

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Police, Public Order and Criminal Justice (Scotland) Bill introduced in the Scottish Parliament on 30 September 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 46-EN.

### **POLICY OBJECTIVES OF THE BILL**

2. Scotland has a first class police service which plays an essential role in protecting communities across Scotland, tackling crime and reducing the fear of crime. The Executive has invested in record numbers of police officers and a range of police technology. But ensuring the police have the tools to do the job is about more than resources. It is also important to be sure that police powers are up to date and police support organisations are structured in the right way to promote efficiency and effectiveness.

3. The Bill provides for a range of measures to improve police effectiveness, strengthen their hand in the fight against crime, including serious organised crime, and enhance the safety of communities right across Scotland. The provisions will help to meet the high-level commitments in *A Partnership for a Better Scotland* to tackle crime and disorder by reducing violent and drug-related crime, making communities safer and feel safer and reforming the criminal justice system. The Bill progresses the specific Partnership Agreement commitments to expand the Scottish Drug Enforcement Agency, to review the law on knife crime, to improve police efficiency by providing more common support services and to establish an independent police complaints body.

4. The Bill will give police the powers they need to tackle knife crime, football violence and drug-related crime, prevent the anti-social use of fireworks and identify suspects more effectively. It will make police complaints more transparent and accountable by setting up an independent Police Complaints Commissioner, and ensure that the new Scottish Crime and Drug Enforcement Agency and the police support services have modern, accountable management structures that enable them to respond effectively to today's challenges.

5. Community safety is not something that can be delivered by one agency alone. Procurators Fiscal, the Scottish Court Service, local authorities and people living in the communities themselves all have a part to play. That is why the Bill will also include measures that go wider than just policing to increase penalties for carrying a knife, to reform the law on public processions and to strengthen prosecutors' ability to get co-operation from offenders who can provide evidence to put criminals involved in serious organised crime behind bars.

6. Specifically the Bill will provide for:

- the establishment of a new Scottish Police Services Authority to maintain the Scottish Crime and Drug Enforcement Agency and provide the common police services;
- the establishment of a new independent Police Complaints Commissioner for Scotland;
- an allowance to be made to special constables in respect of services given;
- Her Majesty's Inspectorate of Constabulary to recruit more widely;
- the introduction of football banning orders;
- reform of the law on public processions;
- amendments to the law on knives and offensive weapons;
- police powers of search and arrest in relation to fireworks possession offences;
- police powers to require individuals to give their date and place of birth;
- police powers to take fingerprints to establish identity;
- the introduction of mandatory drug testing and referral for certain arrested persons;
- the introduction of a system of statutory incentives for providing evidence for use against others; and
- minor tidying up amendments to Police (Scotland) Act 1967.

## **CONSULTATION**

7. The policies in this Bill have been the subject of a number of different consultations, stretching back to 2001.

8. In February 2005, the Scottish Executive published *Supporting Police, Protecting Communities: Proposals for legislation*. This paper sought views on a range of proposals designed to improve police effectiveness and enhance community safety, all of which are now included in the Bill. Sixty-seven responses were received in total, 14 from private individuals and fifty-three from organisations including 12 local authorities, 11 football or football supporters' organisations, and 8 police or police authority organisations. Eighteen responded on all of the issues in the consultation paper and, due to the varied nature of the policies in the paper, forty-eight responded on one or some of the policies. One did not respond to any of the topics but made other comments about the Bill. As the results of the consultation varied between different issues, the responses on each issue are discussed below in the sections on the individual policies.

9. The Scottish Executive published consultations on police complaints in 2001 and fireworks enforcement in 2004. These consultations are discussed in more detail in the relevant policy sections.

## **BILL PROVISIONS**

### **THE SCOTTISH POLICE SERVICES AUTHORITY AND THE SCOTTISH CRIME AND DRUG ENFORCEMENT AGENCY**

#### **Policy objectives**

10. In *A Partnership for a Better Scotland*, the Scottish Ministers made commitments to continue to expand the Scottish Drug Enforcement Agency (SDEA) and to improve the efficiency of police forces by providing more common police services. These commitments were followed up by the proposals set out in the consultation paper *Supporting Police, Protecting Communities: Proposals for legislation*. This paper proposed to give effect to the Partnership Agreement commitments by bringing forward legislation to put the SDEA and the common police services on a new statutory footing which would make them better able to modernise and meet future challenges. They would be brought together into a single organisation in order to secure efficiencies and also to provide a solid basis for extension and expansion as more common services were identified.

11. The origins of these proposals lie in a review of police force structures commissioned by the Scottish Ministers in the late 1990s and undertaken by a group with representatives from the Scottish Executive, ACPOS and COSLA. The group recommended that the number of forces should remain at 8 but that efficiencies could be secured by bringing together and extending the support services which are provided on a national basis to the 8 forces. These support services include the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy, and are known collectively as the common police services.

12. A further important development in 2001 was the establishment of the Scottish Drug Enforcement Agency by bringing together the Scottish Crime Squad, the Scottish Criminal Intelligence Office and the Scottish Technical Support Unit with a remit to support Scottish police forces and to lead in tackling serious organised crime in Scotland. At present, the SDEA is an organisation established and maintained by Ministers under section 36(1) of the Police (Scotland) Act 1967; and is the subject of a collaborative agreement under section 12(1) of the 1967 Act between the 8 Scottish Chief Constables and Conveners of the police authorities and joint police boards which allows police officers to be seconded from Scottish police forces to the SDEA's Operational and Intelligence Group.

13. More recently, the decision has been taken to bring together the 4 forensic science laboratories in Glasgow, Edinburgh, Dundee and Aberdeen, each of which is maintained by its own police authority, into a single national forensic science service. This will facilitate the efficient planning and provision of forensic science services throughout Scotland.

14. The various common police services have evolved over time on an 'ad hoc' basis, have no clear legal identity, no consistent arrangements for governance and accountability and no authority to employ their own staff directly or to enter into contracts. These various factors

inhibit the ability of the common police services as a whole to continue to develop, expand and provide the best possible support to Scottish police forces.

15. With that in mind, the consultation paper *Supporting Police, Protecting Communities: Proposals for legislation* proposed that a single statutory body should be established encompassing all the common police services, including the SDEA, to provide a coherent, practical and effective basis for the oversight and governance of all the common police services. However in order to safeguard the independence of the SDEA in relation to operational matters, the new body would **maintain** the SDEA while **providing** the common police services directly in areas which did not involve operational policing.

### **Key information**

16. The Bill establishes a new body corporate, the Scottish Police Services Authority (the Authority). The Authority is required to provide a range of services and to establish and maintain the Scottish Crime and Drug Enforcement Agency (the Agency), which will give new statutory form to the former Scottish Drug Enforcement Agency.

17. The Bill defines the “police support services” (common services) which the Authority will be under a duty to provide, which include all of the functions currently carried out by the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy. The Authority will also be responsible for the development and provision of a new national forensic science service. The Bill provides an order-making power for the Scottish Ministers, subject to affirmative resolution of the Scottish Parliament, to modify the common services which the Authority is under a duty to provide, and accordingly provides a statutory framework which is sufficiently flexible to add additional services at a later date. Finally, the Bill places the Agency on a proper statutory footing, sets out its statutory functions, gives it the statutory powers which are necessary to discharge these functions, and provides that it will be under the direction and control of its Director.

18. The Bill provides clear and modern arrangements for accountability and the corporate governance of the Authority, reflecting the traditional tri-partite involvement of the Scottish Ministers, local authorities and chief constables. With that in mind, the Authority will be appointed by the Scottish Ministers and will comprise a Convener and between 6 and 9 other members including senior police officers, conveners of police authorities or joint boards, and lay members. At executive level the Authority will be led by a Senior Strategic Officer who will report to the members of the Authority. The Authority, unlike the existing common services, will employ its own staff, including police officers on secondment; and existing staff will transfer to the Authority when it comes into being.

19. The Authority will be wholly funded by the Scottish Ministers, which will provide a greater degree of clarity and stability than the present arrangements. The Scottish Ministers will set the Authority’s budget including the amount which is to be allocated to the Agency. The Authority and the Agency will each be required to prepare and publish an annual report and an annual plan, and in exercising their statutory functions will be required to comply with any directions issued by the Scottish Ministers or strategic priorities set by the Scottish Ministers. However the Scottish Ministers will have no power to do anything which might affect the

Agency's decisions about which particular operations are to be carried out or how they are to be carried out; and as indicated above the Agency will be under the direction and control of its Director.

### **Consultation**

20. Thirty of the sixty-seven responses to the consultation paper *Supporting Police, Protecting Communities: Proposals for legislation* specifically dealt with the questions set out in the consultation paper relating to the police common services, including the SDEA. The great majority of responses supported the basic proposal to establish a new statutory body to bring together the existing police common services.

