

## **Operational Responsibility of the Chief Constable**

### **Purpose**

The purpose of this briefing paper is to provide a summary for the Scottish Police Authority (SPA) Board regarding the operational responsibility of the Chief Constable of Police Scotland to make decisions about officer deployment through Mutual Aid/Police Collaboration requests.

This briefing should be read in conjunction with the letter from HM Chief Inspector of Constabulary, dated 21 December, to the SPA Chair on Police Scotland's operational planning for Brexit.

### **Background**

The wider question of the extent of operational independence of a Chief Constable is one that has been returned to repeatedly over many years, as far back as the Royal Commission on Policing in 1962. The concept has never been defined successfully and the term "operational responsibility" is felt to be more accurate in describing the position where the Chief Constable has sole responsibility for the direction and control of police officers and staff, but must be accountable to the Scottish Police Authority for operational decisions.

In the lead up to police reform and the creation of the national police service for Scotland, the issue of separation between policing and politics featured large in the debate. Early controversies, notably decisions by the first Chief Constable of Police Scotland about the standing authority for armed policing and the use of the tactic of stop and search, brought the issue of operational responsibility to the fore.

The legislation is clear that operational decision making rests with the Chief Constable and he is accountable to the Scottish Police Authority for the policing of Scotland. Scottish Ministers cannot direct the police in relation to any specific operational activity.

In 2015, agreements were reached between the SPA and the then Chief Constable to the effect that the police should consult with the SPA in advance when making decisions likely to be of public interest, for example significant changes to policing policy.

Clearly when making operational decisions, the Chief Constable must take into account the priorities in the Strategic Police Plan, Annual Police Plan, Local Police Plans, and resources allocated to him by the SPA.

### **Legislation**

Section 17 of the Police and Fire Reform (Scotland) Act 2012 provides that the Chief Constable has responsibility for and must account to the Scottish Police Authority for the policing of Scotland. This includes allocation and distribution of resources allocated to him by the Authority.

That said, when making decisions in relation to resource deployment, Section 37 of the same Act ensures that cognisance is taken of best value. When making decisions the Chief Constable should take into consideration the quality and cost to Police Scotland of carrying out the functions balanced against efficiency, effectiveness and economy.

Within the Police Act 1996, Section 98 in relation to cross border assistance provides that the Chief Officer of a police force in Scotland **may**, on the application of the Chief Officer of a police force in England or Wales, the Chief Constable of the Police Service of Northern Ireland or the Director General of the National Crime Squad, provide constables or other assistance for the purpose of enabling the English or Welsh force or the Police Service of Northern Ireland or the National Crime Squad<sup>1</sup> to meet any special demand on its resources.

The use of the term **may** in Section 98, as outlined above, provides the Chief Constable in Scotland with scope to reject such an application.

### **Police Collaboration between Police Scotland and other parts of the UK**

In relation to police collaboration, legislation and processes exist that clearly demonstrate lines of responsibility and accountability for the deployment of police resources. Collaboration is more aligned to longer term projects that encourage an interface collaboration between a number of forces to combat a common threat.

Legal requirements for police collaboration can be found in the Police Act 1996, as amended by the Policing and Crime Act 2009 and the Police Reform and Social Responsibility Act 2011.

Whilst it is acknowledged that there is no legislative requirement placed upon Police Scotland to comply with this legislation, the general belief is that Police Scotland will commit to the processes to ensure an effective national (UK) response in times of need and will provide assets to assist.

### **Mutual Aid**

Mutual Aid is implemented in response to complex policing operations. Some of these may require resources that exceed a force's own capacity and it is generally, although not always, seen as a relatively short term and unexpected requirement.

Following agreement with the National Crime Operations Coordination Committee, any mobilisation lasting more than eight weeks would normally be classed as a secondment and not mutual aid. Cases will, however, be assessed on an individual basis.

The Strategic Policing Requirement (SPR)<sup>2</sup> sets out forces' responsibilities in relation to being able to respond to national threats such as terrorism, serious and organised crime, cyber security, public order, civil emergencies and child sexual abuse.

All forces must maintain agreed levels of capacity, capability, consistency and connectivity to contribute to national (UK) demand in such scenarios. These contribution levels are set out in individual professional assessments held by forces; National Police Chiefs' Council (NPCC); College of Policing, and National Police Coordination Centre (NPoCC).

