

# Consultation Response

## Strategic Police Priorities for Scotland

3 October 2019



## Introduction

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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 Scottish Government consultation: Strategic Police Priorities for Scotland (the consultation).

The committee has the following comments to put forward for consideration.

## General Comments

The Criminal Law Committee is made up of academics in the field of criminal law as well as members of the prosecution service, Crown Office and Procurator Fiscal Service (COPFS) and the defence. The committee's interests interact across all the proposed Strategic Police Priorities as they are central to the work in which these members are involved. We would stress that our interests in considering the consultation are wider in seeking also to reflect the public interest.

We recognise that it is timely to undertake the consultation following the merging of the eight former police forces, the Scottish Police Services Authority, and the Scottish Crime and Drug Enforcement Agency into Police Scotland. We responded in 2018 to the post legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012<sup>1</sup> (2012 Act) when we noted that the implementation of the 2012 Act remained to a large extent "work in progress."

The Strategic Police Priorities need to reflect and be flexible to recognise that stage in work in progress and to deal with some of the negative factors arising from the merger that may have resulted. We refer to these later.

<sup>1</sup> <https://www.lawscot.org.uk/media/360872/post-legislative-scrutiny-of-the-police-and-fire-reform-scotland-act-2012.pdf>

## Consultation Questions

### **Question 1: To what extent do the revised Strategic Police Priorities meet your expectations for what the Scottish Police Authority and the Police Service should focus on in the future:**

Partially.

As the nature of criminal justice is changing significantly, it is important that the Strategic Police Priorities can and do reflect these changes, adapt and respond to the changing justice environment. We would suggest that they need to be able to take account of:

- The increase of court business:

This was highlighted recently by the Lord President where he referred to the increase in solemn business with an increase of 26% in the number of indictments and a 9% increase in the first quarter of 2019/20.<sup>2</sup> More serious cases may depend on requiring more resources in their investigation and ultimately, successful prosecution.

- The changing profile of cases:

There has been an increase in sexual offending that reflects “more than 10,800 sexual offences [that] were recorded in 2016 representing an increase of 5% since the previous year and 60% more than the 6,552 crimes recorded in 2007/08.”<sup>3</sup> Many more cases are arising involving allegations of historic sexual abuse which need to be investigated. These tend to be resource intensive.

- The focus on domestic abuse:

There is a need to monitor the introduction of the new domestic abuse offence, which is committed by engaging in a course of abusive behaviour (which includes coercive and controlling behaviour) towards a partner or ex-partner, following the implementation of the Domestic Abuse (Scotland) Act 2018.

- The needs of the vulnerable in society:

The vulnerable may encounter the criminal justice system whether as an accused or as a witness. To ensure that the justice system can deal with them effectively requires an earlier and effective need for successful identification of them and how best to service their needs. That needs to be achieved at the earliest opportunity. Much of the recent Scottish Government’s public focus has been towards the

<sup>2</sup> <http://www.journalonline.co.uk/News/1027873.aspx#.XYn5s2IKiUI>

<sup>3</sup> <https://www.bbc.co.uk/news/uk-scotland-41399257>

vulnerable witness to ensure that they are able to provide evidence in the best possible manner. That requires the police to be active in successfully identifying witnesses that may be deemed to be vulnerable.

That work includes the provisions of the Vulnerable Witnesses (Criminal Evidence) Act 2019 as these are rolled out.

Most often that identification will involve the police through their role in the investigation of alleged criminal conduct as outlined in the “Crime and Security” aspect of the Strategic Police Priorities. The Society has been focusing in its recent work on the vulnerable accused person where we would refer to our Report published in April 2019 that followed a roundtable event<sup>4</sup> in which the police were participants along with representatives from Scottish Government, other criminal justice organisations and third sector representative of the vulnerable in society.

We made several recommendations which may be pertinent consider when considering the Strategic Police Priorities including:

- The development of a framework of understanding to be shared across the Scottish criminal justice system, following a multi-agency review of definitions and interpretations of vulnerability.