21. There were a range of responses from bodies and individuals on the specific questions set out in the consultation paper and different views on issues such as the precise role of the Authority; the distinction between the provided and maintained services; the appointment of lay members to the Authority; the appointment and role of a Senior Strategic Officer; and whether funding should be provided on a 100% basis by Scottish Ministers or split 50:50 between Scottish Ministers and police authorities in respect of the provided services, the Agency or both.

### **Alternative approaches**

22. The main alternative would be to maintain the status quo, under which all of the common police services, and the Agency, are run separately from each other under a variety of different arrangements which have grown up over time. The Scottish Ministers have made it clear that they do not believe that the present complicated and anomalous arrangements are satisfactory; nor do they consider that they provide a framework which will enable the common services to provide the best possible support to the Scottish police forces or the people of Scotland.

23. Another possibility would be to establish 2 separate statutory bodies and 2 separate sets of governance arrangements, one for the Agency and one for the other common services. While this would be an improvement on the present arrangements, Ministers believe that establishing two separate bodies is unnecessary provided that the governance arrangements for the Agency properly recognise the need to safeguard its independence in relation to operational matters. Setting up two entirely separate bodies would inevitably involve additional structures, overlapping membership of their respective boards, additional administrative costs and in general an unnecessary element of duplication for no obvious benefit.

## **POLICE COMPLAINTS COMMISSIONER FOR SCOTLAND**

### **Policy objectives**

24. In *A Partnership for a Better Scotland*, the Scottish Ministers made a commitment to reform the police complaints system in Scotland by establishing an independent police complaints body. The Bill therefore provides for the appointment of a Police Complaints Commissioner for Scotland with powers to ensure there is a new, independent scrutiny of the manner in which police forces respond to complaints from the public they serve. The new arrangements build on the strengths of the existing system for handling the non-criminal aspects of complaints but introduce arrangements for a national overview of standards and consistency in

complaint handling, by the Commissioner. Importantly, the Bill will also give the Commissioner direct powers to require a review of, and in some cases supervise a review of, cases where a police force's handling of a complaint has raised concerns.

25. The Scottish Executive originally consulted in 2001/02 on the scope of a new police complaints body and two possible organisational structures for it:

- an 'ombudsman' type body, building broadly on the existing system and providing a review/appeal mechanism; and
- a complaints authority which would deal with incoming complaints and with its own in-house investigative capability.

26. Responses to that earlier consultation demonstrated near universal support for the retention of the unique role played by the Crown Office and Procurator Fiscal Service (COPFS) in investigating all complaints made against police officers which involve allegations of a criminal nature. Ministers including the Lord Advocate concurred with this view and have decided to retain and strengthen the role of Area Procurators Fiscal. By maintaining the primacy of Area Procurators Fiscal in investigating allegations of criminal conduct, it follows that the focus of the new complaints body should be on complaints which do not involve criminal behaviour.

27. The new body will have a wide-ranging remit as regards non-criminal complaints against the police in Scotland. The powers set out in this Bill will give the new body the ability to do its job effectively, allowing it to bring greater levels of transparency and robust independent scrutiny to the police complaints system in Scotland. Equally, it is important that any new system does not turn into an additional bureaucratic process. One of the key elements of any modern complaints system is the ability to achieve swift and effective local resolution wherever possible. Nothing in the Bill undermines that.

### **Key information**

28. The post of Police Complaints Commissioner for Scotland will be filled in accordance with Nolan principles, with the appointment to be made by the Scottish Ministers. The Bill will give the Commissioner powers to review cases where a dissatisfied complainer has cause to be aggrieved at the manner in which their complaint has been handled by a Scottish police force. If the Commissioner decides that a particular complaint which has been made against the police has not been handled properly, he or she can direct the relevant police force to reconsider this complaint. The Commissioner can also supervise the reconsideration of any complaint when he or she wishes to do so.

29. The Commissioner will therefore fulfil some of the functions hitherto exercised by Her Majesty's Inspectorate of Constabulary for Scotland (HMIC). Currently, HMIC has statutory authority under section 40A of the Police (Scotland) Act 1967 to examine complaints referred to it by members of the public who are dissatisfied with the manner in which forces deal with complaints. The Bill provides that section 40A is repealed and the powers of the Police Complaints Commissioner in the Bill will include those currently held by HMIC.

30. The Bill also provides for the Commissioner to carry out independent scrutiny of the overall handling of complaints by the Scottish Police Service, including the Scottish Crime and Drug Enforcement Agency and the new Scottish Police Services Authority.

31. It is vital that a modern complaints system provides an organisation with the scope to learn from complaints and to improve as a result; not simply apportion blame. The Bill therefore provides for the Commissioner to have a range of powers and duties intended to ensure that he/she can fulfil a quality assurance function to drive up standards and consistency in the way police complaints are handled across the Scottish Police Service. For example, the Bill will enable the Police Complaints Commissioner to provide guidance on standards and good practice. The Scottish Public Services Ombudsman has already developed this role across other parts of the public sector and there will be close working between the two officeholders, particularly where their respective roles and responsibilities interrelate.

32. The Bill provides that the Commissioner will be responsible for appointing and remunerating such staff as he/she deems necessary, preparing and maintaining accounts, preparing an annual report and passing it to the Scottish Ministers, and providing any information to the Scottish Ministers so that they can satisfy themselves that the Commissioner is carrying out his or her duties effectively and efficiently.

## **Consultation**

33. This policy was consulted on in the paper *Supporting Police, Protecting Communities: Proposals for legislation*. Twenty-seven of the responses to that consultation commented on the proposals for an independent police complaints body. There was support for the proposals from a clear majority of the respondents. Over 75% supported the proposals on retaining the role of Area Procurators Fiscal in handling criminal complaints, and on the powers that should be given to the new body.

34. In 2001 the Scottish Executive published *Complaints Against the Police in Scotland: A Consultation Paper*. This paper proposed the retention of the role of the Procurator Fiscal in investigating criminal complaints against the police and this was widely supported. The paper also sought views on two options for the structure of a police complaints body: (i) an ombudsman-type body building broadly on the existing system and providing a review and appeal mechanism; and (ii) a complaints authority which would deal with incoming complaints and have the capability to carry out its own investigations into those complaints. Thirty-one responses were received from voluntary organisations, local authorities, joint police boards, police associations, organisations and forces, the legal sector, other public bodies, political parties and members of the public. Fifteen supported the ombudsman-type body and eleven supported the complaints authority.

## **Alternative approaches**

35. The main alternative would be to give the new body a key role in the handling of complaints alleging criminal activity on the part of police officers, and provide it with a stand-alone investigative capability. That would make it similar to the Independent Police Complaints Commission in England and Wales. However the unique role played by Area Procurators Fiscal in Scotland in directing investigations into criminal complaints against the police means that a

strong independent element is already present in this aspect of the system. The majority of consultation respondents agreed that there was no need to change roles and responsibilities in respect of criminal complaints.

## **PAYMENTS TO SPECIAL CONSTABLES**

### **Policy objectives**

36. Special constables are volunteer police officers who have the full powers and privileges of the office of constable. They represent a valuable resource, particularly as they can be deployed in high visibility roles which deliver the sort of reassurance that many communities are seeking. They not only provide an additional police presence; they also represent a tangible link between the Police service and the community. Traditionally, they have received no remuneration other than certain out-of-pocket expenses. The Police (Scotland) Act 1967 expressly provides that special constables are constables to whom allowances only are payable, in contrast to regular constables to whom pay and allowances are payable.

37. However, there has been a long term decline in numbers with the total figure falling to below 1000 in 2003, down from 14,000 in the 1950s. ACPOS made a commitment in *Policing Priorities for Scotland* to reverse this declining trend by looking afresh at incentives and the way that Special Constables are utilised. They set themselves a target to increase numbers by 500 by the end of 2005/06, which the Executive supports. This support is reflected in the form of a specific commitment in *A Partnership for a Better Scotland*.

38. In 2003, following a proposal from ACPOS, the Scottish Ministers agreed to support a pilot in the Grampian and Tayside force areas whereby a single payment of £1,000 was made to special constables who volunteered to undertake a minimum number of duties over a 12-month period. The pilot was evaluated at the end of 2004 and showed that the scheme, when delivered with the correct mix of incentive and better management, had resulted in increased recruitment and deployment. Accordingly, Ministers agreed that the scheme should be rolled out so that all forces could contribute towards achieving the ACPOS target.

39. In order to protect their voluntary status, it should be stressed that there is no requirement for special constables to join the scheme. Special constables will continue to be entitled to make themselves available for duty as and when it suits them. Special constables who do not commit to the scheme will not receive any additional payment. The payment is simply so that police forces can allocate police resources more efficiently and to allow police forces to better deploy those special constables who, by mutual agreement, are willing to “commit” in the way proposed. This will allow special constables and forces to agree deployment patterns rather than simply leaving it to the special constable to decide when he/she will be available.

