



# Police and Fire Reform (Scotland) Act 2012

2012 asp 8

## PART 1

### POLICE REFORM

#### CHAPTER 1

##### THE SCOTTISH POLICE AUTHORITY

#### **1 The Scottish Police Authority**

- (1) There is established a body corporate to be known as the Scottish Police Authority or, in Gaelic, Ùghdarras Poilis na h-Alba.
- (2) Schedule 1 makes provision about the Authority's constitution, members and staff and other matters relating to it.

#### **2 Functions of the Authority**

- (1) The Authority's main functions are—
  - (a) to maintain the Police Service,
  - (b) to promote the policing principles set out in section 32,
  - (c) to promote and support continuous improvement in the policing of Scotland,
  - (d) to keep under review the policing of Scotland,
  - (e) to hold the chief constable to account for the policing of Scotland (including, in particular, the chief constable's carrying out of the duties imposed by or mentioned in section 17).
- (2) The Authority also has the additional functions conferred on it by virtue of this or any other enactment.

- (3) The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.

### 3 Maintenance of the police

- (1) In pursuance of its function under section 2(1)(a)—
- (a) the Authority must (in accordance with regulations made under section 48)—
    - (i) pay constables pay and allowances, and
    - (ii) reimburse any expenses reasonably incurred by a constable,
  - (b) the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures, and
  - (c) the Authority must, before the beginning of each financial year, provide to the chief constable details of how it intends to allocate the financial resources it expects to have available to it in respect of that financial year.
- (2) In this section, “financial year” means each period of a year ending on 31 March.

### 4 General powers of the Authority

- (1) The Authority may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.
- (2) The Authority may in particular—
- (a) enter into contracts,
  - (b) borrow money,
  - (c) acquire and dispose of land and other property,
  - (d) with the authorisation of the Scottish Ministers, purchase compulsorily land, and
  - (e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).
- (3) The Authority may not exercise the power in subsection (2)(b) or (e) without the consent of the Scottish Ministers.
- (4) Such consent may be given—
- (a) with respect to a particular case or a particular class of case,
  - (b) subject to such conditions as the Scottish Ministers consider appropriate.
- (5) The power in subsection (2)(c) includes power to accept, on such terms and conditions as the Authority considers appropriate—
- (a) gifts of money, and
  - (b) gifts or loans of other property.
- (6) The powers in subsection (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.
- (7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under subsection (2)(d) as if—
- (a) that provision were contained in an Act in force immediately before the commencement of that Act, and

---

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

---

- (b) the Authority were a local authority.

## **5 Directions**

- (1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers.
- (2) A direction may not be given in respect of—
  - (a) a specific operation being or to be carried out by the Police Service, or
  - (b) the way in which the Police Service is carrying out (or is to carry out) a specific operation.
- (3) The Scottish Ministers must—
  - (a) publish a direction given under this section in such manner as they consider appropriate, and
  - (b) lay a copy of it before the Scottish Parliament.
- (4) The Scottish Ministers may vary or revoke a direction (and subsection (3) applies in relation to an instrument varying or revoking a direction as it applies to a direction).

## **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.

---

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

---

- (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.
- (3) Where—
- (a) a senior officer is called on to resign or retire, and

---

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

---

(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.

---

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

---

- (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,
  - (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)),

---

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

---

- (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.



---

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

---

- (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

---

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

---

- (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.

## **CHAPTER 3**

### FORENSIC SERVICES

### **31 Forensic services**

The Authority must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.

## **CHAPTER 4**

### PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

### **32 Policing principles**

The policing principles are—

- (a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and
- (b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—
  - (i) is accessible to, and engaged with, local communities, and
  - (ii) promotes measures to prevent crime, harm and disorder.

### **33 Strategic police priorities**

- (1) The Scottish Ministers may determine strategic priorities for the Authority (“strategic police priorities”).
- (2) Strategic police priorities may relate to—
  - (a) the policing of Scotland, or
  - (b) the carrying out of the Authority’s functions.
- (3) Before determining strategic police priorities, the Scottish Ministers must consult—
  - (a) the Authority,
  - (b) the chief constable,
  - (c) such persons as appear to them to be representative of local authorities, and
  - (d) such other persons as they consider appropriate.

---

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

---

- (4) When determining strategic police priorities, the Scottish Ministers must have regard to the policing principles.
- (5) The Scottish Ministers must arrange for the strategic police priorities to be published in such manner as they consider appropriate.
- (6) The Scottish Ministers must lay a copy of the strategic police priorities before the Scottish Parliament.

### **34 Strategic police plan**

- (1) The Authority must prepare a strategic police plan.
- (2) A strategic police plan is a plan which—
  - (a) sets out the main objectives for the Authority and for the policing of Scotland,
  - (b) explains the reasons for selecting each main objective,
  - (c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,
  - (d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and
  - (e) includes any other information connected with the Authority’s functions, or policing, which the Authority considers appropriate.
- (3) Before preparing a strategic police plan, the Authority must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in policing.
- (4) The Authority must involve the chief constable in the preparation of a strategic police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.
- (5) When preparing a strategic police plan, the Authority must—
  - (a) send a copy of a draft plan to—
    - (i) each local authority,
    - (ii) the inspectors of constabulary, and
    - (iii) such other persons as the Authority considers likely to have an interest in the plan,
  - (b) invite the recipients to comment on the draft plan within such reasonable period as the Authority may specify, and
  - (c) have regard to any comments received within that period.
- (6) The Authority must—
  - (a) submit its strategic police plan to the Scottish Ministers, and
  - (b) use its best endeavours to secure their approval of the plan (with or without modifications).
- (7) If the Scottish Ministers approve a strategic police plan submitted to them, the Authority must—
  - (a) publish the approved plan in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), and
  - (b) lay a copy of it before the Scottish Parliament.