Vulnerability is a very wide-ranging term which we would suggest goes beyond mere recognition of the “protected characteristics” as outlined in the Equality Impact Assessment which accompanies the consultation.<sup>5</sup> There is a need to understand and recognise that vulnerability may be permanent or transient and indeed to take account of factors such as immigration status, homelessness and poverty along with newer aspects such as Adverse Childhood Experience.

- A review of how the use of existing and innovative technology can better support information sharing and data protection

Identification of the vulnerable is important but there is a need to ensure that information regarding identification can be shared with other criminal justice organisations. That information needs transferred:

- to COPFS to allow appropriate decisions to be taken by them regarding liaison and diversion.
- to court so support can be arranged for accused

<sup>4</sup> <https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

<sup>5</sup> Strategic Police Priorities for Scotland Consultation Partial Equality Impact Assessment/Children’s Rights and Wellbeing Impact assessment

- The risk of terrorism and serious organised crime:

These are relevant to consider including what the implications of Brexit on Scottish justice system may be as the police have an important role in protecting individual rights, investigating crime and prosecuting crime.

- Futureproofing to take account of the advances in technology and use of artificial intelligence: Artificial intelligence is being increasingly used to assist in predicting crime and as a criminal intelligence tool. This may extend to include the provisions of the Scottish Biometric Commissioner Bill<sup>6</sup> with its functions to in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.

### **Question 2: Do the revised Strategic Police Priorities reflect your needs:**

We refer to our answer to Question 1.

### **Question 3: Do the revised Strategic Police Priorities reflect the needs of your community:**

We refer to our answer to Question 1.

### **Question 4: Do you agree that the revised Strategic Police Priorities should be in place for a period of 6 years?**

No.

We consider that the Strategic Police Priorities should be reviewed either on preferably a three- or five-year basis. Six years is too long given the changing parameters of the justice system as outlined above in response to Question 1.

They should be reviewed at more regular intervals to ensure that they remain fully relevant.

### **Question 5: How do you think the progress towards delivering the Strategic Police Priorities should be measured?**

<sup>6</sup> <https://www.parliament.scot/parliamentarybusiness/Bills/111859.aspx>

We recognised in our earlier response to the post-legislative scrutiny of the 2012 Act that it would take time before the centralisation of the police services under the 2012 Act would demonstrate the benefits to be achieved in saving of time and resources.

We would suggest that the implementation of new legislation which involves the police would provide a means to measure progress. One such example which we would flag is the implementation of the Criminal Justice (Scotland) Act 2016 that involved detailed changes to the police station procedures affecting suspects. This is one specific example where the improvement in service may be measured. Our members are involved in conducting and attending for police station interviews where we are aware of inconsistencies in practice across the country where we would suggest consideration should be given to the importance of the evidence being obtained from such interviews. Reviewing the implementation of how that Act is working would allow measurement to be taken of the number of interviews being conducted and their subsequent use in the criminal justice system.

We would also stress the need to ensure that the need for appropriate police training is identified where the implementation of new areas of legislation influences police standard operating procedures. The effectiveness of such training could be another way to measure progress.

## **6. Do you have any comments to make on our partial equalities impact assessment?**

There may well be negative consequences of the 2012 Act still existing that need addressed.

We still consider that there needs to be a recognition that most of the offending is summary in nature and requires to be dealt with effectively. These cases may rarely involve or require complex legal, forensic or scientific inquiry but still the provision of funding and adequate resources to investigate such crimes. Savings resulting from the centralisation of police services should be utilised to ensure that they are deployed for the benefit of the local community.

We are interested too in the role of local police officers in crime prevention as we understand that the use of Strategic Police Priorities has not proved widely popular within the single police force. How do the Strategic Police priorities address what is an issue of rural community concern that may not be of the same national concern in a city centre suburb and vice versa? The consultation does not tackle that point.

What is essential is 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.



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