



Police and Fire Reform (Scotland) Act 2012

2012 asp 8

PART 1

POLICE REFORM

CHAPTER 16

INDEPENDENT CUSTODY VISITING

93 Purpose of custody visiting

The provisions in this Chapter are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

94 Independent custody visiting

- (1) The Authority must make arrangements to ensure that independent custody visitors may—
 - (a) visit detainees,
 - (b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
 - (c) monitor the treatment of detainees and the conditions in which they are detained.
- (2) The arrangements must—
 - (a) provide for the appointment as independent custody visitors of suitable persons who are independent of both the Authority and the Police Service,
 - (b) authorise independent custody visitors to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained, and

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- (c) provide for reporting on each visit.
- (3) The arrangements may, in particular, authorise independent custody visitors to—
- (a) access, without prior notice, any place in which a detainee is held,
 - (b) examine records relating to the detention of persons there,
 - (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
 - (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
 - (e) meet such other persons that the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (4) The arrangements may allow access to a detainee to be refused only where—
- (a) the Scottish Ministers have determined grounds on which access to detainees (or to a category of detainee) can be so refused,
 - (b) it appears to a constable of the rank of inspector (or above) that such a ground is satisfied in relation to the detainee, and
 - (c) any other procedural requirements the Authority considers necessary have been met.
- (5) The Authority must—
- (a) keep the arrangements under review and revise them as it thinks fit,
 - (b) prepare and publish such reports on independent custody visiting as the Scottish Ministers may reasonably require.
- (6) The Authority and members of its staff, the Police Service and police staff and independent custody visitors must have regard to any guidance issued by the Scottish Ministers about independent custody visiting.
- (7) Before issuing guidance, or making a determination for the purposes of subsection (4) (a), the Scottish Ministers must consult—
- (a) the Authority,
 - (b) the chief constable,
 - (c) independent custody visitors or such persons as appear to them to be representative of independent custody visitors, and
 - (d) such other persons as they consider appropriate.
- (8) The Scottish Ministers must lay a copy of guidance issued or any determination made before the Scottish Parliament.

95 SPT visits

- (1) The Authority must make arrangements to ensure that members of the SPT may—
- (a) visit detainees,
 - (b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
 - (c) monitor the treatment of detainees and the conditions in which they are detained.

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- (2) The arrangements must authorise members of the SPT to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.
- (3) The arrangements may, in particular, authorise members of the SPT to—
 - (a) access, without prior notice, any place in which a detainee is held (accompanied by such experts as the SPT members think fit),
 - (b) examine records relating to the detention of persons there,
 - (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
 - (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
 - (e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (4) The arrangements may allow access to a detainee to be refused only—
 - (a) where there are urgent and compelling grounds of public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit, and
 - (b) the Scottish Ministers have notified the Authority that such grounds exist and that access should accordingly be refused.
- (5) The Authority must keep the arrangements under review and revise them as it thinks fit.
- (6) The Authority and members of its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits.

96 Interpretation of Chapter 16

- (1) For the purposes of this Chapter, a reference to a detainee is a reference to a person in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (2) or a person assisting A while A is acting in such a capacity.
- (2) The capacities are—
 - (a) that of a constable,
 - (b) that of a police custody and security officer,
 - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
 - (d) that of a person who—
 - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
 - (ii) is carrying out functions as a member of that team.
- (3) For the purpose of subsection (2) a reference to a member of a relevant police force is a reference to a member of—
 - (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
 - (b) the metropolitan police force,

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- (c) the City of London police force, or
- (d) the Police Service of Northern Ireland.

(4) In this Chapter—

“SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT, and

“OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.