



# Police and Fire Reform (Scotland) Act 2012

2012 asp 8

## PART 1

### POLICE REFORM

## CHAPTER 2

### THE POLICE SERVICE OF SCOTLAND

#### *The Police Service of Scotland*

#### **6 The Police Service of Scotland**

There is to be a constabulary to be known as the Police Service of Scotland (or, in Gaelic, Seirbheis Phoilis na h-Alba ) comprising—

- (a) a constable holding the office of chief constable,
- (b) one or more constables holding the office of deputy chief constable,
- (c) one or more constables holding the office of assistant chief constable, and
- (d) other individuals holding the office of constable.

*Constables: appointment, ranks and terms of office*

#### **7 Senior officers**

- (1) The Authority must appoint—
  - (a) the chief constable,
  - (b) one or more deputy chief constables, and
  - (c) one or more assistant chief constables.
- (2) An appointment of a chief constable has effect only if approved by the Scottish Ministers.

- (3) The Authority must consult the chief constable before appointing a deputy or assistant chief constable.

## **8 Regular constables**

It is for the chief constable to appoint constables (other than senior officers).

## **9 Special constables**

The chief constable may appoint special constables, being constables who are not entitled to be paid but who may, in accordance with regulations made under section 48, be entitled to receive—

- (a) allowances,
- (b) periodic payments which acknowledge the giving of, or a commitment to give, services.

## **10 Constable's declaration**

- (1) An appointment of an individual as a constable has effect only where the individual has made a declaration in the following terms before a sheriff or justice of the peace—

“I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law.”.

- (2) The Scottish Ministers may by order modify the declaration.

## **11 Ranks**

- (1) The ranks which a constable may hold are—

- (a) chief constable,
- (b) deputy chief constable,
- (c) assistant chief constable,
- (d) chief superintendent,
- (e) superintendent,
- (f) chief inspector,
- (g) inspector,
- (h) sergeant,
- (i) constable.

- (2) Constables appointed as senior officers under section 7 are to hold the rank corresponding to the office to which they are appointed.

- (3) It is for the chief constable to assign, and to make promotions to, ranks below that of assistant chief constable.

- (4) A constable may be demoted in rank only—

- (a) if the constable consents, or
- (b) in accordance with regulations made under section 48.

- (5) The Scottish Ministers may by regulations modify subsection (1) to add or remove any rank below that of chief constable.
- (6) Regulations made under subsection (5) may make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate including (in particular) provision—
  - (a) creating or removing an office corresponding to the rank,
  - (b) relating to the functions of senior officers,
  - (c) modifying this or any other enactment.
- (7) Before making regulations, the Scottish Ministers must consult—
  - (a) the chief constable,
  - (b) the Authority,
  - (c) the joint central committee of the Police Federation for Scotland,
  - (d) such persons as appear to them to be representative of senior officers,
  - (e) such persons as appear to them to be representative of superintendents (including chief superintendents), and
  - (f) such other persons as they consider appropriate.

## 12 Constables: terms of office

A constable is to hold and vacate office in accordance with—

- (a) regulations made under section 48, and
- (b) any other enactment (for example, the Police Pensions Act 1976 (c.35) or section 14 of this Act) which makes provision in that regard.

## 13 Rewards

The Authority may, on the recommendation of the chief constable, pay such sums by way of reward as it thinks fit to—

- (a) a constable (other than the chief constable) who in its opinion has carried out the constable's functions with exceptional diligence or in a specially meritorious manner, or
- (b) a person who in its opinion has made a substantial contribution to the carrying out of police functions.

## 14 Senior officers: resignation or retirement for efficiency or effectiveness

- (1) The Authority may call on a senior officer to resign or, where appropriate, retire from office in the interests of efficiency or effectiveness of the Police Service.
- (2) Before calling on a senior officer to resign or retire, the Authority must—
  - (a) give the senior officer—
    - (i) a written explanation of the reason why the Authority proposes to call on the senior officer to resign or retire, and
    - (ii) an opportunity to make written representations,
  - (b) consider any written representations made, and
  - (c) where the chief constable is to be called on to resign or retire, consult the Scottish Ministers.

