

These notes relate to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006

POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Police

Chapter 1: the Scottish Police Services Authority

The Scottish Police Services Authority

Section 1 – Establishment of the Scottish Police Services Authority

8. This section establishes the Scottish Police Services Authority (“the Authority”) and gives effect to schedule 1 which sets out matters including the constitution, membership and staff of the Authority.

Section 2 – Duty to establish and maintain the Agency

9. This section places a duty on the Authority to establish and maintain an organisation to be known as the Scottish Crime and Drug Enforcement Agency (“the Agency”) which will replace the Scottish Drug Enforcement Agency (SDEA).
10. Subsection (2) sets out the core functions of the Agency. These are to prevent and detect serious organised crime, to contribute to the reduction of such crime and to the mitigation of its consequences and to gather, store and analyse information in connection with the above. In effect the purpose of the Agency is to reduce serious organised crime and the harm it causes. The function of mitigating the consequences of serious organised crime acknowledges that the prosecution of organised criminals is only one of the strategies that may be employed to tackle organised criminality.
11. Sub-section (3) enables the Agency to share, with specified organisations, information which it has gathered and stored for the purposes of carrying out its core functions. The specified organisations include other UK police forces, the Serious Organised Crime Agency (SOCA) and other law enforcement agencies.

Section 3 – Duty to provide the police support services

12. Section 3 provides that in addition to establishing and maintaining the Agency, the Authority must provide the ‘police support services’ set out in subsection (2). These include all the common police services currently established and provided by the Scottish Ministers under section 36 of the Police (Scotland) Act 1967, namely the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy; and also the police forensic science services. The Authority will also carry out the functions of the Scottish Ministers which are delegated to it by the Scottish Ministers under Part V of the Police Act 1997 in relation to issuing criminal record certificates.

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13. Subsections (3) and (4) give the Authority flexibility in the ways in which it provides these services, so that it may establish organisations, may collaborate with other bodies, and may do anything incidental or ancillary to the provision of these services.
14. Subsections (5) and (6) make it clear that in all its activities the Authority must act in a way which is calculated to promote the efficiency and effectiveness of the police, having regard also to the contribution its services make to the efficiency and effectiveness of the wider criminal justice system.
15. Subsection (8) amends section 121 of the Police Act 1997 to provide that the functions of the Scottish Ministers under that Act in relation to the issuing of criminal record certificates (other than making regulations and orders) will be able to be carried out by the Authority.

Section 4 – Strategic priorities of the Authority

16. This section gives the Scottish Ministers the right to determine strategic priorities for the Authority, after consulting the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards. In practice here and elsewhere in this Chapter, this will mean the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Police Authorities Conveners Forum (SPACF). Subsection (3) requires the Scottish Ministers to publish any such strategic priorities which they make. As an example, a strategic priority may be to promote the efficiency and effectiveness of the police in Scotland.

Section 5 – Objectives of the Authority

17. This section requires the Authority to determine its objectives and keep them under review. These objectives must be consistent with any strategic priorities determined by the Scottish Ministers.

Section 6 – Annual plans of the Authority

18. This section requires the Authority to submit a draft 'annual plan' to the Scottish Ministers at least 3 months before the beginning of each financial year. The annual plan must include:
 - any strategic priorities determined by the Scottish Ministers and any directions issued by the Scottish Ministers;
 - the objectives which the Authority has determined for itself, and how it intends to meet them;
 - a statement of the financial resources that will be available to the Authority over the course of that year and how the Authority intends to allocate the funding.
19. Subsection (4) requires the Authority to consult people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations in preparing its annual plan. Subsection (5) requires the Scottish Ministers to approve the plan either as submitted or with such modifications as they consider appropriate within 2 months of the plan being submitted to them. Subsections (6) and (7) require the Authority to publish the plan once approved by Scottish Ministers and to send it to specified persons and bodies.

Section 7 – Annual reports of the Authority

20. This section requires the Authority to publish an annual report at the end of each financial year. The report must give an account of the Authority's activities for that year and must describe the extent to which the objectives (if necessary, as modified) have been implemented.

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21. Subsection (4) places a duty on the Authority to send a copy of the report to specified persons, including the Scottish Ministers. The Scottish Ministers must lay a copy of the report before the Scottish Parliament (subsection (5)).

Section 8 – Provision of information to the Scottish Ministers

22. This section gives the Authority a duty to comply with any reasonable request for information from the Scottish Ministers.

Section 9 – Liability for wrongful acts of certain persons seconded to the Authority

23. This section establishes that liability in respect of any wrongful acts committed by persons on secondment to the Authority rests with the Authority rather than the chief constable of the seconding force. (This includes support staff members of the Agency but not police members of the Agency for which separate arrangements are made under section 22.) This liability provision is consistent with the current position for constables seconded on central service under section 38 of the Police (Scotland) Act 1967 to common police services provided by the Scottish Ministers under section 36 of that Act - where section 38(3B) provides that the Scottish Ministers are liable in reparation for wrongful acts or omissions of those constables.
24. Neither this section nor section 22 makes any provision in respect of employees of the Authority, including employees who are also members of the Agency because, as the employer, the Authority will be vicariously liable for any unlawful acts committed by its employees in the course of their employment.

Section 10 – Grants

25. This section establishes that the Authority and the Agency are to be funded by grants from the Scottish Ministers. Subsection (2) requires the Scottish Ministers to specify the amount of grant which is to be used for the purposes of the Agency, and subsections (3) and (5) empower the Scottish Ministers to set other terms and conditions around the use of the funding. However, subsection (4) provides that the Scottish Ministers cannot impose terms and conditions which would impinge on the operational independence of the Agency. Subsection (7) requires the Scottish Ministers to consult the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards before making such grants.

Section 11 – Charges by the Authority and other receipts

26. This section empowers the Authority to charge for any goods or services it or the Agency provides (for example, for training provided to non-Scottish forces or for disclosure certificates), and requires that such income should be payable to the Scottish Ministers unless they decide otherwise in respect of any part of this income.