

POLICING AND CRIME ACT 2009

EXPLANATORY NOTES

TERRITORIAL EXTENT AND APPLICATION

Part 1 – Police Reform

Public accountability

Section 1 Duty of police authorities in relation to public accountability

26. [Section 1\(1\)](#) inserts into the Police Act 1996 a requirement for police authorities, when discharging any of their functions, to have regard to the views of the public in their area concerning policing. This duty complements the duty of police authorities, under section 96 of the Police Act 1996, to obtain the views of the public concerning policing.
27. The functions of a police authority, under section 6 of the Police Act 1996 and the [Police Authorities \(Particular Functions and Transitional Provisions\) Order 2008 \(S.I. 2008/82\)](#) are as follows: securing the maintenance of an efficient and effective police force; holding to account chief officers for the exercise of their functions; monitoring the performance of their force in complying with the Human Rights Act 1998 and in carrying out the local policing plan; securing that arrangements are made for their force to co-operate with other forces in the interests of efficiency or effectiveness; and promoting equality and diversity in their force. This section requires police authorities to have regard to the views of the public in the execution of all these functions.
28. [Section 1\(2\)](#) has the effect that Her Majesty’s Inspectorate of Constabulary has a power to carry out an inspection of, and report to the Secretary of State on, the new requirement imposed on police authorities by section 1(1). This power sits alongside their power to inspect and report on a police authority’s performance of its functions.

Appointments of senior officers

Section 2 Police Senior Appointments Panel

29. [Section 2](#) inserts new sections 53B, 53C and 53D into the Police Act 1996. New section 53B establishes a statutory Police Senior Appointments Panel (the Panel). (Previously, there was a senior appointments panel which existed on a non-statutory basis with the primary role of advising the Secretary of State about the appointment of senior officers.)
30. The Panel will be constituted in accordance with arrangements made by the Secretary of State. Under these arrangements, the Panel will consist of a chair and members appointed by the Secretary of State as well as representative members nominated by the Secretary of State, the Association of Police Authorities and the Association of Chief Police Officers. These arrangements also include provisions about the proceedings of the Panel and the issuing of annual (or other) reports.
31. The Secretary of State may make staff available to the Panel, pay fees to the independent members appointed by the Secretary of State and defray expenses incurred by the Panel.

*These notes refer to the Policing and Crime Act 2009
(c.26) which received Royal Assent on 12 November 2009*

32. New section 53C sets out the functions of the Panel. The Panel will advise the Secretary of State on any matter on which it is consulted by the Secretary of State in connection with senior officer appointments, on consents to deputy chief constables and assistant chief constables fulfilling the role of the chief constable for a period exceeding three months, and on consents for the second most senior officer in the City of London police to act as Commissioner for a particular period.
33. The Panel will advise the Secretary of State and police authorities about matters relating to succession planning. New section 53C(2) gives the Panel the function of advising about ways to increase the pool of potential candidates for senior officer appointments, and the training and development needs of such potential candidates.
34. The Secretary of State may refer a report made by Her Majesty's Inspectors of Constabulary to the Panel, and following such a referral the panel will provide advice to the Secretary of State and police authorities on any matters it thinks appropriate in connection with the training and development needs of senior officers, and other matters relating to senior officers.
35. Under new section 53D, the Secretary of State has the power to confer additional functions on the Panel by order. Such an order may, in particular, confer advisory or other functions on the Panel in connection with the appointment of senior officers. Before making an order the Secretary of State must consult the Panel.
36. Subsection (2) amends section 54 of the Police Act 1996 by omitting subsection (3A). This omission removes the ability of the Secretary of State to delegate certain functions relating to senior officer appointments to the Chief Inspector of Constabulary.
37. Subsection (3) amends the Race Relations Act 1976 so that the Panel is listed in Schedule 1A to that Act as subject to the general statutory duty. Therefore, in exercising its functions, the Panel must have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between persons of different racial groups.
38. Subsection (4) amends the Freedom of Information Act 2000, so that the Panel is listed in Schedule 1 to that Act. The Panel will therefore be a "public authority" for the purposes of that Act.