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*Status: This is the original version (as it was originally enacted).*

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- (3) Where—
  - (a) a senior officer is called on to resign or retire, and
  - (b) the officer has made written representations under subsection (2)(a)(ii),
 the Authority must provide the officer with written reasons for its decision.
- (4) A senior officer called on to resign or retire must do so with effect from—
  - (a) the date determined by the Authority when calling on the senior officer to resign or retire, or
  - (b) such earlier date as may be agreed between the senior officer and the Authority.

## **15 Temporary service outwith the Police Service of Scotland**

- (1) The chief constable may make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service.
- (2) A constable on temporary service outwith the Police Service—
  - (a) is to continue to hold the office of constable, and
  - (b) except where contrary provision is made by regulations under subsection (3) or by or under any other enactment, is to continue to—
    - (i) have all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
    - (ii) have the powers and privileges of a constable throughout Scotland, and
    - (iii) be under the direction and control of the chief constable in relation to the constable's performance of policing functions.
- (3) The Scottish Ministers may by regulations—
  - (a) prescribe types of temporary service in respect of which a constable—
    - (i) may not be engaged in pursuance of subsection (1),
    - (ii) may be so engaged only with the consent of the Authority or the Scottish Ministers (or both),
    - (iii) is not to have any of the functions, powers or privileges of a constable,
    - (iv) is not to be under the direction and control of the chief constable, and
  - (b) make such further provision in respect of constables on temporary service as they consider appropriate.
- (4) Regulations made under subsection (3) may in particular make provision—
  - (a) modifying any provision of this Act or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables) in relation to constables on temporary service,
  - (b) about the liability for unlawful conduct of a constable while on temporary service.
- (5) At the end of a period of temporary service outwith the Police Service, a constable—
  - (a) is entitled to revert to serve as a constable of the Police Service in the rank in which the constable was serving immediately before the period began, and
  - (b) is to be treated as if the constable has served as a constable of the Police Service during the period of temporary service for the purposes of any

scale prescribed by virtue of regulations made under section 48 fixing the constable's rate of pay by reference to length of service.

- (6) Subsection (5) does not apply where a pension, allowance or gratuity becomes payable to the constable during the period of temporary service by virtue of regulations made under the Police Pensions Act 1976 (c.35).
- (7) A constable may, during any period of temporary service, be promoted to a higher rank and in such a case—
  - (a) the reference in subsection (5)(a) to the rank in which the constable was serving immediately before the period began is to be construed as a reference to the rank to which the constable is promoted, and
  - (b) the constable is, for the purposes of subsection (5)(b), to be treated as having served in that rank from the time of promotion.

## **16 Temporary service as constable of the Police Service of Scotland**

- (1) The chief constable may make arrangements for any individual falling within subsection (2) to be engaged on temporary service as a constable of the Police Service.
- (2) An individual falls within this subsection if the individual is a member of—
  - (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
  - (b) the metropolitan police force,
  - (c) the City of London police force,
  - (d) the Police Service of Northern Ireland,
  - (e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
  - (f) the British Transport Police Force,
  - (g) the Civil Nuclear Constabulary,
  - (h) the States of Jersey Police Force,
  - (i) the salaried police force of the Island of Guernsey, or
  - (j) the Isle of Man Constabulary.
- (3) An individual may be engaged on temporary service under arrangements made under this section only where the individual has made the declaration specified in section 10 before a sheriff or justice of the peace.
- (4) An individual engaged on temporary service under such arrangements holds the office of constable.