To ensure that national emergencies take cognisance of the capacity and capability of individual contributing forces, all formal requests for mutual aid must be routed through NPoCC. This ensures that no unreasonable burden is placed on any single force.

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<sup>1</sup> The National Crime Squad is now referred to the National Crime Agency (NCA).

<sup>2</sup> Home Office, [The Strategic Policing Requirement](#), March 2015.

## Mobilisation

The principles which govern the mobilisation of assets apply to England and Wales, however Police Scotland supports them. Tier 1 and Tier 2 deployments are no longer relevant to Police Scotland since reform, however NPoCC still consider Police Scotland a region in its own right in terms of mobilisation.

Tier 1 deployments are managed by the host force as this mobilisation is within its own capacity and capability.

Tier 2 deployments are concerned with the movement of resources within a region and will be facilitated through a Regional Information and Coordination Centre (RICC). The RICC co-ordinates the regional response but will still provide information to the NPoCC to ensure it maintains an overall understanding of deployments.

The National Police Coordination Centre (NPoCC) is responsible for the mobilisation of police assets requested through mutual aid at a national (UK) tier 3 level.<sup>3</sup>

To achieve this mobilisation, NPoCC will:

- assess national capacity and contribution in relation to the Strategic Policing Requirement
- establish and coordinate continuous testing and exercising regimes to ensure effective capability and mobilisation of national assets when required
- facilitate mutual aid in a steady state and provide a fit for purpose coordination facility in times of crisis, and
- ensure effective reporting mechanisms with the Home Office and central government crisis management structures.

When mobilisation involves the PSNI and/or Police Scotland, NPoCC will ensure that the host force has the necessary memorandum of understanding (MoU) and legal framework in place to support variations across officers' police terms and conditions. Costs for officers on mutual aid will be recovered from the requesting force, who in turn may seek funding support from the Home Office.

NPoCC also liaises with the Scottish Police Information and Coordination Centre (SPICC). SPICC is responsible for coordinating and managing the mobilisation of Police Scotland resources for events where cross-border mutual aid is required.

The scale and/or nature of the mutual aid requirement may result in an intelligence-led pro rata approach being applied to meet the demand. NPoCC would seek chief officer agreement to implement the approach which supports, as far as is practicable, a fair and equitable distribution of resources. This means that any requests for national mutual aid must be made, assessed and coordinated through NPoCC.

On a weekly basis Police Scotland will share the numbers of public order trained staff with NPoCC, which will then enhance the national response when necessary. This is not a legislative requirement, however, it is again acknowledged that Police Scotland will support a national response where appropriate.

It is also worth highlighting that Police Scotland has benefitted from the wider mobilisation process, having received additional public order assets from England and Wales in relation to the visit of the President of the United States in 2018.

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<sup>3</sup> College of Policing, [Mobilisation](#).

## Funding

Where assistance is provided under mutual aid, the policing body of the receiving force will pay to the policing body of the donor force “such contribution as may be agreed upon” between those two policing bodies or, in the absence of such agreement, under any agreement between all policing bodies generally.

The NPCC has produced guidance on the key principles to be followed in relation to the funding of mutual aid and collaboration between forces. This includes detailed guidance on charging formulas to assist forces and their respective police authorities in agreeing cost recovery mechanisms.<sup>4</sup>

## Summary

The Chief Constable of Police Scotland has ultimate responsibility and accountability for the deployment and allocation of resources allocated to him by the Scottish Police Authority. The deployment and allocation must be considered at all times against the strategic aims of Police Scotland and the impact that any deployment will have of the efficiency, effectiveness and economy of Police Scotland.

The collaborative working and mutual aid agreements outlined in this paper provide valuable opportunities to enhance the operational policing response across the United Kingdom. The Chief Constable of Police Scotland, however, retains the ultimate decision whether or not to support such a response.

There is no direction given regarding the justification of any refusal by the Chief Constable to provide assets to support collaboration.

It is important that the Scottish Police Authority holds the Chief Constable to account for the delivery of policing services through force collaboration and that it understand its role in agreeing funding recovery arrangements.

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<sup>4</sup> NPCC, [National Policing Guidelines on Charging for Police Services](#), April 2019.