---

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

---

- (8) The Authority—
- (a) must review an approved strategic police plan at least once every 3 years (and must, in particular, do so where the strategic police priorities have been significantly revised), and
  - (b) following such a review, must—
    - (i) prepare a replacement strategic police plan, or
    - (ii) notify the Scottish Ministers that, having undertaken a review, the Authority has concluded that there is no need to replace the existing strategic police plan.
- (9) Subsections (3) to (8), and section 36, apply in relation to a replacement strategic police plan as they applied in relation to the plan being replaced.

### **35 Annual police plans**

- (1) The chief constable must prepare an annual police plan for each yearly period beginning on 1 April.
- (2) An annual police plan is a plan which—
- (a) sets out the proposed arrangements for the policing of Scotland during the yearly period,
  - (b) describes how those arrangements are expected to contribute towards the achievement of the main objectives for the policing of Scotland set out in the strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (c) includes any other information connected with policing which the chief constable considers appropriate.
- (3) When preparing an annual police plan, the chief constable must—
- (a) send a copy of a draft plan to the Authority,
  - (b) invite the Authority to comment on the draft plan within such reasonable period as the chief constable may specify, and
  - (c) have regard to any comments received within that period.
- (4) The chief constable must—
- (a) publish the annual police plan before the start of the yearly period to which it relates in such manner as the chief constable considers appropriate (having regard to the desirability of it being accessible to those whom the chief constable considers likely to have an interest in it), and
  - (b) lay a copy of it before the Scottish Parliament.

### **36 Planning functions: considerations**

- In carrying out their respective functions in relation to the preparation of the strategic police plan and each annual police plan, the Authority and the chief constable must—
- (a) have regard to the policing principles,
  - (b) have regard to, and ensure that the strategic police plan and each annual police plan is not inconsistent with, the strategic police priorities, and
  - (c) ensure that an annual police plan is not inconsistent with the most recently approved strategic police plan.

## CHAPTER 5

### BEST VALUE

#### 37 Best value

- (1) It is the duty of the Authority to make arrangements which secure best value for the Authority (that is, a continuous improvement in the carrying out of the Authority's functions).
- (2) It is the duty of the chief constable to make arrangements which secure best value for the Police Service (that is, a continuous improvement in the carrying out of police functions).
- (3) In securing best value, the Authority and the chief constable must maintain an appropriate balance among—
  - (a) the quality of the carrying out of functions,
  - (b) the cost of carrying out functions,
  - (c) the cost to persons of any service provided for them on a wholly or partly rechargeable basis by the Authority or, as the case may be, under arrangements made by the chief constable.
- (4) In maintaining that balance, the Authority and the chief constable must have regard to—
  - (a) efficiency,
  - (b) effectiveness,
  - (c) economy, and
  - (d) the need to meet the equal opportunity requirements.
- (5) The Authority and the chief constable must carry out their duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the carrying out of functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.
- (7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

#### 38 Best value: further provision

- (1) In carrying out their respective duties under section 37(1) and (2), the Authority and the chief constable must have regard to—
  - (a) any relevant guidance issued by the Scottish Ministers, and
  - (b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of subsection (1) or, as the case may be, (2) of section 37 (or purposes which include those purposes).
- (2) In the event of a conflict in any respect between any matters to which the Authority or the chief constable is to have regard under subsection (1), the Authority or the chief constable must in that respect have regard only to those falling within paragraph (a).
- (3) Before issuing relevant guidance, the Scottish Ministers must consult—



---

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

---

- (a) the Authority,
  - (b) the chief constable, and
  - (c) such other persons as they consider appropriate.
- (4) The Scottish Ministers may vary or revoke relevant guidance.
- (5) In this section “relevant guidance”—
- (a) means guidance on the carrying out of the duties imposed by subsections (1) or (2) of section 37,
  - (b) includes, in particular, guidance on—
    - (i) how to make, and what is to be included in, the arrangements mentioned in those subsections,
    - (ii) how to implement the duties imposed by those subsections.

## CHAPTER 6

### ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

#### **39 The Scottish Police Authority’s annual report**

- (1) The Authority must prepare an annual report as soon as practicable after the end of each reporting year.
- (2) An annual report is a report setting out—
- (a) an assessment of the Authority’s performance during the reporting year in carrying out its functions,
  - (b) an assessment of the Police Service’s performance during the reporting year in the policing of Scotland, and
  - (c) such other information relating to the Authority’s functions, or to policing, as the Authority considers appropriate.
- (3) An annual report must, in particular, contain—
- (a) an assessment of the performance by the Authority and the Police Service during the reporting year in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (b) an assessment of the performance by the Police Service during the reporting year in implementing the proposed arrangements set out in the annual police plan for the period to which the report relates.
- (4) The chief constable must—
- (a) within 3 months of the end of a reporting year, provide the Authority with a report setting out the chief constable’s assessment of the Police Service’s performance during that reporting year in the policing of Scotland, and
  - (b) provide the Authority with such other assistance as it may reasonably require in relation to the preparation of an annual report.
- (5) A report provided by the chief constable under subsection (4)(a) must, in particular, contain the chief constable’s assessment of the Police Service’s performance during the reporting year concerned—

- (a) in achieving, or in working towards achieving, the main objectives for the policing of Scotland set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (b) in implementing the proposed arrangements set out in the annual police plan for the reporting year concerned.
- (6) The Authority must—
- (a) publish each of its annual reports in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it),
  - (b) provide a copy of each of its annual reports to the Scottish Ministers, and
  - (c) lay a copy of each of its annual reports before the Scottish Parliament.
- (7) In this section “reporting year” means a yearly period ending on 31 March.

#### **40 Accounts**

- (1) The Authority must—
- (a) keep proper accounts and proper records in relation to the accounts, and
  - (b) as soon as practicable after the end of each yearly period ending on 31 March, prepare a statement of accounts in respect of that period.
- (2) A statement of accounts so prepared must be in such form and contain such information as the Scottish Ministers may determine.
- (3) Without prejudice to the generality of section 84, the chief constable must—
- (a) provide the Authority with such assistance and information as it may reasonably require for the purposes of subsection (1), and
  - (b) seek to ensure that sufficient information is kept for those purposes.
- (4) In particular, the Authority is entitled to require the chief constable to provide, within such reasonable time as it may specify, accounts of such of the transactions relating to the Police Service as it may specify.