### *Chief constable*

## **17 Chief constable's responsibility for the policing of Scotland**

- (1) The chief constable is responsible, and must account to the Authority, for the policing of Scotland.
- (2) In particular, the chief constable—
  - (a) has direction and control of the Police Service (see section 21),
  - (b) is responsible for the day to day administration of the Police Service, including the allocation and deployment of resources received from the Authority,

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- (c) is to be involved in the preparation of the strategic police plan and the Authority's annual report (see sections 34(4) and 39(4)),
  - (d) is to prepare annual police plans (see section 35),
  - (e) must seek to secure continuous improvement in the policing of Scotland (see section 37(2)),
  - (f) must designate local commanders and ensure that adequate arrangements are in place for the policing of each local authority area (see section 44), and
  - (g) may be required to provide the Authority with information relating to the Police Service, policing or the state of crime (see sections 40(3), 60(4) and 84(3)).
- (3) The chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by—
- (a) the appropriate prosecutor in relation to the investigation of offences,
  - (b) the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (c) the Lord Justice General, or
  - (d) the sheriff principal for the place in which the functions are to be carried out.
- (4) The chief constable must seek to ensure that the policing of Scotland is done—
- (a) with due regard to the policing principles, and
  - (b) in accordance with—
    - (i) the strategic police priorities,
    - (ii) the most recently approved strategic police plan, and
    - (iii) the relevant annual police plan.
- (5) The chief constable must ensure that the policing of Scotland is done with due regard to any recommendations made or guidance issued by the Authority on the policing of Scotland.
- (6) Any recommendation made or guidance issued by the Authority for the purposes of subsection (5) must not be inconsistent with—
- (a) the strategic police priorities,
  - (b) the most recently approved strategic police plan, or
  - (c) any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences.

## **18 Delegation of chief constable's functions**

- (1) The chief constable may direct or authorise any other constable to carry out any of the chief constable's functions.
- (2) A direction or authorisation under subsection (1) does not affect the chief constable's—
- (a) responsibility for the carrying out of delegated functions, or
  - (b) ability to carry out delegated functions.
- (3) The Authority must designate a deputy chief constable to carry out the chief constable's functions where—
- (a) the office of chief constable is vacant, or

- (b) the chief constable is unable to carry out those functions by reason of being absent, incapacitated or suspended from duty.
- (4) Only one deputy chief constable may be so designated to act at any one time.
- (5) This section does not affect any restriction on delegation of the chief constable's functions contained in any enactment which makes provision in that regard.

### *Functions of constables*

## **19 Constables: functions and jurisdiction**

- (1) A constable has—
  - (a) all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
  - (b) all the powers and privileges of a constable throughout Scotland.
- (2) A constable who is the chief constable, a deputy chief constable, an assistant chief constable or a local commander also has all the additional functions conferred on such a constable by virtue of this or any other enactment or by rule of law.

## **20 Constables: general duties**

- (1) It is the duty of a constable—
  - (a) to prevent and detect crime,
  - (b) to maintain order,
  - (c) to protect life and property,
  - (d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,
  - (e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and
  - (f) to attend court to give evidence.
- (2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.
- (3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

## **21 Direction and control of the Police Service**

- (1) Constables are, in the carrying out of their functions (including any functions held by virtue of being a deputy chief constable, an assistant chief constable or a local commander), subject to the direction and control of the chief constable.
- (2) A constable must—
  - (a) carry out lawful orders, and
  - (b) punctually and promptly perform all appointed duties and attend to all matters within the scope of that constable's office.

- (3) Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable.

## **22 Failure to perform duty**

- (1) It is an offence for a constable, without reasonable excuse, to be absent from duty.
- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.
- (3) It is an offence for a constable to neglect or violate the constable's duty.
- (4) A person who is guilty of an offence under subsection (3) is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

## **23 Failure to return equipment**

- (1) It is an offence for a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, immediately upon being ordered to do so, any relevant item.
- (2) It is an offence for a person who ceases to be a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, when ceasing to be a constable, any relevant item.
- (3) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.
- (4) Subsection (5) applies where a sheriff or a justice of the peace is satisfied on evidence on oath that—
- (a) there has been a failure to return a relevant item, and
  - (b) the relevant item is in any place.
- (5) The sheriff or, as the case may be, the justice of the peace, may grant a warrant to any constable named in the warrant to enter and search the place at any reasonable hour, if necessary by force, and to take any relevant item which is found in the place.
- (6) For the purposes of this section, a “relevant item” is anything issued to a constable for the carrying out of the constable's functions.