### **Key information**

40. This type of special payment falls within the definition of an allowance under the 1967 Act. There is therefore power in the 1967 Act to make provision for the scheme in regulations under section 26 of the 1967 Act and it is intended that the scheme will be set up under new special constable regulations. The Bill does not change this position but simply puts the legislative position beyond doubt by setting out on the face of the statute the circumstances in



which the special payment can be regarded as an allowance under the 1967 Act, namely where it relates to service given by the special constable for such length of time and within such period as Scottish Ministers decide. Ministers intend initially to set the requirement as a minimum of 180 hours over a 12 month period, so that any special constable who makes such a commitment can opt to receive the allowance.

### **Consultation**

41. Consultation on this issue will be taken forward as part of a wider consultation on new Police (Special Constable)(Scotland) Regulations. The Executive has included the provisions in the Bill to ensure that the primary legislation sets out the circumstances in which the special payment is payable. This issue is not a controversial one and it is expected that the consultation will be supportive of this proposal.

### **Alternative approaches**

42. The alternative would be to retain the status quo and rely on the existing legislative provisions which do not set out in detail the circumstances in which this type of payment can be made as an allowance.

## **HMIC RECRUITMENT**

### **Policy objectives**

43. All staff officers employed by HMIC are employed on secondment. However, the Police (Scotland) Act 1967 does not allow for the recruitment of persons who are not constables in a Scottish Police Force. HMIC considers (and the Scottish Executive agrees) that to limit recruitment to constables from Scottish police forces unnecessarily constrains their ability to attract the best qualified staff.

### **Key information**

44. The Bill provides for an amendment to the Police (Scotland) Act 1967 to enable HMIC to appoint staff officers from police forces in the rest of the UK or, indeed, the rest of the world, including non-police officers where they can demonstrate the necessary competencies for the post.

45. The position on who appoints such officers could benefit from some clarification. The position in practice is that Ministers appoint the Inspectors and Assistant Inspectors of Constabulary, while the Chief Inspector appoints the staff officers. This is a pragmatic approach in that it allows Ministers to appoint those who will set the direction and strategy of the inspectorate, but delegates the responsibility for appointing staff. The legislation will put this beyond doubt.

### **Consultation**

46. This policy was developed in discussion with HMIC.

### **Alternative approaches**

47. The only alternative approach would be to not make the change and allow the legislation to continue to restrict HMIC to only recruiting from Scottish police forces. Neither HMIC nor the Scottish Executive view this as desirable.

## **POWER TO AMEND THE DEFINITION OF RELEVANT SERVICE**

### **Policy objectives**

48. Section 38A of the Police (Scotland) Act 1967 ensures that constables engaged on temporary service outside their force retain relevant rights in respect of pay and pension and can continue to be promoted in their police force as if they were still serving in their force and lists the relevant services to which this applies. However, there is no mechanism for changing this list of relevant services other than through new primary legislation.

### **Key information**

49. The Bill provides for the Scottish Ministers to have an order making power to amend the list of relevant services to which constables can undertake temporary service while retaining their rights in respect of pay and pension and their ability to be promoted within their force. This will enable changes to be made to the list of relevant services much more quickly and efficiently.

### **Consultation**

50. No formal consultation was conducted on this provision.

### **Alternative approaches**

51. The only alternative would be to continue the status quo.

## **FOOTBALL BANNING ORDERS**

### **Policy objectives**

52. The vast majority of those who attend football matches in Scotland and who follow Scottish clubs and the national team to games abroad have no interest in or intention of causing trouble. However, there is a minority who use football as an excuse to indulge in bigoted racist or sectarian abuse and a small hardcore who commit unacceptable violence in connection with football matches. These few can make life a misery for the genuine fans at games right across the country. Police advise that in the 2003/04 season there were 626 arrests and in the 2004/05 season there were 707 arrests for football-related offences in Scotland.

53. Violence and bigoted abuse at football matches is not new and has, regrettably, been a feature of Scotland's national game for a number of years. Significant advances have been achieved since 1980 when alcohol was banned from football grounds. This has greatly reduced the problem of violence within grounds. However, violence still occurs in relation to games: it now often takes place after games in town centres and other places away from the grounds

themselves, between followers of different teams. In many cases, those involved in the fight had not even been at the game but watched it, while drinking, in groups in public houses.

54. Racist, sectarian and other abuse remains in evidence at football matches themselves. This would be unacceptable if experienced anywhere else in Scotland and there is no reason why it should be tolerated at football games.

55. Scottish fans abroad have unarguably been involved in less disorder than followers of some other national teams. Fans of the Scottish national team have an excellent and well-deserved reputation. However, the Scottish Executive is aware of a number of incidents involving supporters of Scottish clubs abroad which risk damaging this excellent reputation.

### **Key information**

56. The key element of banning orders is that they would ban those who indulge in football-related violence and/or disorder from the places where they are most likely to commit these acts. Thus they would be banned from any game in Scotland involving a League or Premier League club or a national team. If necessary they can also be banned at key times from other specified places such as pubs, town centres or certain junior league matches – see paragraph 66 below.

57. The Bill also provides that the banning orders will prohibit those subject to the orders from attending matches in the rest of the UK that involve a club from the English Premier League, Football League and Conference or a national team. This is to ensure that banning orders will be effective in tackling cross-border football hooliganism. The Executive is aware of football casualties linked to a number of Scottish clubs who have associations with football hooligan groups linked to English clubs and who are often present at matches of both clubs in reciprocal support for each others' violent activities.

58. For games played outwith the UK, the Bill provides that those subject to a banning order can be required to surrender their passport (if they have one) to a police station to ensure that they are not able to travel to an overseas game at which they posed a risk of causing trouble. This would not mean requiring everyone subject to a banning order to surrender their passport whenever any Scottish team was playing abroad, but would mean that, for example, a person who was known to have caused trouble in connection with past matches of a certain Scottish team may be required to surrender their passport (if they have one) to prevent them travelling to that team's overseas matches.

### *Ways to impose a banning order*

59. A court may impose a banning order if it is satisfied that the order would help prevent further football-related violence or disorder in the future.

60. The Bill provides for two ways of making a banning order. The first is "on conviction", which would be when a person has been convicted of a football-related offence; for example assaulting a supporter of another team or racist/sectarian abuse at football stadium. The second is "on summary application", which would be when a chief constable applies to a court, supplying convincing evidence that a person has been involved in football-related violence or

disorder in the past and continues to pose a risk. This could be used to deal with those who continually engage in violence or disorder over a period of time, and where the court will need to examine the history of behaviour in order to decide on an appropriate banning order. This method would also allow evidence of disorder committed outside Scotland to be taken into account, alongside any evidence from within Scotland.

61. Banning orders may be imposed not only to prevent physical violence but also where the court is satisfied that the order would help prevent the stirring up of hatred against people on the grounds of their race, ethnicity, national origins or religion or other bases of discrimination or to help prevent threatening, abusive or insulting behaviour. It is not expected that banning orders will be made against everyone who acts in this way at a football match – this would be excessive and a strain on resources. Instead, the police would need to demonstrate a pattern of behaviour over time for an order to be made on these grounds. This power would allow the police and the courts to deal with those who consistently exhibit the worst behaviour and send a message that these actions will not be tolerated. This should act as a strong example and disincentive to others against engaging in this type of behaviour.

#### *Length*

62. The length of time a banning order lasts should reflect the severity of the case. The Bill provides that where a person is convicted of a football-related offence and sentenced to imprisonment, the banning order could last a maximum of 10 years. Where a person is convicted of a football-related offence but not sentenced to imprisonment, the order could last a maximum of 5 years. A banning order made on application to the civil courts could last a maximum of 3 years. It is anticipated that the maximum of 10 years would only be imposed in the most serious cases.

#### *Appeals, terminations and exemptions*

63. The Bill provides that those on whom an order is imposed should have a right of appeal and also a right to apply for the termination of their banning order once it has lasted for two-thirds of its length if the person can demonstrate a significant change in circumstances in support of this.

64. The Bill provides for people subject to banning orders to apply to the enforcing authority for exemptions from their orders in certain circumstances. For example, if a person subject to a banning order was going to a family wedding or holiday in Spain on the same day the football team that they support was playing in Germany, it would be reasonable to grant them an exemption from the requirement to surrender their passport in these circumstances. There will be a right of appeal against a decision of the enforcing authority.

#### *Administration*

65. The Bill provides for Strathclyde Police to act as the enforcing authority to administer the orders. As the police will take the lead in applying for and enforcing banning orders this should help ensure a joined-up approach to implementing the orders. The intention is that a civilian unit within Strathclyde Police will take on this role.

### *Additional requirements*

66. The court will also, if necessary, be able to impose additional requirements as part of a banning order. For example, these could ban the person from attending certain places such as specified bars or town centres or railway stations on match days or from going to specified games involving, for example, certain junior clubs where they were known to have a track record of causing trouble. The court will only be able to impose these if it is satisfied that they will help prevent violence or disorder that is related to football.