#### **41 Audit**

The Authority must send a copy of each statement of accounts to the Auditor General for auditing.

#### **42 Examination of Police Service by Auditor General**

- (1) The Auditor General may initiate examinations into—
- (a) the economy, efficiency and effectiveness of the Police Service, and
  - (b) the arrangements made by the chief constable under section 37(2).
- (2) In determining whether to initiate an examination, the Auditor General must take into account any proposals made by the Scottish Parliament.
- (3) It is for the Auditor General personally to initiate an examination under this section and to decide who is to carry it out.
- (4) In carrying out the examination that person (“the examiner”)—

---

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

---

- (a) is not entitled to question the merits of the policy objectives of the chief constable or the Police Service, but
  - (b) may consider the appropriateness of any criteria used to assess the use of resources available to the Police Service.
- (5) The examiner (if not the Auditor General) must report the results to the Auditor General, who may report the results to the Scottish Parliament and the Authority.
- (6) The Auditor General may publish the results of an examination.
- (7) Sections 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) apply in relation to an examination under this section as they apply in relation to an examination under section 23 of that Act.

#### **43 Examinations of Scottish Police Authority by Auditor General**

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to the Authority, to include a reference to examinations into the arrangements made by the Authority under section 37(1).

### **CHAPTER 7**

#### **LOCAL POLICING**

#### **44 Local policing**

- (1) The chief constable must ensure that there are adequate arrangements in place for the policing of each local authority area (and any adjacent territorial waters).
- (2) For each local authority area, the chief constable must, after consulting the local authority, designate a constable as local commander.
- (3) A constable may be designated as local commander in relation to more than one local authority area.

#### **45 Local authority role in policing**

- (1) A local commander must involve the local authority in the setting of priorities and objectives for the policing of its area.
- (2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander—
  - (a) its views on any matter concerning or connected to the policing of its area, and
  - (b) any recommendations for the improvement of the policing of its area that it thinks fit.
- (3) A local authority may specify policing measures that it wishes the local commander to include in a local policing plan.
- (4) A local authority may provide feedback by reference to any local police plan in force for the area.
- (5) A local commander must provide to the local authority such—

---

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

---

- (a) reports on the carrying out of police functions in its area (including by reference to any local policing plan in force for the area),
  - (b) statistical information on complaints made about the Police Service in, or the policing of, its area, and
  - (c) other information about the policing of its area,
- as the local authority may reasonably require.
- (6) A local commander may refer a requirement under subsection (5) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—
- (a) the carrying out of any operation by the Police Service, or
  - (b) the prosecution of offenders.
- (7) A requirement referred under subsection (6) has effect only if it is confirmed by the chief constable.

#### **46 Duty to participate in community planning**

- (1) In section 16(1) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning)—
- (a) paragraph (c) is repealed, and
  - (b) in paragraph (e), for “a police force” substitute “the Police Service of Scotland”.
- (2) The chief constable must delegate the carrying out of the chief constable’s functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.
- (3) Subsection (2) does not affect—
- (a) the chief constable’s responsibility for the carrying out of the delegated functions,
  - (b) the chief constable’s ability to carry out the delegated functions.

#### **47 Local police plans**

- (1) As soon as is reasonably practicable after the first strategic police plan is approved under section 34, a local commander must prepare and submit a local police plan to the relevant local authority for approval.
- (2) A local police plan is a plan which—
- (a) sets out the main priorities and objectives for the policing of the local authority’s area,
  - (b) explains the reasons for selecting each of those priorities and objectives,
  - (c) sets out the proposed arrangements for the policing of the local authority’s area (and how those arrangements are expected to achieve the main priorities and objectives),
  - (d) where reasonably practicable, identifies outcomes by reference to which the achievement of those priorities and objectives may be measured,
  - (e) describes how those priorities, objectives and arrangements are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning, and

---

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

---

- (f) includes any other information connected with the policing of the local authority's area which the local commander considers relevant.
- (3) In preparing a local police plan, the local commander must—
  - (a) have regard to the most recently approved strategic police plan, and
  - (b) consult—
    - (i) the joint central committee of the Police Federation for Scotland,
    - (ii) such persons as appear to the local commander to be representative of senior officers,
    - (iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),
    - (iv) such persons as appear to the local commander to be representative of police staff, and
    - (v) such other persons as the local commander considers appropriate.
- (4) If the local authority approves a local police plan submitted to it, the local commander must publish it in such form and manner as the Authority may specify.
- (5) The local commander must review the local police plan if—
  - (a) a new strategic police plan is approved under section 34, or
  - (b) the plan is not replaced under subsection (6) or modified under subsection (9) during the period of 3 years beginning with the date of publication of the plan.
- (6) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.
- (7) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.
- (8) Subsections (3) to (5) apply in relation to a replacement local police plan as they apply in relation to the plan being replaced.
- (9) The local commander and the local authority may agree to modify an approved local police plan at any time.
- (10) Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.
- (11) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

## CHAPTER 8

### GOVERNANCE AND ADMINISTRATION OF POLICE

#### **48 Governance and administration of police**

The Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets.

#### **49 Appointments, promotions etc.**

- (1) Regulations made under section 48 may in particular make provision relating to—

---

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

---

- (a) eligibility for appointment as constable or police cadet or for appointment or promotion to a particular rank,
  - (b) the procedure for appointment of senior officers or for the appointment or promotion of other constables,
  - (c) periods of service on probation,
  - (d) the efficiency or effectiveness of constables or police cadets,
  - (e) restrictions on the private life or business interests of constables or police cadets,
  - (f) resignation or retirement of constables.
- (2) Such regulations—
- (a) may provide for appointments of senior officers to be for fixed terms, but
  - (b) must not provide for fixed term appointment to any rank below that of assistant chief constable.

