers in crime prevention has been enhanced by the 2012 Act's reforms. It is not necessarily apparent that this is in fact arising or being achieved in practice. The use of strategic police priorities has not proved widely popular within the single police force. There needs to be strong evidence that this has been successful which we have not seen. By way of example, what may be a policing issue of concern in a rural community may not attract the same level of concern in a city centre suburb and vice versa.

Anecdotally, we understand that certain road traffic initiatives in north-east Scotland where there was known to be an issue of young males driving dangerously at excessive speed were treated as lower priority once a central force was operative. Certain types of lower level offences (for example, possession of bladed weapons, sectarian and religious/homophobic public order offences) are more common in some parts of the country than others. So deployment of resources may well require to be more locally focused.

Section 32 of the 2012 Act sets out policing principles as improving the safety and well-being of persons, localities and communities in Scotland and achieving that by policing in a way which is accessible to and engaged with local communities and promoting measures to prevent crime, harm and disorder. Whether

¹ <http://www.bbc.co.uk/news/uk-scotland-43606102>

this is operating consistently and at the same level and with the same weight across Scotland is uncertain. Recent correspondence in the Herald newspaper has expressed some concerns that:

*'The rank and file officers, whom I have the highest regard for, are now further away and even more remote from the public they are supposed to serve.'*²

Whether that statement is correct, we do feel that it is essential that police officers have the confidence of the communities in which they serve. There may be a growing perception in respect of summary offending that a centralised force cannot direct local police services as effectively as local forces could before whatever the faults in the former system may have been.

2. Have the policy intentions of the 2012 Act in relation to the police service been met?

Most members of the public will encounter the police, if at all, in relation to road traffic matters, petty thefts, vandalism or other anti-social behaviour and, in more recent times, in connection with domestic abuse. They want their complaints dealt with speedily and effectively. Their first engagement with the police may well be as a witness/complainer where there may be a suggestion on occasions that certain crimes are not always being assigned a priority. That can be a source of frustration for the public.

The protection and improvement to police services may indeed not always have been seen to be delivered. The experience from January 2018 when the Criminal Justice (Scotland) Act 2016 (2016 Act) came into force was that the central administration did not seem to be fully prepared for the new changes. Officers at the front line such as on the street or at the charge bar were not fully up to speed with the requirements of their new duties. There may have been a view that the numbers of those being reported in custody fell dramatically despite the accused being on bail and having analogous previous convictions where previously there would have been a remand on the basis of public protection. There may have been local inconsistencies with practices. The Society does fully recognise that it cannot of course comment on individual cases. Any observations regarding the implementation of new legislation such as the 2016 Act does also take time especially as the 2016 Act has introduced very substantial changes.

Fire and rescue service

3. In your view, what have been the consequences of the 2012 Act for the fire and rescue service? Please set out your views on (a) any benefits and (b) any

² http://www.heraldsotland.com/opinion/letters/16208689.Huge_mistake_over_police/

negative consequences of the 2012 Act for the fire and rescue service.

We have no response to make to this question.

4. Have the policy intentions of the 2012 Act in relation to the fire and rescue service been met?

We refer to our general comments above where we have indicated that there is little correlation between crime and the Scottish Fire and Rescue Service. However both Police Scotland and the Scottish Fire and Rescue Service deliver services that include the prevention and control of fires as well as road traffic collisions and rescues which can all result in the commission of criminal offences.

We note that the Scottish Fire and Rescue Service commenced operations on 1 April 2013 which made them well placed to handle the complexity of the Clutha incident that occurred on 29 November 2013. There, the need to work effectively with a deeply concerned and affected community, Police Scotland in relation to such a high profile incident and to deploy joint resources in relation to the investigation of the incident must, we assume, have benefitted from the centralised organisations. That, we would envisage, have included communications as well as resource management. Similarly, we would note that with the Bin lorry incident in Glasgow on 22 December 2014 that must have also provided a similar opportunity.

Other issues

5. Are there any other issues you would like to raise in connection with the operation of the 2012 Act?

We have no comment to make in relation to any further policy or legislative changes that may be required to improve the effectiveness of the 2012 Act.

We recognise that Police Scotland is here to stay and in many ways, the 2012 Act can still be fully seen as 'work in progress.' We do note that there does need to be confidence in the governance decision – making and accountability of the scrutinising processes in relation to Police Scotland. Our perception has been that the SPA and PIRC has attracted much publicity not always in the most helpful or positive fashion since the 2012 Act came into force.

We trust this response is helpful for your purposes. We are happy to provide any further information that may be required.

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