67. Additional requirements may require to be varied from time to time, either at the request of the banned individual (e.g. if he gets a job in an area covered by the ban) or by the police (e.g. if a person starts causing trouble in a new location). For banning orders imposed in the civil courts, either the person subject to the order or the police will be able to apply for a variation direct to the court. However, only the person subject to the order will be able to apply to a criminal court for a variation on an order made there. The Executive is currently considering who else should be able to apply to vary a football banning order imposed by the criminal courts.

### **Consultation**

68. Football banning orders were consulted on in the paper *Supporting Police, Protecting Communities: Proposals for legislation*. Thirty-seven of the responses to that consultation commented on the football banning order proposals. There was support for the proposals from a clear majority of the respondents. Over 80% supported each of the 6 questions in the consultation paper.

### **Alternative approaches**

69. A number of alternative approaches to the detail of FBOs have been considered. Some respondents to the consultation suggested that FBOs should only be imposed on conviction, not on summary application. However, limiting banning orders to “on conviction” only would, for example, mean that Scottish hooligans convicted abroad could not be given banning orders. Courts will only impose an order when satisfied that it would help prevent future football-related violence or disorder. A presumption against imposing orders on application or not having that ability at all would curtail the police and courts’ ability to deal with some who pose a threat of violence or disorder at football games.

70. Another alternative considered was to create an exclusion zone (of perhaps a 2 mile radius) around every ground in the country on match days to prevent people subject to banning orders causing trouble in the vicinity of football matches. A similar scheme has been effective in South Wales. However, the Executive considers that setting a prescriptive area of 2 miles around every ground in the country could be disproportionate and that the needs of people who live/work within this area but are subject to a banning order should also be considered. If considered necessary, restrictions of this nature could be imposed on a case-by-case basis through the flexibility for additional requirements.

## **PUBLIC PROCESSIONS**

### **Policy objectives**

71. Public processions have long been part of life in Scotland. People have taken to the streets to celebrate their identity, to commemorate a cause or to protest against a decision. The Executive respects the rights of organisations and individuals to continue to organise marches and parades. But responsibilities come with that right and those organising marches must also respect the rights of those affected by their marches. The Executive recognises that the effects of the number and frequency of marches and parades have been causing concern in some communities. The Executive wants to address those concerns and ensure an appropriate balance between the rights of those who want to march and the rights of communities.

72. The Executive asked Sir John Orr, former Chief Constable of Strathclyde Police, to review the arrangements in place for marches and parades. The current arrangements have been in place for over 20 years and need to be refreshed in light of current changes. Sir John's report contained 38 recommendations which emerged following wide ranging consultation and there was a considerable degree of consensus about the changes necessary. This Bill will provide for those recommendations which require primary legislation to implement.

### **Key information**

#### *Notification period*

73. Under the current legislation, organisers are required to give only 7 days notice to local authorities and the police of their intention to organise a parade. This gives local authorities and the police little time to consider the notification in any detail or to inform the community of forthcoming events. As part of the review, Sir John Orr considered whether the period should be extended and concluded that 28 days represented a more realistic notice period. (In practice, many organisations already give considerably more than the 7 days notice currently required.) The Bill provides for a notification period of 28 days.

#### *Exceptions to an extended notification period*

74. Under the current legislation, local authorities can dispense with the 7 days notification period. The Executive believes that it is important that this flexibility continues, although it should only be used in certain circumstances, for example when the reason for the procession could not have been foreseen. This would allow organisers of events, for example in response to a political announcement, an economic decision or a local decision, not to give 28 days notice. The Bill provides for local authorities to dispense with the 28 day notification period in certain circumstances.

#### *Who should give notice of their intention to process?*

75. Under the current legislation, local authorities can make provision exempting certain organisations from giving notice of their intention to process. This has led to variable interpretation across Scotland with some authorities exempting over 300 organisations and others exempting very few organisations. Exemptions mean that neither local authorities nor local communities could have a full picture of processions taking place or the disruption they may cause. The Bill provides for removal of this inconsistency by requiring all organisers to give

notice of their intention to hold a procession. The Bill specifies one exception to this: funeral directors will not be required to notify the Local Authority about forthcoming funeral processions. The only other exceptions would be specified in an order made by the Scottish Ministers which would exempt certain organisers from the notification requirements.

#### *Grounds for making decisions on notifications*

76. Local authorities currently feel restricted in the sorts of issues they can consider when reaching decisions on procession notifications, generally basing their decisions only on public order issues and public safety issues. While those issues remain key, the Bill gives local authorities the duty to take into account a wider range of issues. These would include any risk of damage to property, disruption of other activities including public services, or disruption of the life of the community, and whether the march (either alone or in conjunction with other events) would place an excessive burden on the police. Local authorities will be able to take these issues into account when considering imposing conditions (e.g. changes to timings or routes) on the procession or even prohibiting the procession altogether. At the same time, it should be noted that any decision by a local authority to prohibit a procession, or impose a condition on such an event, must be compatible with the right to free assembly under the European Convention on Human Rights.

#### *A Code of Conduct for processions*

77. Many local authorities and police forces have voluntary codes of conduct in place. Some march organisers also have their own codes. These codes cover things like timing, routes, assembly and dispersal arrangements; conditions about where participants will march – such as how wide the march will be and in what part of the road, or conditions about noise – such as where and when music can be played and loudhailers used. The Bill provides for local authorities to take into account previous levels of adherence to any codes of conduct and guidance which they issue when deciding what conditions to impose on similar processions.

#### *Power of Ministers to issue guidance*

78. The Bill provides that local authorities should have regard to any guidance issued by the Scottish Ministers when carrying out their functions with regard to public processions. This guidance will be used to set out the steps local authorities should take when considering whether to prohibit or impose conditions on processions and will outline how community groups should be consulted, and then informed of decisions taken by local authorities regarding public processions.

### **Consultation**

79. Sir John Orr's recommendations were made following extensive consultation and participation from local authorities, the police, marching organisations and others. Twenty-seven of the respondents to the consultation paper *Supporting Police, Protecting Communities: Proposals for legislation* made comments on the marches and parades proposals. Over 75% of respondents supported each of the nine questions positively. A number of respondents highlighted the need for guidance in certain areas (for example, what the exceptional circumstances under which the 28 day notification period could be shortened would be). A

number of respondents also highlighted the need to consider the resource requirements of implementing the recommendations.

### **Alternative approaches**

80. During the review consideration was given to banning marches which had in the past attracted violent/disorderly conduct, either from participants or from those who follow the march. However, the Executive considers that this approach would not be compatible with the Article 11 of the Human Rights Convention to ban marches, potentially involving a large number of people who intend to be peaceful, based on the conduct of a smaller number of people who may not even have been members of the organisation who arranged the previous procession.

## **KNIFE CRIME**

### **Policy objectives**

81. Every year in Scotland far too many people are badly injured and killed by knives. Murder statistics show that knives and other sharp items continue to be the most common method of killing in this country, consistently accounting for around half of all murders each year.

<b>Year</b>	<b>Total number of murders</b>	<b>Number of murders with knives</b>
2003	108	55
2002	128	68
2001	110	49
2000	105	43
1999	119	66
1998	97	42

82. These continuing levels of knife crime represent an ugly and destructive aspect of Scottish society and are totally unacceptable. The statistics reflect a far too common view amongst some that carrying and using knives is a way of displaying strength and gaining respect. Increasingly the police are reporting the carrying and concealment of bladed weapons, mainly by young men, particularly in Glasgow and the west of Scotland.

83. In November 2004, the First Minister announced a five-point plan aimed at taking the first steps in changing the trends in knife crime. This Bill will take forward three points of that plan:

- doubling the penalty for possession of a knife (or other articles with a blade or point);
- enhancing police powers of arrest to include the power of arrest on suspicion of carrying a knife (or another bladed or pointed article) or an offensive weapon; and
- increasing the minimum purchase age of non-domestic knives from 16 to 18.



## **Key information**

84. The Criminal Law (Consolidation) (Scotland) Act 1995 prohibits the carrying of both knives (and other articles with blades or points) and offensive weapons in public places, without lawful authority or reasonable excuse. However, the maximum sentence for carrying a knife (or other article with a blade or point) is currently 2 years, while the maximum sentence for carrying an offensive weapon is 4 years. The Executive considers that the problems caused by knives and their prominent role in violent crime in Scotland, means that there is a need to align these penalties. The Bill provides for an increase in the maximum sentence for carrying a knife (or other articles with a blade or point) in a public place from 2 years to 4 years.

85. At the moment, the Criminal Law (Consolidation) (Scotland) Act 1995 provides the police with the power to arrest a person without a warrant, where they believe that such a person has committed an offence of carrying a knife (or other bladed or pointed article) or an offensive weapon. However, this power of arrest is limited to circumstances in which the police are not satisfied as to the person's identity or place of residence, or where it is considered necessary to arrest the person to prevent a further offence involving a knife or offensive weapon. The Bill provides for the removal of this limitation so that the police may arrest a person where they have reasonable cause to believe that he has committed or is committing an offence of carrying a knife or other article with a blade or point or an offensive weapon.