## **50 Conditions of service**

- (1) Regulations made under section 48 as to conditions of service may in particular make provision about—
- (a) pay, allowances and expenses,
  - (b) public holidays and leave,
  - (c) the issue, use and return of police clothing and equipment.
- (2) In relation to special constables, such regulations must not entitle them to pay but may make provision entitling them to receive periodic payments in acknowledgment of the giving of services (including provision about the minimum aggregate length of service needed within a period in order to give rise to an entitlement to receive a periodic payment in respect of that period).
- (3) Regulations made under section 48—
- (a) may make retrospective provision about pay or allowances, but
  - (b) must not retrospectively reduce any pay or allowance payable to or in respect of any person.

## **51 Regulations: duties**

- (1) Regulations made under section 48 may make provision relating to duties of constables or police cadets.
- (2) Such regulations may in particular make provision about—
- (a) duties which are or are not to be performed,
  - (b) hours of duty,
  - (c) the treatment as occasions of police duty of attendance at meetings of the Police Federations and any other body recognised for the purposes of section 64 of the [Police Act 1996 \(c.16\)](#) as representing members of police forces.

## **52 Disciplinary procedures: conduct and performance**

- (1) Regulations made under section 48 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.
- (2) Such regulations may make provision—
  - (a) setting out—
    - (i) standards of behaviour which, if breached, may be treated as misconduct,
    - (ii) standards of performance which, if breached, may be treated as being unsatisfactory performance,
    - (iii) other circumstances in which a constable's behaviour may be treated as misconduct or in which a constable's performance may be treated as unsatisfactory (for example, where performance is inefficient or where there has been a failure to perform functions),
  - (b) for circumstances in which a constable may be suspended from duty pending investigation into whether the constable has been engaged in misconduct,
  - (c) subject to subsection (3), for a constable who is found to have been engaged in misconduct or whose performance is found to have been unsatisfactory to be dealt with by being—
    - (i) dismissed (with or without notice),
    - (ii) demoted in rank,
    - (iii) warned that future misconduct or unsatisfactory performance may lead to further disciplinary action,
    - (iv) admonished, or
    - (v) dealt with in any other way,
  - (d) conferring functions on the Police Investigations and Review Commissioner in relation to investigations of whether a constable has been engaged in misconduct,
  - (e) applying the procedures (with or without modifications) in relation to a constable engaged on temporary service outwith the Police Service (see section 15).
- (3) Such regulations must provide for the Authority to determine any case which relates to the standard of behaviour or performance of a senior officer.
- (4) A constable suspended by virtue of regulations made under section 48 is not entitled to carry out any functions as a constable unless the regulations otherwise specify.

## **53 Personal records**

Regulations made under section 48 may make provision relating to—

- (a) the keeping of personal records about constables and police cadets,
- (b) the taking of fingerprints and samples from constables and police cadets and the retention, use and destruction of such fingerprints and samples or of information derived from such samples.

**54 Consultation on regulations**

- (1) Before making regulations under section 48 about any matter mentioned in section 61(1) of the Police Act 1996 (c.16) (other than pensions), the Scottish Ministers must—
  - (a) share a draft of the regulations with the Police Negotiating Board for the United Kingdom, and
  - (b) consider any representations made.
- (2) Before making any other regulations under section 48, the Scottish Ministers must—
  - (a) consult and share a draft of the regulations with—
    - (i) the chief constable,
    - (ii) the Authority,
    - (iii) the joint central committee of the Police Federation for Scotland,
    - (iv) such persons as appear to them to be representative of senior officers,
    - (v) such persons as appear to them to be representative of superintendents (including chief superintendents), and
    - (vi) such other persons as they consider appropriate, and
  - (b) consider any representations made.

**55 Regulations: supplementary**

- (1) Regulations made under section 48 may—
  - (a) make provision for the delegation of functions to—
    - (i) the Scottish Ministers,
    - (ii) the Authority,
    - (iii) the chief constable,
    - (iv) a local commander,
    - (v) the Police Investigations and Review Commissioner, or
    - (vi) any other person,
  - (b) authorise or require the delegation of functions by any person.
- (2) In the absence of express contrary intention, nothing in this Part affects the generality of the power conferred by section 48.

**CHAPTER 9**

## POLICE APPEALS TRIBUNALS

**56 Right to appeal to police appeals tribunal**

- (1) A constable may appeal to a police appeals tribunal against any decision to dismiss the constable, or to demote the constable in rank, taken in pursuance of regulations made under section 48.
- (2) An appeal is competent only if the constable has exhausted any available process of review or appeal provided for in such regulations.
- (3) Schedule 3 makes provision about police appeals tribunals, the rules relating to appeals, and other relevant matters.



## **57 Representation**

- (1) Before determining an appeal, a police appeals tribunal must—
  - (a) give both the appellant and the respondent a chance to make representations (whether by way of written submissions or oral hearing), and
  - (b) consider such representations.
- (2) Either party may require that the representations are to be made by way of oral hearing.
- (3) Where an oral hearing is to be held, the parties may elect to be represented (including by a legally qualified person).

## **58 Determinations by tribunal**

- (1) A police appeals tribunal may determine an appeal by—
  - (a) confirming the decision being appealed, or
  - (b) replacing that decision with any less severe decision which could have been made by the person who made it.
- (2) Where the determination replaces the decision appealed against, it takes effect from the date of the decision which resulted in the dismissal or demotion in rank of the appellant.
- (3) Subsection (4) applies where a determination made by a police appeals tribunal reinstates the appellant—
  - (a) as a constable,
  - (b) in—
    - (i) the rank previously held by the appellant, or
    - (ii) a different rank.
- (4) The appellant is to be deemed, for the purposes of reckoning service for pension and to such extent (if any) as may be determined by the tribunal for the purposes of pay, to have served as a constable, or in the reinstated or different rank, continuously from the date of the decision which resulted in the dismissal or demotion in rank of the appellant to the date of the tribunal's determination.
- (5) In determining an appeal, the tribunal may deal with such other matters relating to the appellant's reinstatement or period of service as the tribunal thinks fit including, in particular, any periods where the appellant was suspended in consequence of the proceedings which led to the appellant's dismissal.

