

**The Scottish Human Rights Commission**

**Consultation Submission – Scottish Police Authority Inquiry into Armed Policing**

**November 2014**

**Introduction**

The Scottish Human Rights Commission welcomes the opportunity to provide comments to the Inquiry into Police Scotland’s decision to allow its complement of trained ARV police officers to deploy to routine incidents with visible firearms. The Commission also notes the complimentary review by Her Majesty’s Inspectorate for Constabulary.

Human rights play a key role in policing. All public authorities whether they are the police force, the judiciary or the civil administration have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of internationally recognised human rights standards.

The Commission welcomes the commitments made by Police Scotland within Scotland’s National Action Plan that it will identify opportunities to further embed human rights within the structures and culture of policing. These will include strengthening accountability for the respect of human rights as well as training on human rights for the police. It has, for example, committed to help ensure legality and proportionality in the use of force and stop and search through adequate training and monitoring.

The Commission would like to reiterate the need for a comprehensive and systematic institutional approach to human rights law and principles in all areas of policing. Human Rights-Based Policing is a strategic approach for reorienting a police force from the traditional policing models and theories to a new paradigm anchored on genuine respect for human rights and dignity, transparency, accountability, the rule of law, and people’s active participation in democratic governance.

The Commission recognises that specially trained armed police perform a necessary and important function in policing, particularly when it comes to protecting people’s lives in violent situations. However, the Commission is concerned that introducing firearms to standard policing duties across Scotland, even where officers are fully trained, constitutes a significant shift in approach and practice. The Commission recommends that this type of change should only take place when

a) all the appropriate safeguards are in place;

b) appropriate scrutiny (and accountability) by all of the public bodies that have responsibility for policing policy and operations has been carried out; and

c) wide and participative consultation with the public has been taken.

**A Human Rights-Based Policing (HRBP)**

HRBP is an approach to policing that defines the relationship between individuals and the police. It is the systematic embedding and implementation of human rights law and standards in police strategy, policy and practice. HRBP aims not only to empower right holders but to strengthening the capacities of duty bearers, including the police to meet their duties and obligations.

HRBP means that policing should embed human rights standards under five broad levels:

1. Policy and strategic decision making;
2. Operational planning and deployment;
3. Training and guidance;
4. Use and control; and
5. Investigation, monitoring and scrutiny.

The effective protection of human rights does not rest only on Police Scotland, but in a number of public bodies which have responsibility for policing in Scotland, with an overarching obligation that the State respects, protects, and fulfils human rights.

To respect human rights means refraining from interfering with the enjoyment of people’s rights.

To protect human rights means to implement laws that provide equal protection to all persons from human rights violations by state authorities or by non-state actors.

To fulfil human rights refers to the act of establishing institutions and implementing systems, mechanisms or procedures that enable people to claim and enjoy their rights.

*Key Human Rights Instruments*

*Treaties*

The European Convention on Human Rights 1950 (ECHR) , incorporated into domestic law by the Scotland Act 1998 and the Human Rights Act 1998

The International Covenant on Civil and Political Rights (1966)

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

*Codes, Principles and Declarations*

The UN Code of Conduct for Law Enforcement Officials (1979)

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana (1990)

The Council of Europe Declaration on the Police, Resolution 690 (1979)

**Firearms and the right to life**

The exercise of the power to use force may violate the most basic human rights such as the right to life, liberty and security of person and the respect for his/her inherent dignity. Police use of force which contributes to a risk of violation of the right to life represents a clear defeat of one of the prime purposes of policing, that of maintaining the safety and security of the persons.

The State has a duty to organise its legal system so as to strictly supervise the action of law enforcement agencies and permit effective control of them.[[1]](#footnote-1) Any use of force must be no more than is absolutely necessary and it must be proportionate to the achievement of a legitimate aim, taking into account all of the circumstances relevant to its use.[[2]](#footnote-2)

The right to life, as set out in Article 2 of the ECHR, protects individuals not only where they are at risk from individuals who intentionally set out to kill, but also in situations where the State permits force to be used which may result in the deprivation of life, as an unintended outcome.

Law enforcement operations much be planned and controlled so as to minimise to the greatest extent possible recourse to lethal force or incidental loss of life. National law regulating policing operations must secure a system of adequate and effective safeguards against arbitrariness, abuse of force and even against avoidable accidents.[[3]](#footnote-3)

Law enforcement agents must be trained to assess whether or not there is an absolute necessity to use firearms, not only on the basis of the letter of the relevant regulations, but also with due regard to the pre-eminence of respect for human life as a fundamental value.[[4]](#footnote-4)

While recognising that ARV police officers are highly trained and a framework is in place to regulate the use of firearms, the Commission notes that the decision to provide standing authority and overt carriage is a significant change in practice in some parts of Scotland which has raised concern amongst the public.