86. The Criminal Justice Act 1988 prohibits the sale of any knife, blade, razor blade, axe, any bladed or sharply pointed article or any item made or adapted for causing personal injury to someone under 16. The Bill provides for an increase to 18 in the minimum purchase age for all such items other than domestic knives. This will bring the age limit on sale of non-domestic knives into line with those for alcohol and fireworks.

## **Consultation**

87. These proposals were consulted on in the paper *Supporting Police, Protecting Communities: Proposals for legislation*.

88. 33 respondents commented on aligning the penalties for carrying a knife in public with those for carrying of an offensive weapon. 23 of these agreed and 4 agreed in part with the proposal. Those objecting suggested that increased penalties were not needed; some querying whether the current maximum was fully used by the courts.

89. 34 respondents commented on the broader power of arrest that it would support the message that knife crime will not be tolerated. 22 of these agreed and 4 agreed in part with the proposal. Those objecting were mainly concerned that this would lead to innocent individuals being arrested simply for carrying a knife. However, these objections appear to be based on a misunderstanding of the proposal since an arrest may only be made where an offence has been committed and the scope of the offences concerned is not being changed.

90. 32 respondents commented on the proposals to align the purchase age for knives with that for alcohol and fireworks. 23 of these agreed and 4 agreed in part. Those objecting were concerned about stigmatising young people and the impact on those living in their own

households. In response to the latter point, the Bill now makes clear that the increase in the purchase age will apply to non-domestic knives only, so young people living on their own will not be prevented from buying domestic knives.

### **Alternative approaches**

91. The alternative approach would be to not make the changes outlined above. However, the Executive believes that these measures are needed to tackle knife crime and is clear that doing nothing is not an option.

## **POLICE POWERS TO ENFORCE FIREWORKS POSSESSION OFFENCES**

### **Policy objectives**

92. Fireworks, used responsibly, can be a source of fun and enjoyment for many. However, too many fireworks are used irresponsibly in an anti-social or unsafe manner. The Scottish Executive is committed to helping the police put a stop to the dangerous and anti-social use of fireworks.

93. Under the Fireworks Act 2003 regulations may prohibit the possession of fireworks by persons of a specified age and the possession of fireworks of a specified description, including by persons of a specified description. At present, the Fireworks Regulations 2004 (2004/1836) provide that subject to certain exceptions no person under the age of 18 years shall possess an adult firework in a public place and no person shall possess “category 4” fireworks (generally the largest and most powerful fireworks). The exceptions are, for example, for people employed as organisers or operators of fireworks displays or manufacturers of fireworks etc.

### **Key information**

94. At present the enforcement powers are derived from the Consumer Protection Act 1987 and consist of the power to issue a summons and seize the prohibited items. The difficulty is that the police have no express powers to stop and search for fireworks that people may possess in contravention of the regulations. Therefore the Bill provides for the police to have stop, search and seizure powers in relation to possession offences created in regulations under sections 3 and 5 of the 2003 Act.

95. The police would expect to encounter difficulties in enforcing these two possession offences without additional powers. To enable them to be enforced effectively and proactively, the police require powers of search and arrest in respect of these offences.

### **Consultation**

96. A consultation conducted jointly between the Department for Trade and Industry and the Scottish Executive Enterprise, Transport and Lifelong Learning Department in summer 2004 found broad support for giving these powers to the police.

97. In April 2004 the Department of Trade and Industry and the Scottish Executive jointly published *Fireworks Regulations 2004: Consultation on proposals to tackle the anti-social use of fireworks through the regulation of use and supply*. Forty of the responses received were addressed to the Scottish Executive and nineteen responses were addressed to the Department of Trade and Industry and copied to the Scottish Executive. In response to the question regarding the fireworks possession regulations, some respondents, particularly the police, stated a preference for powers of stop, search and seize in relation to those suspected of committing fireworks possession offences, so as to make the offences easier to enforce.

### **Alternative approaches**

98. The alternative would be to not give police specific powers of search and arrest in relation to these offences and rely on common law powers. However, the statutory powers provided for in this Bill will help the police enforce these provisions and reduce anti-social use of fireworks.

## **POLICE POWER TO REQUIRE A PERSON'S DATE AND PLACE OF BIRTH**

### **Policy objectives**

99. The police currently have powers to require a person to divulge their name and address. This was appropriate when this power was first given to the police but is not now always sufficient information to fully identify someone or to distinguish between records with the same name on the police or Scottish Criminal Record Office (SCRO) databases. This can make it more difficult to determine whether a particular person has a criminal record. Modern information systems have more powerful means of identifying individuals and date and place of birth are routinely used. In practice, when the police ask a person for their date of birth he/she usually gives it, but in cases where they refuse the police have no power to require that information.

### **Key information**

100. The Bill provides police with the authority to obtain a person's date of birth – and also their place of birth – so they can be more positively identified. The Executive does not consider that this will place any additional burden on police officers; rather it would give legislative backing to the police in asking for information they request in the normal course of their duties.

101. We are aware that there may be some people who do not know their date or place of birth. In these circumstances the Executive would expect people to assist the police as far as is possible in confirming their identity. The legislation will not punish those people who do not know their date or place of birth because it will only be an offence for a person to withhold these details from the police if they do not have a reasonable excuse. Those who genuinely do not know details of their date and place of birth would be considered to have a reasonable excuse.

### **Consultation**

102. 25 responses were received to the questions on whether the police should be given a power to ask for date and place of birth information. 24 agreed that they should be able to

require date of birth information and 22 agreed that they should be able to require place of birth information.

### **Alternative approaches**

103. The only alternative would be to not give the police the power to require a person to provide information about their date and place of birth. This would not help to identify different people more effectively on the SCRO databases.

## **POLICE POWER TO TAKE FINGERPRINTS TO ESTABLISH IDENTITY**

### **Policy objectives**

104. There is currently a lack of clarity in the law in Scotland as to whether police officers have the power to require fingerprints from someone they believe to have committed a lower level offence, such as minor antisocial behaviour or some driving offences. This lack of clarity can cause real operational difficulties for the police. A good example would be where there is some doubt about the identity of a person suspected of a minor offence. In these circumstances officers often have to engage in a laborious verification process to try and confirm their identity which often results in the need to arrest or detain a person and take them to a police station.

105. Recent technological developments have made it possible for operational police officers with the correct equipment to take fingerprints on the spot and away from the custody suite. These fingerprints could then be checked remotely against existing fingerprint databases. This equipment is expected to be ready for trial in the very near future and Ministers are keen that Scottish legislation does not prevent its effective deployment.

106. The new technology offers an opportunity to make further strides in the drive to free up police officers' time, enabling them to spend more time on front line operational duties. With this in mind, there is a compelling case, provided the rights of the individual are suitably safeguarded, to give police officers the power to require a person to provide fingerprints, outside of a police station, in order to verify identity. Fingerprints taken under these powers would not be retained or added to any database. Should an individual subsequently be arrested and charged with an offence, a full set of fingerprints would be taken as part of the normal investigation and evidence gathering process.

107. The facility to run a quick identity check against national fingerprint databases will enable front line police officers to make more informed decisions on whether on the spot action is called for – such as the issuing of a fixed penalty notice – or whether a person should be detained for further questioning and removed to a police station.

### **Key information**

108. The Bill provides for a new power for a police officer to require a person to provide fingerprints when they are suspected of having committed an offence in order to verify the identity of that person. This power is useful in a situation for example, when a police officer suspects that a person has given him false information about their identity.

109. The Bill provides for this new power to be used if an individual is suspected of committing any offences and thus enables the police to check fingerprints taken against all databases available to them.

110. The Bill provides that fingerprints taken under this power cannot be retained or added to any database. The provisions make clear that they must be destroyed once they have been used for the purpose for which they are intended. Should the individual subsequently be arrested, a full set of fingerprints could still be taken as standard for investigation and evidence gathering purposes.

### **Consultation**

111. This policy was consulted on in the paper *Supporting Police, Protecting Communities: Proposals for legislation*. Twenty-four of the responses to that consultation commented on the proposals for giving police officers the power to take fingerprints outside a police station. 21 respondents supported the proposals to take fingerprints in this way to verify identity, and 15 supported the proposal to allow these fingerprint samples to be checked against all relevant databases.

### **Alternative approaches**

112. The only alternative would be to maintain the status quo and not provide the police with the ability to take fingerprints to establish identity. That would limit their ability to save constables' time by utilising the new technology of the mobile fingerprint readers.

## **MANDATORY DRUG TESTING AND ASSESSMENT OF ARRESTED PERSONS**

### **Policy objectives**

113. Addiction problems are one of the main drivers for criminal behaviour in Scotland. 70% of cases dealt with by Scottish courts are believed to have a drug related aspect. More than three out of four people who receive a custodial sentence from the courts show signs of drug abuse at the point of entry to prison.