## **59 Powers to obtain information**

- (1) The person appointed to chair a police appeals tribunal (the chairing member) may require the appellant, respondent or any other person—
  - (a) to attend a hearing of the tribunal, at such time and such place as the chairing member may specify, for the purposes of giving evidence,
  - (b) to give to the tribunal, by such day as the chairing member may specify, such documents or information as the tribunal may reasonably require.
- (2) Subsection (1) does not authorise the chairing member or the tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose in civil proceedings in the Court of Session.

- (3) It is an offence for any person on whom a requirement under subsection (1) is served to—
- (a) fail to attend a hearing of the tribunal as required by the citation,
  - (b) refuse or fail, while attending such a hearing as so required, to answer any question,
  - (c) refuse or fail to give the tribunal any document or information so required,
  - (d) knowingly or recklessly make any statement in respect of any information so required which is false or misleading in a material respect, or
  - (e) deliberately alter, suppress, conceal or destroy any document so required.
- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) It is a defence for a person charged with an offence under subsection (3)(a), (b) or (c) to show that the person had a reasonable excuse for the refusal or failure.

## CHAPTER 10

### COMPLAINTS AND INVESTIGATIONS

#### 60 **Complaints handling**

- (1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.
- (2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.
- (3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.
- (4) Without prejudice to the generality of section 84 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).
- (5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).
- (6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

#### 61 **The Police Investigations and Review Commissioner**

- (1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.
- (2) Accordingly—
  - (a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute—

---

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

---

- “*The Police Investigations and Review Commissioner*”,
- (b) for the title of that section substitute “**The Police Investigations and Review Commissioner**”,
  - (c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “Police Investigations and Review Commissioner”.
- (3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

## **62 General functions of the Police Investigations and Review Commissioner**

After section 33 of the 2006 Act, insert—

### **“33A General functions of the Commissioner**

The Commissioner’s general functions are—

- (a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—
  - (i) the handling of relevant complaints; and
  - (ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;
- (b) where directed to do so by the appropriate prosecutor—
  - (i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;
  - (ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);
- (c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and
- (d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).”.

## **63 Investigations under supervision of Lord Advocate or procurator fiscal**

After section 41 of the 2006 Act, insert—

*“Investigations***41A Investigations under supervision of Lord Advocate or procurator fiscal**

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A, must comply with—

- (a) any lawful instruction given by the appropriate prosecutor who issued the direction; and
- (b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

**64 Serious incidents involving the police**

After section 41A of the 2006 Act (inserted by section 63), insert—

**“41B Serious incidents involving the police**

- (1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is—
  - (a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—
    - (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person’s duties; and
    - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
  - (b) any other circumstance in or in consequence of which—
    - (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or
    - (ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or
  - (c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.
- (2) But a matter is not a “serious incident involving the police” if it is—
  - (a) a matter—
    - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
    - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or
  - (b) a matter which is being, or has been, investigated—
    - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or

---

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

---

- (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

## **65 Investigations of other matters in the public interest**

After section 41B of the 2006 Act (inserted by section 64), insert—

### **“41C Investigation of matters in the public interest**

- (1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.
- (2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—
  - (a) a matter—
    - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
    - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;
  - (b) a matter which is being, or has been, investigated—
    - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
    - (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14); or
  - (c) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A.”.

## **66 Investigations: procedure etc.**

After section 41C of the 2006 Act (inserted by section 65), insert—

### **“41D Investigations: procedure etc.**

- (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A as they consider appropriate.
- (2) Regulations may, in particular, make provision—
  - (a) requiring the chief constable or the Authority to refer matters to the Commissioner;
  - (b) about circumstances in which the Commissioner—
    - (i) must, must not or need not carry out an investigation; or
    - (ii) may discontinue an investigation;
  - (c) about the form and procedure of an investigation;
  - (d) imposing restrictions on the extent of any investigation;
  - (e) setting time limits within which matters must be investigated;
  - (f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);

---

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

---

(g) for the delegation of functions to the Commissioner.

(3) Before making regulations under this section, the Scottish Ministers must consult—

- (a) the Commissioner;
- (b) the Authority;
- (c) the chief constable;
- (d) such persons as appear to them to be representatives of senior officers;
- (e) such persons as appear to them to be representatives of superintendents (including chief superintendents);
- (f) the joint central committee of the Police Federation for Scotland; and
- (g) such other persons as they think appropriate.”.

## 67 Reports on investigations

After section 41D of the 2006 Act (inserted by section 66), insert—

### “41E Reports on investigations

- (1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A.
- (2) The Commissioner must—
  - (a) provide a copy of a report prepared under subsection (1) to—
    - (i) the person (if any) who requested the investigation;
    - (ii) the Authority; and
    - (iii) any other person whom the Commissioner considers appropriate; and
  - (b) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.
- (3) Apart from identifying the Authority or the Police Service, a report must not—
  - (a) mention the name of any person; or
  - (b) contain any particulars which, in the Commissioner’s opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
 unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

## 68 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 67), insert—

### “41F Investigations: obstruction and contempt

- (1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—
  - (a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or

---

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

---

in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A; or

- (b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.

- (2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.

## **69 Complaints against the Commissioner**

Before section 43 of the 2006 Act insert—

### **“42A Complaints against the Commissioner**

- (1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner’s staff.
- (2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.