Section 3 Regulations about senior officers

39. **Section 3** enables regulations under section 50 of the Police Act 1996 to make provision for payments to be made to senior officers who cease to serve before the end of their fixed term appointment. It also enables such regulations to make provision with respect to steps to be taken in connection with the appointment of senior officers, for example by enabling the establishment of co-ordinated recruitment rounds for such officers.

Section 4 Metropolitan police force appointments

40. Previously, appointments to the ranks of Assistant Commissioner, Deputy Assistant Commissioner and Commander in the Metropolitan police were made by the police authority and the Commissioner had no role in these appointments. Section 4 amends the relevant provisions of the Police Act 1996 to give the Commissioner a formal role in these appointments which mirrors that of the Chief Constable in the appointment of Deputy Chief Constable and Assistant Chief Constable in forces outside London. Before making such an appointment, the police authority will be required to consult the Commissioner.

Police co-operation

Section 5 Police collaboration

41. **Section 5** replaces section 23 of the Police Act 1996 with 10 new sections that provide for the creation of agreements between police forces and between police authorities to collaborate. The new sections 23 to 23I confer power on chief officers and police authorities in England and Wales to enter into collaboration arrangements.
42. New section 23 allows agreements to be made between chief officers of police forces to carry out their functions through collaboration in the interests of the efficiency or effectiveness of policing, where prior approval has been given by the police authorities of the forces involved. Subsection (2) allows for a range of types of agreement about the delivery of policing services (for example, operational policing services) by one or more police forces to one or more police forces. Subsection (3) allows for provisions about certain police staff to be included in agreements and subsection (4) allows for agreements to include arrangements for the transfer of direction and control of police officers or police staff.
43. New section 23A allows collaboration agreements to be made between police authorities in the interests of the efficiency or effectiveness of policing, following consultation with the chief officers of their forces. Police authority collaboration agreements can include arrangements for one or more police authorities to provide support (examples of which are listed in subsection (3)) to one or more police authorities or police forces. Subsection (4) specifies that provisions concerning the discharge of functions of employees under the direction and control of a chief officer may be included in police authority agreements with the approval of that chief officer.
44. New section 23B allows collaboration agreements between police forces or between police authorities to include provisions about payments, which may, for example, include payments in relation to costs for support provided and any arrangements for liabilities or indemnities.
45. New section 23C provides that plans for collaboration agreements involving seven or more forces or authorities must first involve consultation with the Secretary of State; that agreements must be in writing; that they may include provisions which account for different cases or circumstances (for example, an agreement might specify that the transfer of direction and control may be dependent on the geographical location of particular operations); that new agreements may vary existing agreements; and that agreements may be terminated by an agreement between the parties to them.
46. New section 23D specifies that police authorities must establish accountability arrangements for collaborations involving their own police force, including consideration of co-operative arrangements (for example joint committees) with another authority whose force is involved in the collaboration. Subsection (2) stipulates that the police authorities should notify their chief officers of the proposed accountability arrangements.
47. New section 23E provides that the parties to a collaboration agreement must publish the agreement in full or else publish the fact that the agreement has been made and such details as they think appropriate. It also provides that chief officers must publish the accountability arrangements that will apply to police force collaborations.
48. New section 23F provides that the Secretary of State may issue guidance about collaboration agreements or related matters. This is expected to include guidance on best practice in accountability and governance structures in collaborations of different kinds.
49. New section 23G outlines the types of direction which the Secretary of State may give about collaboration agreements. These include directions to enter into, to consider entering into or not to enter into an agreement or directions about the terms of

agreements. The directions may apply to particular agreements, types of agreements or all agreements.

50. New section 23H allows the Secretary of State to terminate existing agreements by notice to the parties.
51. New section 23I defines terms used in sections 23 to 23H. “Police force” is defined to include the British Transport Police and the Civil Nuclear Constabulary and “chief officer” and “police authority” are defined accordingly.