114. Evidence has shown that tackling addiction problems can reduce levels of associated crime. Dealing with drug misusing offenders in the community offers the best prospect for addressing drug related criminal behaviour. Research has also shown that every £1 spent on treatment leads to savings of £3 in terms of enforcement at later stages in the criminal justice system, quite apart from the social benefit to both the individual and the community. The Scottish Executive's Drugs Action Plan, *Protecting Our Future*, identified the opportunity for increasing the number of individuals referred into drug treatment as a result of a criminal justice intervention.

115. Mandatory drug testing and assessment offers an additional opportunity, at the earliest stage in the criminal justice process, for diverting into treatment those offenders who commit offences to fund an addiction.

## **Key information**

116. In dealing with drug misusing offenders and their related criminal behaviour, the Executive has sought to ensure that there is opportunity at all stages of the criminal justice system for such individuals to engage with drug treatment services. By reducing or eliminating the amount of drugs (principally opiates and cocaine) consumed by such persons, there is potential to make a positive impact on the amount of related acquisitive crime committed to fund the drug misuse. This approach has, for example, already proved to be effective with the introduction of drug treatment and testing orders.

117. In certain areas of Scotland arrest referral schemes operate at the very earliest stage of the criminal justice process, at the point of arrest or charge. These schemes were introduced to offer the accused a voluntary pathway into treatment services (with no formal link with the due process of law). There is no compulsion on those arrested to have any involvement with arrest referral services and as a consequence there is no penalty for non-involvement. While arrest referral can have a positive impact on those willing to engage there will always be a proportion of offenders who are unwilling to take up the offer assessment and referral. Drug testing is intended to stiffen the arrest referral approach through introducing statutory powers for testing for specified class A drugs and requiring those who test positive to attend a mandatory assessment, the overall objective being to increase the numbers engaging with treatment services.

118. The Bill will therefore provide that the police may require those arrested for certain “trigger” offences to undertake a test for the presence of cocaine or heroin in their body. The trigger offences would be those often associated with drug use, including theft and possession of drugs. However, the police would also have discretion to require individuals arrested for other offences to take a test if they had reason to believe that the alleged crime might also have been associated with drug misuse. Anyone who tested positive would be required to attend an assessment to assess any dependency on drugs and whether they might benefit from treatment. However, it would not be mandatory for them to engage in treatment should that be recommended.

119. These provisions will be enforced by a criminal sanction. Those who refuse to take a drugs test or who, having tested positive, fail to attend their assessment, will have committed an offence punishable by a fine of up to level 4 (£2500) and/or imprisonment for up to 3 months.

120. These provisions have the potential to have very wide application, given the number of drug-misusing offenders in Scotland. The Scottish Ministers therefore intend to roll out the scheme in phases, beginning with a pilot based on four major police stations in areas of high drug misuse and associated criminality. The pilot will allow further evidence on the costs and effectiveness of the scheme to be gathered, to supplement that already available, and the details of the rollout will be decided in the light of the experience with the pilot.

## **Consultation**

121. The mandatory drug testing of arrestees proposals were included in the consultation document on the Police Bill (*Supporting Police, Protecting Communities: Proposals for legislation*) which was issued in February 2005. Twenty-nine consultation respondents

commented in part or in whole upon the proposals, the majority of whom were supportive of the overarching policy. Supporters included all of the police respondents and four local authorities, including Glasgow City Council. The most significant respondents who opposed the proposals were the Faculty of Advocates, the Law Society of Scotland and the Scottish Drugs Forum. A number of key issues were raised by such respondents (including the lack of resources for treatment services and whether or not the coercive element would undermine the effectiveness of the subsequent treatment). However the intention is to pilot the proposals in the first instance, which will provide an opportunity to examine these potential difficulties.

### **Alternative approaches**

122. The alternative to making testing and assessment mandatory would be to widen the roll-out of voluntary testing and assessment regimes, or perhaps to make the test mandatory but the assessment voluntary. However, evidence from England and Wales suggests that mandatory schemes have the potential to encourage more offenders into effective treatment at an early stage.

123. We also considered a number of enhanced approaches. One option might have been to follow up mandatory assessments by making a course of treatment also mandatory, for those testing positive and assessed as suitable. However, it is recognised that enforcing medical treatment at that stage on an individual, who has not been convicted of an offence, would have human rights implications. It is also recognised, as some consultation respondents noted, that the effectiveness of drug treatment can often depend upon the commitment and willingness of clients to engage in it and that coercion might undermine this.

124. A second possible extension of the provisions would be presumption against bail. At the initial stages of policy development the Executive considered whether a positive drug test should lead to automatic presumption against bail, unless the person was willing to engage with treatment services. However until such time as the mandatory testing and assessment procedures have proved their effectiveness it was felt premature to suggest such an approach at this stage. Nevertheless, the fact of a positive drug test result could form part of the information put before the court when it considers whether to grant bail or remand a person to custody.

## **INCENTIVES FOR OFFENDERS TO PROVIDE EVIDENCE AND INFORMATION**

### **Policy objectives**

125. The aim of this part of the Bill is to encourage more accused persons to provide significant co-operation to the police and the prosecutor, particularly against those involved in serious organised crime. Although there is no data collected on the number of accused who have received sentence discounts or avoided prosecution because of their willingness to provide information and/or evidence against associates, anecdotal evidence from the Crown Office and Procurator Fiscal Service would suggest that such instances are comparatively rare.

126. A similar situation exists in England and Wales. The UK Government's March 2004 White Paper, *One Step Ahead: A 21<sup>st</sup> Century Strategy to Defeat Organised Crime*, noted that in 2003 the then HM Customs and Excise had just six defendants turning Queen's Evidence (in five separate cases). The White Paper went on to contrast the position in other countries, in particular

the USA, where 26% of defendants in drug trafficking cases received sentence reductions as a result of ‘substantial co-operation’ with the investigation, and Australia, where 10-15% of defendants in serious drugs trafficking cases took advantage of similar provisions.

127. The proposals in the Bill are based to some extent on those contained in the Serious Organised Crime and Police Act 2005, which will shortly apply in England, Wales and Northern Ireland and which implement the policy proposals outlined in “*One Step Ahead*”. The Scottish Ministers considered whether or not the relevant provisions of that Act should extend also to Scotland but decided that it would be more appropriate to consult separately in Scotland and to bring forward a modified package of proposals that were more directly tailored to perceived Scottish needs.

### **Key information**

128. The Bill seeks to achieve the overall objective in three ways. Firstly it will provide a statutory framework for possible sentence reduction by the courts in return for an accused pleading guilty to the offence(s) with which he is charged and providing, or agreeing to provide, co-operation against criminal associates. In addition, the Bill will place on a statutory footing the existing common law powers of prosecutors to offer immunity from prosecution. Finally, it will allow co-operation which an offender has given in an unrelated case to be presented in confidence to the judge who may then take that co-operation into account in sentencing the offender.

129. The Scottish Ministers believe that accused are more likely to co-operate with the authorities where the incentives and procedures for doing so are clear and unambiguous. The statutory framework for sentence reduction will enable a co-operating accused to enter into a binding agreement with the prosecution which would commit the prosecution to providing the court with information about the level of co-operation given or offered. The judge will then be able to take the co-operation into account in deciding on the appropriate sentence. Because the incentive to co-operate will be greater for those who face a significant term of imprisonment, these arrangements will apply only to those offenders tried on indictment. The Scottish Ministers also believe that placing the prosecutor’s common law powers to offer immunity from prosecution in return for co-operation on a statutory basis will facilitate greater use of these capabilities.

130. There will however be safeguards to prevent abuse of these arrangements. Where an accused fails to deliver the co-operation agreed or promised the prosecution would be able either to seek a review of any discounted sentence or to withdraw immunity and commence or recommence criminal proceedings against the accused.

131. The Scottish Ministers also consider that there should be an appropriate procedure for an accused who has been convicted and wishes to bring to the attention of the sentencing judge previous co-operation in an unrelated case. If necessary, it should also be possible for that information to be given to the sentencing judge in confidence without even the accused’s solicitor and counsel being made aware of it. This would bring Scotland into line with the position in England and Wales on this issue.



## **Consultation**

132. The proposals to introduce incentives to secure the co-operation from criminals against other criminals were contained in the consultation document *Supporting Police, Protecting Communities: Proposals for legislation*. Between 20 and 22 responses were received to four specific questions on the issue. In each case the responses expressed majority support for the proposals. Support ranged from 55% to 66%.

133. Those who did not support the proposals did so for a variety of reasons. These included opposition to more favourable treatment in the sentencing process for co-operating accused and a view that sufficient powers already existed for the courts to take co-operation into account in sentencing and for the prosecutor to grant immunity from prosecution. The Faculty of Advocates expressed their opposition to any alteration to the current arrangements and was of the view that any innovation on the procedure for sentence reduction should be the subject of careful consideration by the Scottish Law Commission. The Law Society of Scotland raised a number of practical difficulties and queries about the proposals for both sentence reduction and immunity from prosecution. Some misunderstanding of the proposals was also evident with sentence reduction being confused with plea bargaining.