## **70 Protection from actions for defamation**

After section 46 of the 2006 Act, insert—

### **“46A Protection from actions for defamation**

- (1) For the purposes of the law of defamation—
  - (a) any statement made by the Commissioner or any of the Commissioner’s staff—
    - (i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A;
    - (ii) in communicating with any person for the purposes of such a review or investigation;
    - (iii) in a report on such a review or investigation; or
    - (iv) in a report made under section 43,has absolute privilege;
  - (b) any statement made to the Commissioner or any of the Commissioner’s staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A has absolute privilege; and
  - (c) any statement made to the Commissioner or any of the Commissioner’s staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”.

## CHAPTER 11

### HER MAJESTY’S INSPECTORS OF CONSTABULARY IN SCOTLAND

#### **71 Her Majesty’s inspectors of constabulary in Scotland**

- (1) There are to continue to be inspectors of constabulary in Scotland.
- (2) Her Majesty may by Order in Council appoint such number of inspectors of constabulary as the Scottish Ministers may determine.
- (3) The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary.
- (4) An inspector of constabulary is to hold and vacate office at Her Majesty’s pleasure.
- (5) An inspector of constabulary is otherwise—
  - (a) to be paid such remuneration or allowances as the Scottish Ministers may determine, and
  - (b) to hold office in accordance with such other terms and conditions as may be so determined.

#### **72 Assistant inspectors of constabulary**

- (1) The Scottish Ministers may—
  - (a) appoint assistant inspectors of constabulary on such terms and conditions as they may determine, or
  - (b) make arrangements for constables to serve as assistant inspectors of constabulary.
- (2) A constable engaged on service as an assistant inspector of constabulary is under the direction and control of the inspectors of constabulary.
- (3) The Scottish Ministers are liable in respect of any unlawful conduct on the part of any constable engaged on service as an assistant inspector of constabulary in the carrying out (or purported carrying out) of that constable’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.

#### **73 Staff officers**

- (1) The inspectors of constabulary may—
  - (a) appoint staff officers, on such terms and conditions as they may determine, for the purpose of assisting them in the carrying out of their functions, or
  - (b) make arrangements for constables to serve as staff officers for that purpose.
- (2) A constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary.
- (3) The inspectors of constabulary are liable in respect of any unlawful conduct on the part of any constable engaged on service as a staff officer in the carrying out (or purported carrying out) of that constable’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.



#### **74 Functions of inspectors**

- (1) The Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the Authority or the Police Service as they consider appropriate.
- (2) The inspectors of constabulary may make such other inquiries as they think fit about—
  - (a) the state, efficiency and effectiveness of the Authority and the Police Service, and
  - (b) the arrangements made by the Authority and the chief constable under section 37(1) and (2).

#### **75 HMICS plan**

- (1) The inspectors of constabulary must prepare a plan setting out—
  - (a) priorities for inquiries to be carried out by them, and
  - (b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.
- (2) The inspectors of constabulary—
  - (a) must keep the plan under review, and
  - (b) may from time to time revise the plan.
- (3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.
- (4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

#### **76 HMICS powers**

- (1) The inspectors of constabulary have power to do anything which they consider necessary or expedient for the purposes of, or in connection with, the carrying out of their functions.
- (2) The inspectors of constabulary may authorise any assistant inspector of constabulary, or any of their staff officers, to carry out on behalf of the inspectors of constabulary such of their functions as they may determine to the extent so authorised.
- (3) Subsection (2) does not affect the inspectors of constabulary’s—
  - (a) responsibility for carrying out delegated functions, or
  - (b) ability to carry out delegated functions.

#### **77 Duty to assist and co-operate with HMICS**

The Authority and the chief constable must provide the inspectors of constabulary with such assistance and co-operation as they may require for the purposes of, or in connection with, the carrying out of their functions (and must, in particular, comply with any reasonable request made by the inspectors of constabulary in that regard).

**78 HMICS reports: inquiries directed by Scottish Ministers**

- (1) The inspectors of constabulary must give the Scottish Ministers—
  - (a) a report of any inquiry carried out in pursuance of section 74(1) and any other information in relation to the report that the inspectors of constabulary think fit, and
  - (b) any other information relating to the inquiry that the Scottish Ministers may request.
- (2) As soon as is reasonably practicable after giving the report to the Scottish Ministers, the inspectors of constabulary must—
  - (a) give a copy of the report to the Authority and, where the report relates to the Police Service, to the chief constable, and
  - (b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of a report given to them under this section.

**79 HMICS reports: other inquiries**

- (1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.
- (2) The inspectors of constabulary must—
  - (a) as soon as is reasonably practicable after giving the report under subsection (1) —
    - (i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and
    - (ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and
  - (b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.
- (3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.

**80 Inquiry reports: consideration and action**

In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 78 or 79 and, having done so, must take such measures (if any) as they think fit in relation to the report.

**81 Power to give directions after adverse HMICS report**

- (1) This subsection applies where a report given by the inspectors of constabulary under section 78 or 79 states that the inspectors of constabulary are of the opinion—

---

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

---

- (a) that the Authority or Police Service—
    - (i) is not efficient or effective, or
    - (ii) will, unless remedial measures are taken, cease to be efficient or effective, or
  - (b) that best value for the Authority or the Police Service—
    - (i) has not been secured in pursuance of subsection (1) or, as the case may be, (2) of section 37, or
    - (ii) will not, unless remedial measures are taken, be so secured.
- (2) Where subsection (1) applies, the Scottish Ministers may direct the Authority to take such measures as may be specified in the direction.
- (3) The Authority must comply with any direction given under this section.

## **82 HMICS annual report**

- (1) As soon as is practicable after the end of each yearly period ending on 31 March, the inspectors of constabulary must prepare an annual report on the carrying out of their functions during that period.
- (2) The inspectors of constabulary must—
  - (a) give a copy of each of their annual reports to the Scottish Ministers, the Authority and the chief constable, and
  - (b) publish each of their annual reports in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report given to them under this section.