Section 6 Authorisations to interfere with property etc

52. **Section 6** amends section 93 of the Police Act 1997 (authorisations to interfere with property etc).
53. **Section 6(2)** and **(4)** inserts new subsections (3)(za) and (3A) into section 93 of the Police Act 1997. They permit an authorising officer within section 93(5)(a)–(c) to grant an authorisation to interfere with property on an application made by a member of the officer’s own police force (“the authorising force”) or by a member of another police force (“a collaborative force”). Such authorisations may be granted to a member of another force if the chief officers of the forces in question are parties to an agreement under section 23(1) of the Police Act 1996 (“police force collaboration agreements”) which provides for them.
54. **Section 6(5)** amends section 93(6) of the Police Act 1997 so that an authorising officer from the authorising force may authorise property interference in the officer’s own force area or that of a collaborative force subject to the terms of the relevant police force collaboration agreement.

Section 7 Authorisations for obtaining and disclosing communications data

55. **Section 7** amends Chapter 2 of Part 1 of the Regulation of Investigatory Powers Act 2000 (“RIPA”) (acquisition and disclosure of communications data).
56. **Section 7(2)** inserts new subsections (3A)–(3I) into section 22 of RIPA. They permit a person who is a designated person by reference to an office, rank or position with a police force (“the authorising force”) to grant an authorisation for persons holding offices, ranks or positions with another police force (“a collaborative force”) to obtain communications data under RIPA. Such authorisations can be granted if the chief officers of the authorising and collaborative forces are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.
57. **Section 7(4)** inserts new subsections (3A)–(3F) into section 23 of RIPA. They permit a person holding an office, rank or position with a police force (the “notifying force”) to issue a notice under section 22(4) of RIPA requiring the disclosure of communications data to a person holding an office, rank or position with another police force (“a collaborative force”). Such notices can be issued if the chief officers of both forces are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.
58. New subsection (3C) provides that references in new subsections (3A) and (3B) to a police force are references to:
 - any police force maintained under section 2 of the Police Act 1996;
 - the metropolitan police force; and,

- the City of London police force.
59. New subsection (3F) provides that references in new subsections (3D) and (3E) to a Scottish police force are references to a police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967.

Section 8 Authorisations for covert human intelligence sources: conditions

60. **Section 8** amends section 29 of the Regulation of Investigatory Powers Act ('RIPA'). Section 29(2)(c) of RIPA provides that arrangements must exist for a covert human intelligence source's case which satisfy the requirements of subsection (5). Under section 29(5) and (9), these arrangements cannot be divided between different public authorities unless the activities of the covert human intelligence source are for the benefit of each of those public authorities. The new provisions require arrangements equivalent to those in section 29(5) of RIPA to be in force in relation to sources of police collaborative units comprising two or more police forces. Under the new provisions, these equivalent arrangements could be divided between the police forces in a collaborative unit provided the chief officers of the forces in question had made a collaboration agreement permitting this to happen. The new provisions apply either to police forces in England and Wales which have made a collaboration agreement to this effect under section 23(1) of the Police Act 1996, or to Scottish police forces which have made a collaboration agreement to this effect under section 12 of the Police (Scotland) Act 1967.