## **Alternative approaches**

134. An alternative approach would be to retain the *status quo*. The Scottish Ministers do not favour this option as the present arrangements have not been notably successful in turning criminals against their associates.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

135. This part of the Policy Memorandum has been prepared by the Scottish Executive to assist consideration by the Scottish Parliament of the impact on equal opportunities by the Police, Public Order and Criminal Justice (Scotland) Bill. It responds to the six equalities questions as endorsed by the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission in 1999 and used by both the Equal Opportunities Committee and the Scottish Executive. Each of the policies is discussed in more detail above in the Policy Objectives section of this Memorandum.

### **1) What is the policy for? Who is the policy for? What are the desired and anticipated outcomes?**

136. In part the policies set out in the Bill are for police officers and police forces but, in the main, the policies are intended to benefit the people of Scotland and visitors to Scotland by improving police effectiveness and enhancing community safety. The desired and anticipated outcomes of each policy are discussed below.

*Scottish Police Services Authority and Scottish Crime and Drug Enforcement Agency*

137. This part of the Bill is intended to ensure that the Agency and the common police services will be able to operate in a more effective manner and deliver a better service to the Scottish public and, in the case of the common services, the police forces and the wider criminal justice system. The Authority and the Agency will be subject to the general and specific duties to promote race and disability equality.

*Police Complaints Commissioner for Scotland*

138. This part of the Bill will introduce a Police Complaints Commissioner for Scotland. The policy is to ensure that a reconsideration of a non-criminal complaint is undertaken in an open, transparent and accountable manner. The Commissioner will be subject to the general and specific duties to promote race and disability equality.

*Payment to special constables*

139. This part of the Bill is intended to enhance recruitment and retention and increase the number of special constables.

*HMIC recruitment*

140. This part of the Bill is intended to enable HMIC to recruit secondees from a wider range of sources to ensure that the HMIC can continue to recruit the best candidates.

*Football banning orders*

141. This part of the Bill is intended to reduce violence and racist, sectarian and other abuse at and around football matches. It enables courts to impose these orders to help prevent the stirring up of hatred against groups defined by their (actual or perceived) race, religious affiliation, ethnicity, national origin, sexual orientation or disability. This has significant equality implications and represents a direct effort to tackle discrimination.

*Public processions*

142. This part of the Bill will introduce reforms to the process by which local authorities are notified of planned processions and by which they may impose conditions on, or prohibit, such processions. Guidance will be issued under the Bill which can direct local authorities to consider a wider range of community views before making decisions on the marches and, in summation, to ensure public processions are better organised.

*Knife crime*

143. This part of the Bill is intended to reduce the availability of knives to young people, to increase the ability of the police to arrest people suspected of committing an offence of carrying a knife and increase the deterrent against carrying a knife. Taken together, the hope is that these will reduce the amount of knives that are used in violent incidents in Scotland.

*Police powers to enforce fireworks possession offences*

144. This part of the Bill is intended to ensure that police can effectively enforce fireworks possession offences and thus reduce the anti-social and dangerous use of fireworks.

*Police powers to require a person's date and place of birth*

145. This part of the Bill is intended to enable the police and criminal record system to more accurately identify people. At present the police are only able to require a person to divulge their name and address, which is not always sufficient information to distinguish between people.

*Police power to take fingerprints to establish identity*

146. This part of the Bill is intended to save a significant amount of police time by enabling them to take fingerprints at places other than a police station to establish identity and undertake remote checks against fingerprint databases.

*Mandatory drug testing and assessment of arrested persons*

147. This part of the Bill is to provide police with the power to require persons arrested for certain offences to undergo a mandatory drugs test and to require those who test positive for a Class A drug to attend an assessment with a drugs counsellor. The intention is to encourage those offenders into treatment and thereby to reduce their drug use and prevent future re-offending.

*Offenders assisting investigations and prosecutions*

148. This part of the Bill is intended to increase the number of criminals in Scotland who give evidence against their criminal associates. In particular, the Executive hopes that this will increase the number of convictions of those involved at the top end of serious organised crime.

**2) Do we have full information and analyses about the impact of the policy upon all equalities groups? If not, why not?**

149. The effects of the Bill have been carefully considered in relation to their potential impacts on different equality groups. It is important to stress that the policies to be implemented through the Bill are intended to be applied universally throughout Scotland. (The only exception is the policy on mandatory drug testing and assessment, which will be subject to a gradual roll-out beginning in limited areas. But even here, within the areas covered by the scheme, application will be universal.) Moreover, there is no *intention* that the Bill should have any differential or discriminatory impact on equality groups. It is the Executive's view that the Bill does not impact in any differential or discriminatory sense upon groups which are defined by personal attributes or characteristics such as gender, marital status, age, race, disability, religion, sexual orientation, language, social origin or political belief. This is discussed in relation to some of these characteristics below:

- **Gender** – it is recognised that the majority of football hooligans and those who commit crimes involving knives or fireworks are men. It is the Executive's view that the primary defining characteristic of offenders is their involvement in criminal activity and not their gender. On this basis the Executive does not regard this Bill as raising issues in relation to gender discrimination.

- **Religious affiliation** – it is recognised that a substantial number, though by no means all, of the public processions which take place in Scotland are organised by groups of a particular religious affiliation. However, the legislation will apply equally to all public processions, whichever group they are organised by. The proposals in the Bill regarding marches and parades have as their primary defining attribute the involvement of persons in marches and parades and not their religion. On this basis the Executive does not regard the Bill as raising issues in relation to discrimination on the grounds of religion.
- **Age** – Provisions for football banning orders and mandatory drug testing are targeted on adult offenders and will not be applicable to those aged under 16. Purchase of non-domestic knives will be prohibited for those aged 16 and 17, as is already the case for under 16s. But the exemption of domestic knives is included in order to avoid discriminating against young people living in their own home.

**3) Has the full range of options and their differential impacts on all equality groups been presented?**

150. The policy being pursued in the Bill has been the subject of full and comprehensive consultation with a wide range of stakeholders which set out the options. This policy memorandum discusses a number of alternative approaches which were considered. Groups representative of equality interests, as well as the Scottish Council for Voluntary Organisations (which is itself representative of voluntary bodies working with equality groups), were included in the consultation.

**4) What are the outcomes and consequences of the proposals? Have the indirect, as well as the direct, effects of proposals been taken into account?**

151. The outcomes and consequences of each of the proposals are as outlined in the answer to the first of these six questions. Both the direct and indirect effects of the proposals have been taken into account. For example, with regard to the provisions on police power to require a person's date and place of birth, it was considered that some people may not know their place of birth, or even in some cases their date of birth. In these circumstances people will not be penalised for failing to provide their birth details as this would constitute a "reasonable excuse" not to provide that information.

**5) How have the policy-makers demonstrated that they have mainstreamed equality?**

152. The Bill has been the subject of extensive consultation. The detailed policy within the Bill has also been developed with the significant assistance of key representative groups, including the police, local authorities, community groups, non-governmental organisations and professional bodies. Throughout this process the Executive has been vigilant for the possibility of discriminatory or significantly differential impacts and in the extensive consultation and work with stakeholders. The Executive has received no representations to suggest that the Bill will negatively impact upon equality interests.

153. The Bill also includes an overarching equality statement that all persons exercising functions under the Act shall do so in a manner which encourages equal opportunities and the observance of the equal opportunity requirements.

**6) How will the policy be monitored and evaluated? How will improved awareness of equality implications be demonstrated?**

154. The policies in the Bill will be monitored and evaluated in a number of ways.

155. For the amendments to penalties for offences and police powers, these will largely be monitored through standard criminal justice measures such as statistical monitoring; and also through feedback from the police and other interested parties on their effectiveness.

*Scottish Police Services Authority and Scottish Crime and Drug Enforcement Agency*

156. The effectiveness of this body will be monitored through its annual report and through audits carried out by Audit Scotland. HMIC may also produce reports on the operation of this body. As part of their responsibilities under the general and specific duties to promote race and disability equality, the Authority and the Agency will prepare equality schemes and monitor various indicators that track progress in fulfilling these duties.

*Police Complaints Commissioner for Scotland*

157. The effectiveness of this body will be monitored through its annual report and through audits carried out by Audit Scotland. As part of his/her responsibilities under the general and specific duties to promote race and disability equality, the Commissioner will prepare equality schemes and monitor various indicators that track progress in fulfilling these duties.

*Payment to special constables*

158. The effectiveness of this policy will be determined by continuing to monitor the number of special constables. As part of this, the number of female special constables and minority ethnic special constables will also be monitored.

*HMIC recruitment*

159. The effectiveness of this policy will be determined on the basis of HMIC's ability to appoint the best people to the position of staff officers.

*Football banning orders*

160. The effectiveness of this policy will largely be monitored by the police who are undertaking a research programme into football offending during the 2005/06 season and subsequent seasons. This will gather data on the situation before and after the introduction of banning orders.