## **CHAPTER 12**

### **CO-OPERATION, EXCHANGE OF INFORMATION ETC.**

## **83 Co-operation between Scottish Police Authority and Police Service**

- (1) The Authority and the chief constable may make arrangements under which—
  - (a) the Authority is to provide assistance to the Police Service, or
  - (b) the Police Service is to provide assistance to the Authority.
- (2) Such assistance may involve—
  - (a) members of the Authority’s staff providing services for the Police Service, or
  - (b) constables or police staff providing services for the Authority.

## **84 Police information**

- (1) The Authority must provide the Scottish Ministers with such reports, statistics or other information relating to the Authority or the Police Service as they may reasonably require.
- (2) Such information may, in particular, relate to—

---

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

---

- (a) the Authority or its functions,
  - (b) the Police Service or police functions,
  - (c) the state of crime.
- (3) The chief constable must provide the Authority with such reports, statistics or other information relating to the Police Service, police functions or the state of crime as it may reasonably require.
- (4) The chief constable may refer a requirement made under subsection (3) to the Scottish Ministers if the chief constable considers that complying with the requirement would or might prejudice—
- (a) the carrying out of any operation by the Police Service, or
  - (b) the prosecution of offenders.
- (5) A requirement referred under subsection (4) has effect only if it is confirmed by the Scottish Ministers.
- (6) The chief constable must provide the Lord Justice General or a sheriff principal with such reports relating to policing as may be reasonably required.
- (7) A requirement by the sheriff principal may relate only to the policing of places in which the sheriff principal has jurisdiction.
- (8) The chief constable must seek to ensure that sufficient information about the state of crime is kept to enable the compliance with any requirement made under this section for the provision of information in that regard.
- (9) The clerk of any court having criminal jurisdiction must comply with any requirement made by the chief constable to provide any information available to the clerk which the chief constable may require for the purposes of subsection (8).
- (10) Nothing in this section requires anyone to provide any report, statistic or other information before the earliest time at which it is reasonable for that person to do so.

## **85 Scrutiny and investigations: co-operation and information sharing**

- (1) The inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner must—
- (a) co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service, and
  - (b) in particular, must together make arrangements with a view to—
    - (i) securing the exchange of information between them about the Authority and the Police Service, and
    - (ii) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service.
- (2) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay any of the persons to whom it applies in taking any action which the person considers to be necessary as a matter of urgency.
- (3) In complying with the duty in subsection (1), the inspectors of constabulary and the Police Investigations and Review Commissioner must—

---

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

---

- (a) comply with any direction (general or specific) given by the Scottish Ministers, and
  - (b) have regard to any guidance given by the Scottish Ministers.
- (4) A direction or guidance may relate to all the functions of the inspectors of constabulary and the Police Investigations and Review Commissioner or to such of those functions (or to such functions of any or all of them) as are specified in the direction or guidance.
- (5) The Scottish Ministers may vary or revoke any direction or guidance.

## CHAPTER 13

### PROVISION OF GOODS AND SERVICES

#### **86 Provision of police services**

- (1) The Authority may authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services.
- (2) An authorisation under subsection (1) may be of a general or specific nature and may, in particular, set out a scale by reference to which charges for police services are to be made.
- (3) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the police services concerned.
- (4) The Authority, when making such an authorisation, must comply with any code about charging for police services issued by the Scottish Ministers.
- (5) Any such code—
  - (a) may be of a general or specific nature,
  - (b) may be varied or revoked at any time.
- (6) The chief constable must ensure that all sums received by way of charges for police services are paid to the Authority.
- (7) Nothing in this section permits the making of any charge for police services which exceeds the cost of providing those services.
- (8) Except in so far as authorised or required by any other enactment or rule of law, the chief constable may not make charges in respect of the carrying out of police functions otherwise than in accordance with an authorisation under subsection (1).
- (9) In this Part, “police services” means services in connection with the maintenance of order, or the protection of persons or property from harm, which are provided on or in relation to land owned or occupied by the person who requests those services.

#### **87 Provision of other goods and services**

- (1) The Authority may—
  - (a) provide goods and services to any other public body or office-holder,
  - (b) provide goods and services of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.

---

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

---

- (2) Goods and services may be provided in pursuance of subsection (1) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of its functions.
- (3) The Authority may, with the consent of the chief constable, make arrangements for the Police Service—
  - (a) to provide goods and services (other than police services) to any other public body or office-holder,
  - (b) to provide goods and services (other than police services) of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.
- (4) Goods and services may be provided in pursuance of subsection (3) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of police functions.
- (5) The Authority may make charges in respect of any goods or services provided by it, or by the Police Service, in pursuance of subsection (1) or (3).
- (6) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the goods or services concerned.
- (7) Nothing in this section permits the Authority to make any charge for forensic services it is required to provide in pursuance of section 31.
- (8) Goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) include—
  - (a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),
  - (b) services involving the inspection, testing, maintenance or repair of vehicles,
  - (c) any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority's functions or, as the case may be, police functions.

## CHAPTER 14

### GRANTS

#### **88 Police grants**

- (1) The Scottish Ministers may make grants to the Authority of such amounts as they determine.
- (2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

#### **89 Grants to other persons**

- (1) The Scottish Ministers may make grants of such amounts as they determine, or provide such other financial assistance as they think appropriate, to such persons as they think

fit for the purposes of providing services to, or otherwise assisting or supporting, the Authority or the Police Service in the carrying out of the Authority's functions or, as the case may be, police functions.

- (2) Grants may be made or financial assistance provided under this section only where the Scottish Ministers consider it is necessary or expedient to do so for promoting the efficiency or effectiveness of, or securing best value for, the Authority or the Police Service.
- (3) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).
- (4) Any financial assistance provided is subject to any conditions specified by the Scottish Ministers.