Section 9 Authorisations for surveillance etc

61. **Section 9** amends section 33 of RIPA (rules for grant of authorisations).
62. **Section 9(3)** inserts new subsections (1ZA) to (1ZF) into section 33 of RIPA. They permit a person who is a designated person for the purposes of section 28 (authorisation of directed surveillance) or section 29 (authorisation of covert human intelligence sources) of RIPA by reference to his or her office, rank or position with a police force ("the authorising force") to grant an authorisation under either of those sections on an application made by a member of another police force ("a collaborative force"). Such authorisations can be granted if the chief officers of the forces in question are parties to a police force collaboration agreement which provides for them. Police force collaboration agreements are agreements made under section 23(1) of the Police Act 1996, as regards police forces in England or Wales, or section 12(1) of the Police (Scotland) Act 1967, as regards police forces in Scotland.
63. **Section 9(5)** inserts new subsections (3ZA) to (3ZF) into section 33 of RIPA. They permit a person who is a senior authorising officer by reference to a police force ("the surveillance authorising force") to grant an authorisation for the carrying out of intrusive surveillance on an application made by a member of another police force ("a collaborative force"). Such authorisations can be granted if the chief officers of the forces in questions are parties to a police force collaboration agreement which provides for them. New subsections (3ZA) to (3ZF) also permit authorisations for the carrying out of intrusive surveillance in respect of residential premises to be granted of residential premises in an area which is the area of operation of the collaborative force and is specified in relation to members of that force in the collaboration agreement.
64. **Section 9(6)** inserts new subsections (5A) and (5B) into section 33. New subsection (5A) provides that references to a police force in new subsections (1ZA) to (1ZC) and (3ZA) to (3ZC) are references to:
- any police force maintained under section 2 of the Police Act 1996;
 - the metropolitan police force; and,
 - the City of London police force.

New subsection (5B) provides that references to a Scottish police force in new subsections (1ZD) to (1ZF) and (3ZD) to (3ZF) are references to a police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967.

Section 10 Police officers engaged on service outside their force etc

65. Section 97 of the Police Act 1996 deals with a police officer's status while on relevant service, which is service outside the officer's force. For an officer to be on relevant service, he must be on service falling within section 97(1). To date, the approach to section 97 has been to amend it on a case by case basis to list the particular types of service that are to constitute relevant service. Section 10 amends the Police Act 1996 to provide for an order-making power to amend section 97 to add further types of service which would constitute relevant service.
66. This section also amends the Police Pensions Act 1976 to include an order-making power to make the necessary related amendments to that Act. This is to ensure that when a police officer is on relevant service, he or she will remain within the scope of his or her police pension scheme.
67. Before making these orders, the Secretary of State is required to send a draft to the Police Advisory Board for England and Wales and to take into consideration any representations from that Board.

Section 11 Police equipment

68. Section 53 of the Police Act 1996 allows the Secretary of State to make regulations as to standards of police equipment. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting the efficiency and effectiveness generally of police forces (section 53(1B)). The amendments made by this Act clarify that the definition of police equipment includes software and also enable the section to be used in respect of one or more forces (at the moment regulations only apply to all forces). Section 44 of the Railways and Transport Safety Act 2003 provides that the Secretary of State may make regulations under section 53 of the Police Act 1996 which have effect in relation to the British Transport Police (including in relation to Scotland). So the section also enables regulations to be made about software used by the British Transport Police in England and Wales and Scotland.

Section 12 Police procedures and practices

69. Section 53A of the Police Act 1996 gives the Secretary of State the power to make regulations requiring all police forces in England and Wales to adopt particular procedures or practices. However, such regulations can be made only if Her Majesty's Chief Inspector of Constabulary is satisfied of various matters set out subsection (7). These matters are that the adoption of the procedure or practice in question is necessary in order to facilitate the carrying out by members of any two or more police forces of joint or coordinated operations; that the making of the regulations is necessary for securing the adoption of that procedure or practice and that securing the adoption of that procedure or practice is in the national interest. This section amends section 53A so that such regulations need not apply in respect of all the police forces in England and Wales. It also amends the matters on which the Chief Inspector of Constabulary and the Secretary of State must be satisfied before any regulations are made under section 53A, by providing that regulations can be made if the procedure or practice in question is necessary in order to promote the efficiency and effectiveness of a police force. Section 45 of the Railways and Transport Safety Act 2003 specifies that this section applies to the British Transport Police.

Section 13 Police facilities and services

70. Section 57(3) of the Police Act 1996 allows the Secretary of State to make regulations as to (common) specified facilities or services. Such regulations cannot be made unless the Secretary of State considers it necessary to do so for the purpose of promoting efficiency or effectiveness. Section 13 enables the section to be used in respect of one or more forces (currently regulations must apply to all forces). Regulations cannot be made without first the Secretary of State consulting representatives of Police Authorities and Chief Officers.