**Safeguards**

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials require rules and regulations on the use of firearms by police officers which amongst other things must:

• Specify the circumstances under which police officers are authorized to carry firearms and prescribe the types of firearms and ammunition permitted

• Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm

• Regulate the control, storage and issuing of firearms and ammunition, including procedures for ensuring that police officers are accountable for firearms and ammunition

In Scotland the police use of firearms in the “Exercise of Police Functions” is provided for by Section 55 of the Firearms Act 1968. This gives legal authority to the Chief Constable for the police use of firearms.

The primary responsibility for decision making on the use and control of firearms lies with the officer who is armed with the weapon. It is his or her responsibility to recognise that the firearm is a lethal weapon which should only be used in a manner which complies with individual human rights and respects the right to life.

The Chief Constable has a duty to ensure that operations of Police Scotland are managed in order to minimise the need for firearms deployment and to ensure that officers are equipped with alternative tools and techniques to reduce and manage risks to officers and others and to avoid the use of potentially lethal force.

In ensuring that the appropriate safeguards are in place when deploying firearms or using force, Police Scotland must ensure that there is:

1. A clear and accessible framework setting out how it authorises police officers to carry firearms and regulates their control, how firearms are stored, issued, and which ammunition is permitted, including any information on proposals for safeguards such as on appropriate deployment, training, guidance and oversight;
2. Justification for the need to introduce any change of policy, or the roll out of an existing local policy to new parts of Scotland; and
3. Evidence to support the justification and illustrate that this approach is necessary and proportionate and complies with human rights standards.

**Scrutiny and Accountability**

There are a number of public bodies which share responsibility for policing in Scotland, including the Scottish Government, the Scottish Parliament, the SPA, PIRC and HMICS. Scrutiny is an essential part of ensuring that public bodies, including Police Scotland, remain effective and accountable nationally (and internationally).

Broadly speaking, there are four categories of accountability mechanism:

1. Judicial – Judicial oversight of executive acts and omissions, particularly in Scotland by virtue of the Human Rights Act 1998 and Scotland Act 1998, and including the European Court of Human Rights;
2. Political - Parliamentary scrutiny and oversight;
3. Administrative – The SPA itself, along with requirements such as the preparation, publication and scrutiny of human rights impact assessments; and
4. Quasi-judicial – such as the complaints mechanisms and inspectorates highlighted above, including the role of the Commission as a National Human Rights Institution, and the international human rights framework.

Each of the public bodies engaged in the accountability framework have distinct responsibilities. It is vital that sufficient and appropriate scrutiny is given in relation to significant operational and policy changes in policing in Scotland to ensure that they are compatible with human rights obligations.

**Public Consultation**

Participation is about the active involvement of people in public planning and decision-making, particularly when those decisions have an impact on their lives. The application of this principle is a recognition of the unique and important role of the community in maintaining peace and order. It represents an understanding of the collaborative nature of policing.

There is substantial value for public bodies in engaging with the wider public, including to strengthen knowledge, analysis and understanding of urgent and key issues for the community. The policing challenge is to police according to the values of service and the communities they serve.

The Commission considers that any change of policy and practice relating to firearms should include multi-sector consultations, dialogues, and other similar activities that encourage and enable people, NGOs, and civil society to participate in the process of policy related to public safety, law enforcement, and the protection of human rights. The lack of public engagement has an adverse effect on public trust and confidence towards the police.

SHRC.

About the Commission: The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act 2006, and formed in 2008. The Commission is a public body and is entirely independent in the exercise of its functions. The Commission is the national human rights institution (NHRI) for Scotland with a mandate to promote and protect human rights for everyone in Scotland. The Commission is one of three NHRIs in the UK, along with the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission. In June 2010 the Commission was accredited with “A” status by the International Coordinating Committee of NHRIs and since May 2011 the Commission has been the elected chair of the European Network of NHRIs.

1. *McCann and Others v. the United Kingdom (1995)* [↑](#footnote-ref-1)
2. *McCann* see also *Şimşek and Others v. Turkey* (2005) [↑](#footnote-ref-2)
3. *Makaratzis v Greece* (2004) [↑](#footnote-ref-3)
4. *Wasilewska and Kalucka v Poland*, 23 February 2010, paras 41 – 47. [↑](#footnote-ref-4)