## CHAPTER 15

### OFFENCES

#### 90 Assaulting or impeding police

- (1) It is an offence for a person to assault—
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
- (2) It is an offence for a person to resist, obstruct or hinder—
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
- (3) The capacities are—
  - (a) that of a constable,
  - (b) that of a member of police staff,
  - (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.
- (4) A person who is guilty of an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (5) A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (1) and an offence under subsection (2).
- (6) Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.
- (7) In this section and section 91, a reference to a member of a relevant police force is a reference to a member of—

---

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

---

- (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, or
- (d) the Police Service of Northern Ireland.

## **91      Escape from custody**

- (1) It is an offence for a person—
  - (a) to remove a person from custody, or
  - (b) to assist the escape of a person in custody.
- (2) The reference in subsection (1) to a person in custody is to be construed as a reference to a person—
  - (a) who is in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (3) or a person assisting A while A is acting in such capacity, or
  - (b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested.
- (3) 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.
- (4) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

## **92      Impersonation etc.**

- (1) It is an offence for a person (not being a constable)—
  - (a) to impersonate a constable with an intent to deceive, or
  - (b) to do anything calculated to suggest that the person is a constable.
- (2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.
- (3) It is a defence for a person charged under subsection(2) to prove that the article—
  - (a) was obtained lawfully, and
  - (b) is in the person’s possession for a lawful purpose.
- (4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.



- (5) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 4 on the standard scale.
- (6) In this section an “article of police uniform” means—
- (a) any article of uniform or any distinctive badge or mark usually issued to constables, or
  - (b) any article having the appearance of such article, badge or mark.

## 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
  - (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.

---

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

---

- (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.
- (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

---

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

---

- (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,
  - (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.

## CHAPTER 17

### MISCELLANEOUS AND GENERAL

#### 97 Dissolution of the Police Advisory Board for Scotland

- (1) The Police Advisory Board for Scotland is dissolved.
- (2) In section 63 of the Police Act 1996 (c.16) (Police Advisory Boards for England and Wales and for Scotland)—
  - (a) in subsection (1)—
    - (i) repeal “and a Police Advisory Board for Scotland”, and
    - (ii) repeal “in those countries respectively”,
  - (b) repeal subsection (1ZA), and
  - (c) in subsection (2), for “each of the Police Advisory Boards” substitute “the Police Advisory Board for England and Wales”.

#### 98 Transitional and transitory provision

- (1) A person mentioned in subsection (3) must provide the Authority with such information and assistance as the Authority may reasonably require.
- (2) A person mentioned in subsection (3) must provide the chief constable with such information and assistance as the chief constable may reasonably require.
- (3) Those persons are—
  - (a) a police authority within the meaning of the Police (Scotland) Act 1967 (c.77) (“the 1967 Act”),
  - (b) a joint police board constituted by an amalgamation scheme made under the 1967 Act,
  - (c) a chief constable of a police force maintained under the 1967 Act,
  - (d) the Scottish Police Services Authority.
- (4) Schedule 4 makes provision about the period before the Police Service is established.
- (5) Schedule 5 contains provision about the transfer of constables, inspectors of constabulary, police cadets, staff, property, rights, liabilities and obligations.

#### 99 Interpretation of Part 1

- (1) In this Part, unless the context otherwise requires—
  - “the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),
  - “annual police plan” has the meaning given by section 35,
  - “appropriate prosecutor” means the Lord Advocate or procurator fiscal,
  - “assistant chief constable” means a constable appointed to the office of assistant chief constable under section 7(1)(c),
  - “Auditor General” means the Auditor General for Scotland,
  - “Authority” means the Scottish Police Authority,
  - “chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),

---

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

---

“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—

- (a) the chief constable,
- (b) other senior officers,
- (c) any special constable,
- (d) any constable on temporary service outwith the Police Service, and
- (e) any individual engaged on temporary service as a constable of the Police Service under arrangements made under section 16,

“deputy chief constable” means a constable appointed to the office of deputy chief constable under section 7(1)(b),

“inspectors of constabulary” means Her Majesty’s inspectors of constabulary appointed under section 71,

“international joint investigation team” means any investigation team formed in accordance with—

- (a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union,
- (b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with Article 34 of the Treaty on European Union,
- (c) the Convention implementing the Schengen Agreement of 14 June 1985,
- (d) the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, or
- (e) any international agreement to which the United Kingdom is a party and which is specified for the purposes of (as the case may be) section 24, 90, 91 or 96 in an order made by the Scottish Ministers,

“joint central committee of the Police Federation for Scotland” means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee,

“local commander” means a constable designated under section 44(2),

“local police plan” has the meaning given by section 47,

“member of the Authority’s staff” means an individual appointed under paragraph 6(1) of schedule 1,

“police appeals tribunal” means a tribunal constituted in accordance with schedule 3,

“police cadet” means an individual appointed under section 25,

“police custody and security officer” means an individual certified under section 28(1),

“police functions” means the functions of constables (including the chief constable’s functions and any functions of a deputy chief constable, an assistant chief constable or a local commander),

“policing” means the carrying out of police functions (and references to the policing of Scotland are references to the carrying out of police functions in or as regards Scotland),

“the Police Investigations and Review Commissioner” means the Commissioner established by section 33 of the 2006 Act and renamed by section 61,

“Police Service” means the Police Service of Scotland,

---

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

---

“police services” has the meaning given by section 86(9),  
“police staff” means staff appointed under section 26(1) (and “member of the police staff” is to be construed accordingly),  
“senior officer” means a constable who holds the office of chief constable, deputy chief constable or assistant chief constable,  
“strategic police plan” has the meaning given by section 34,  
“strategic police priorities” has the meaning given by section 33,  
“terms and conditions” includes terms and conditions about payment of remuneration or allowances or about reimbursement of expenses.

- (2) In this Part, references to securing best value are to be construed in accordance with section 37.

## **100 Crown application**

- (1) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.
- (4) The power conferred by section 4(2)(d) does not apply in relation to Crown land.
- (5) In this section, “Crown land” means land held or used by or on behalf of the Crown (and includes an interest belonging to Her Majesty in right of Her private estates).