*Public processions*

161. The effectiveness of this policy will be monitored through local authority and police feedback on the effectiveness of the new system through the Working Group on Marches and Parades.

*Mandatory drug testing and assessment of arrested persons*

162. It will be possible to monitor the effectiveness of this policy by recording the number of arrested persons who test positive for Class A drugs and attend the initial assessment and then continue to pursue treatment after that point. As this policy is to be run initially as a pilot, the monitoring of that pilot scheme will be particularly important.

*Offenders assisting investigations and prosecutions*

163. It may be possible to monitor the effectiveness of this policy through assessment of the number of times prosecutors enter into assistance agreements with offenders or grant immunity from prosecution and courts are requested to take unrelated co-operation into account in sentencing.

**Human rights**

164. It is considered that the provisions of this Bill are ECHR compatible. Some specific issues considered in respect of this statement are discussed below.

*Football banning orders*

165. The imposition of football banning orders raises issues under articles 6 and 8 of the Convention. Prohibiting a person from attending football matches and imposing other restrictions on them, including the surrender of their passport, may in some cases interfere with the right to private life and potentially also family life. Whether it does will depend upon the particular facts. However, article 8 is not an absolute right and the Executive considers that where article 8 is engaged the prohibitions serve the legitimate aim of the prevention of disorder and crime and the protection of the rights and freedoms of others. Any further restrictions imposed will require to be proportionate and there is judicial control, including appeal rights in relation to the imposition of the orders, the period that they will run for and any further restrictions. There is also provision for exemptions from the requirement to surrender a passport provided the person subject to the banning order can show that they wish to go abroad for reasons other than to attend a football match.

166. The Executive also considers that the proceedings for imposing banning orders in the criminal and civil courts would be regarded as civil for the purposes of article 6 of the ECHR and that they do not involve the determination of a criminal charge. The aim of a football banning order is not to punish the individual but rather to protect the public and prevent harm. The proceedings do not therefore involve the imposition of a penalty. A similar approach has been taken by the courts in England and Wales in relation to sex offender orders (*B v Chief Constable of Avon and Somerset 2002 WLR, 312*) and football banning orders (*Gough & Anor V Chief Constable of Derbyshire [2002] EWCA Civ 351- 20<sup>th</sup> March 2002*). The Executive considers that there are sufficient protections in the court procedures to satisfy the requirements of article 6.

*Mandatory drug testing and assessment of arrested persons*

167. The requirement on a person to provide a sample for testing for a specified class a drug without their consent raises issues under Article 8 of the Convention. A sample will be taken from an individual without their free consent in order to determine whether he or she needs to

attend an assessment about their drug misuse. The aim of the drugs testing and mandatory assessment provisions is to try and prevent this person from re-offending in the future. The right to privacy is not absolute and the Executive considers that any infringement of this right by taking a sample from an individual is justified as it has the legitimate aim of preventing crime and protecting the rights and freedoms of others.

168. It is considered that the requirement to provide a sample for testing is proportionate to that aim. Taking a sample which will be tested is the most practical and conclusive method of determining if a specified class A drug has been taken by an individual. An individual will only be required to give a sample of saliva or urine for testing for specified class A drugs. Non-invasive procedures are used to obtain these samples.

169. The Executive is of the view that the mandatory drug testing and assessment provisions do not raise any issues under Article 5 of the Convention. Article 5(1)(c) provides, among other things, that a person can be deprived of their liberty if he or she is arrested, or detained, with the purpose of bringing him before a competent legal authority on suspicion of having committed an offence. As a person who has been arrested will be detained for the purpose specified under Article 5(1)(c), the Executive considers that requiring a person to provide a sample for testing for a specified class A drug during this period of detention will therefore not infringe their right to liberty. The provisions also impose a time limit of 6 hours within which a sample must be taken.

170. The Executive takes the view that the compulsion on a person to attend a mandatory assessment does not engage the right to refuse medical treatment under Article 8(1). The purpose of an assessment is to determine whether a person is dependent on a specified class A drug, to ascertain if it would be beneficial for them to receive medical treatment and to prevent them from re-offending. There is no provision which forces a person to receive medical treatment once the assessment has taken place. The provisions do not prevent a person from exercising their right to refuse medical treatment which may be recommended for their drug misuse.

171. The compulsion on a person to attend a mandatory assessment or remain there for its duration may raise issues under Articles 5 and 8. The obligation to attend an assessment and remain there may engage the right to privacy and family life under Article 8(1). As a person will commit an offence for failing to remain for the duration of an assessment, it could be argued that this person suffers a deprivation of their liberty for the duration of the assessment. The Executive takes the view that any infringement of these rights is necessary for rehabilitating those who misuse drugs in order to prevent crime and to protect the rights and freedoms of others.

172. The Executive considers that it is proportionate to the aims of the assessment to impose a sanction so that an individual attends and remains at an assessment. No powers are sought to detain the individual who tests positive for a class A drug until the time that he or she actually attends the mandatory assessment, or to compel that person to actively engage in the assessment. The individual will only be required to attend one assessment into their drug misuse and remain there for duration of that session. An assessment will not last for a long period of time. The individual will not be forced to attend any further assessments. Without an element of

compulsion there is a high possibility that individuals will fail to attend the initial assessment and are therefore more likely to commit further offences to fund any dependency on drugs.

### *Public processions*

173. Article 11(1) of the ECHR gives a right to freedom of peaceful assembly and association with others. This right includes the right to process and applies to those who organise processions as well as to those who participate in such an event. The right to free assembly is not absolute and restrictions can be placed on the exercise of this right if these have the legitimate aim of upholding public safety, preventing disorder and crime and protecting the rights and freedoms of others. Such restrictions will require to be proportionate to the legitimate aims which they seek to achieve. The Executive considers that there is no violation of Article 11 in enabling local authorities to impose conditions on or prohibit a procession after considering if there a risk to public safety, a risk of disorder or damage to property, or a risk of disruption to the life of the community; or after assessing whether the holding of a procession would place an excessive burden on the police.

174. It is not incompatible for a procession to be prohibited, or conditions to be imposed on it, after considering whether this event would cause disruption to the community, as to do so is considered to protect the rights and freedoms of others (*Gypsy Council v United Kingdom 2002* (Application No 66336101)).

175. The State is under an obligation to take reasonable measures to protect those who are exercising their right to free assembly (*Plattform Arzte Fur Das Leben v Austria* (1988) 13 EHRR 204). Section 17 of the Police (Scotland) Act 1967 also imposes a general duty on the police to protect life and property. The Executive therefore also considers that it is not incompatible for a procession to be prohibited, or conditions attached to it, after considering whether there are sufficient numbers of constables or resources to police the event.

176. These measures enable local authorities to impose restrictions on processions in order to pursue the legitimate aims of preventing disorder and protecting the rights and freedoms of others. A local authority is under a duty to act in compliance with the ECHR (section 6(1) of the Humans Rights Act 1998) so it will be for each authority to ensure that the actual reasons for prohibiting or imposing a condition on a procession do not infringe a person's right to free assembly and are proportionate to the aims of the restrictions.

177. The Executive also considers that increasing the period of notification to 28 days will not breach Article 11. It is not incompatible with Article 11 of the ECHR to have a system which requires an organiser of a march to give notice of this event as public authorities need advance warning in order to make arrangements to police such an event and protect the rights and freedoms of others. (*Rassemblement Jurassien Unite Jurassienne v Switzerland* (1979) DR 93 EComm HR). Imposing a notification period of 28 days is considered to be proportionate to the aims of requiring the organiser of a procession to give notice of a procession. A local authority will be able to waive the notification period so that a procession will not be prevented from taking place if it is not possible to provide 28 days notice. An organiser of an event will not be prevented from holding a procession even if the local authority decides not to waive the 28 day notice period, as a procession could just be held at a later date.



*Police power to take fingerprints to verify identity*

178. The requirement to provide the police with fingerprints in order to establish identity engages the right to privacy under Article 8 of the Convention. This right is not absolute and the Executive considers that the requirement to take fingerprints is necessary under Article 8(2) because it has the legitimate aim of preventing and detecting crime. It is also the view of the Executive that the power to take fingerprints to verify identity is proportionate because the police will be under a duty to destroy any fingerprint data which is taken once it has fulfilled its purpose (verifying identity).

**Island communities**

179. This Bill has no disproportionate effects on island communities.

**Local government**

180. Local authorities, in their role as police authorities and members of Joint Police Boards have a key interest in policing through the tripartite structure of policing in Scotland. There will be local government representation on the new Scottish Police Services Authority to ensure democratic accountability of that new organisation.

181. Local authorities are also the key players in the process of notifications for public processions. The impact of this on local authorities is discussed above in relation to that part of the Bill.

**Sustainable development**

182. This Bill has no impact on sustainable development.

*This document relates to the Police, Public Order and Criminal Justice (Scotland) Bill (SP Bill 46) as introduced in the Scottish Parliament on 30 September 2005*

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) BILL**

## **POLICY MEMORANDUM**

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