## **24 Liability for unlawful conduct**

- (1) The chief constable is liable in respect of any unlawful conduct on the part of any person falling within subsection (2) in the carrying out (or purported carrying out) of that person's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.
- (2) A person falls within this subsection if the person is—
- (a) a constable under the direction and control of the chief constable, or

- (b) a member of an international joint investigation team who is not—
  - (i) a constable,
  - (ii) a member of the Authority’s staff, or
  - (iii) a member of the police staff.
- (3) The Authority must pay—
  - (a) any damages or expenses awarded against the chief constable in any proceedings brought by virtue of this section,
  - (b) any expenses incurred by the chief constable in relation to such proceedings (in so far as not recovered in the proceedings), and
  - (c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the Authority).
- (4) Where the office of chief constable is vacant, references in subsections (1) to (3) to the chief constable are to be read as references to the person who is for the time being carrying out the chief constable’s functions.
- (5) The Authority may, in such cases and to such extent as it thinks fit, pay—
  - (a) any damages or expenses awarded against a constable in proceedings arising in respect of any unlawful conduct on the part of that constable,
  - (b) any expenses incurred by the constable concerned in relation to such proceedings (in so far as not recovered in the proceedings),
  - (c) any sum required in connection with the settlement of any claim which has or might have given rise to such proceedings.

### *Police cadets*

## **25 Police cadets**

- (1) The chief constable may appoint police cadets to undergo training with a view to becoming constables.
- (2) Subject to section 21 and any other contrary enactment, police cadets are to be treated as employees of the Authority.

### *Police staff*

## **26 Police staff**

- (1) The Authority may appoint police staff to assist in the carrying out of police functions.
- (2) Police staff appointed under subsection (1) may be—
  - (a) employed by the Authority, or
  - (b) provided to the Authority under arrangements between the Authority and a third party.
- (3) The chief constable has power to make appointments under subsection (1) on behalf of the Authority.

**27 Terms and conditions of police staff**

- (1) Police staff may be employed on terms and conditions determined by the Authority.
- (2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of police staff.
- (3) The arrangements mentioned in subsection (2) may include—
  - (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and
  - (b) the establishment and administration of pension schemes.

**28 Police custody and security officers**

- (1) The chief constable may certify a member of the police staff appointed under section 26(1) as having been authorised to carry out functions in relation to custody and security.
- (2) An individual so certified is to be known as a “police custody and security officer”.
- (3) A police custody and security officer has—
  - (a) for the purposes of the functions which the officer is authorised to carry out, the powers and duties set out in schedule 2, and
  - (b) all other functions conferred on police custody and security officers by virtue of this or any other enactment or by rule of law.
- (4) A police custody and security officer is to be regarded as acting in accordance with the officer’s powers and duties only if the officer is readily identifiable as such an officer when so acting (whether or not by means of a uniform or badge worn).
- (5) Sections 22(3) and (4), 23 and 92 apply in relation to a police custody and security officer as they apply in relation to a constable (and when so applied, a reference to a constable is to be read as a reference to such an officer).

**29 Certification of police custody and security officers**

- (1) The chief constable may issue a certificate under section 28(1) only if satisfied that the member of the police staff concerned—
  - (a) is a fit and proper person to carry out a police custody and security officer’s functions, and
  - (b) has received training to such standard as the chief constable considers appropriate for the carrying out of those functions.
- (2) The chief constable may revoke a certificate if the certified person appears to the chief constable not to be a fit and proper person to carry out a police custody and security officer’s functions.
- (3) The chief constable may (pending consideration of whether to revoke a certificate) suspend the certificate where it appears to the chief constable that the certified person may not be a fit and proper person to carry out a police custody and security officer’s functions.
- (4) A certificate is otherwise to continue in force until such date or occurrence as it may specify.

### **30 False statements in relation to certification**

- (1) It is an offence for a person to provide information for the purpose of enabling or assisting the person or any other person to be certified as a police custody and security officer if the person knows that, or is reckless as to whether, the information is false or misleading in a material respect.
- (2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.