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STATUTORY INSTRUMENTS

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**1998 No. 633**

**The Police Act 1997 (Provisions in relation to the NCIS Service Authority) Order 1998**

**PART J**

**STAFF, OFFICERS AND MEMBERS**

**Prohibition of political publicity**

**J1.**—(1) The Authority shall not publish any material which, in whole or in part, appears to be designed to affect public support for a political party.

(2) In determining whether material falls within the prohibition regard shall be had to the content and style of the material, the time and other circumstances of publication and the likely effect on those to whom it is directed and, in particular, to the following matters—

- (a) whether the material refers to a political party or to persons identified with a political party or promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another:
- (b) whether the material is part of a campaign, the effect which the campaign appears to be designed to achieve.

(3) The Authority shall not give financial or other assistance to a person for the publication of material which the Authority is prohibited by this article from publishing itself.

**Codes of recommended practice as regards publicity**

**J2.** Where the Secretary of State issues a code of recommended practice as regards the content, style, distribution and costs of a local authority's publicity, under section 4 of the Local Government Act 1986(1), the Authority shall have regard to the provisions of any such code in coming to any decision on publicity.

**Separate account of expenditure on publicity**

**J3.**—(1) The Authority shall keep a separate account of its expenditure on publicity.

(2) Any person interested may at any reasonable time and without payment inspect the account and make copies of it or any part of it.

(3) A person having custody of the account who intentionally obstructs a person in the exercise of the rights conferred by paragraph (2) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Where the Secretary of State by order provides that, sub-section (1) of section 5 of the Local Government Act 1986 does not apply to publicity or expenditure by a local authority of a

prescribed description then paragraph (1) above shall not apply to expenditure of that description by the Authority.

### **Interpretation and application of articles J1 to 53**

**J4.**—(1) References in articles J1 to 53 above to publicity or related expressions, shall be construed in accordance with the following provisions:

“the Authority” includes any committee, of the Authority;

“publicity”, “publish” and “publication” refer to any communication, in whatever form, addressed to the public at large or to a section of the public.

(2) Articles J1 to 53 above apply to any such publicity expressly or impliedly authorised by any statutory provision, including article K1 below (subsidiary powers of the Authority).

(3) Nothing in articles J1 to 53 above shall be construed as applying to anything done by the Authority in the discharge of its duties under Part C of this Order (access to meetings and documents of the Authority and its committees).

### **Disqualification and political restriction of certain officers and staff**

**J5.** The terms of appointment or conditions of employment of every person holding a politically restricted post under the Authority (including persons appointed to such posts before the coming into force of this article) shall be deemed to incorporate such requirements for restricting his political activities as are prescribed for the purposes of subsection (5) of section 1(5) of the 1989 Act by regulations made by the Secretary of State.

### **Politically restricted posts**

**J6.**—(1) The following persons are to be regarded for the purposes of this Part as holding politically restricted posts under the Authority—

- (a) the person designated under article 58 below as the head of the Authority’s paid service;
- (b) the statutory chief officer;
- (c) a non-statutory chief officer;
- (d) a deputy chief officer;
- (e) the monitoring officer designated under article J9 below; and
- (f) any person not falling within sub-paragraphs (a) to (e) above whose post is for the time being specified by the Authority in a list maintained in accordance with paragraph (2) below and any directions under article 57 below, or is within article C7 above (list of officers to whom powers are delegated).

(2) It shall be the duty of the Authority to prepare and maintain a list of such of the following posts under the Authority, namely—

- (a) the full time posts the annual rate of remuneration in respect of which is or exceeds £19,500 or such higher amount as may have been specified in or determined under regulations made by the Secretary of State under section 2(2) of the 1989 Act;
- (b) the part time posts the annual rate of remuneration in respect of which would be or exceed that amount if they were full time posts in respect of which remuneration were paid at the same rate as for the part time post; and
- (c) posts not falling within sub-paragraph (a) or (b) above the duties of which appear to the Authority to fall within paragraph (3) below,

as are not posts for the time being exempted under article 57 below, posts for the time being listed under article C7 above or posts of a description specified by the Secretary of State for the purposes of this article.

(3) The duties of a post under the Authority fall within this paragraph if they consist in or involve one or both of the following, that is to say—

- (a) giving advice on a regular basis to the Authority itself, to any committee or sub-committee of the Authority;
- (b) speaking on behalf of the Authority on a regular basis to journalists or broadcasters.

(4) It shall be the duty of the Authority to deposit the first list prepared under paragraph (2) above with its proper officer before the expiry of the period of two months beginning with the coming into force of this Order; and it shall also be its duty, on subsequently making any modifications of that list, to deposit a revised list with that officer.

(5) It shall be the duty of the Authority in performing its duties under this article to have regard to such general advice as may be given by virtue of paragraph (1)(b) of article 57 below by a person carrying out functions under that article.

(6) In this article “the statutory chief officer” means the officer having responsibility for the purposes of article F1 above, for the administration of the Authority’s financial affairs.

(7) In this article “non-statutory chief officer” means, subject to the following provisions of this article—

- (a) a person for whom the head of the Authority’s paid service is directly responsible;
- (b) a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the head of the Authority’s paid service; and
- (c) any person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to the Authority itself or any committee or sub-committee of the Authority.

(8) In this article “deputy chief officer” means, subject to the following provisions of this article, a person who, as respects all or most of the duties of his post, is required to report directly or is directly accountable to one or more of the statutory or non-statutory chief officers.

(9) A person whose duties are solely secretarial or clerical or are otherwise in the nature of support services shall not be regarded as a non-statutory chief officer or a deputy chief officer for the purposes of this Part.

### **Grant and supervision of exemptions from political restriction**

**J7.**—(1) The person appointed by the Secretary of State to carry out the functions in relation to political restriction under section 3 of the 1989 Act shall—

- (a) carry out those functions in relation to paragraphs (2) to (7) below; and
- (b) give such general advice with respect to the determination of questions arising by virtue of article J6(2) above as that person considers appropriate after consulting such representatives of local government and such organisations appearing to him to represent employees in local government as he considers appropriate.

(2) A person appointed under section 3 of the 1989 Act—

- (a) shall consider any application for exemption from political restriction which is made to him, in respect of any post under the Authority, by the holder for the time being of that post; and

(b) may, on the application of any person or otherwise, give directions to the Authority requiring it to include a post in the list maintained by the Authority under article J6(2) above.

(3) An application shall not be made by virtue of paragraph (2)(a) above in respect of a post under the Authority except where—

- (a) the Authority has specified or is proposing to specify the post in the list maintained by the Authority under article J6(2) above; and
- (b) in the case of a post falling within sub-paragraph (a) or (b) of that paragraph, the Authority has certified whether or not, in its opinion, the duties of the post fall within paragraph (3) of that article;

and it shall be the duty of the Authority to give a certificate for the purposes of sub-paragraph (b) above in relation to any post if it is requested to do so by the holder of that post.

(4) If, on an application made by virtue of paragraph (2)(a) above in respect of any post under the Authority, the person to whom the application is made is satisfied that the duties of the post do not fall within article J6(3) above, that person shall direct—

- (a) that, for so long as the direction has effect in accordance with its terms, the post is not to be regarded as a politically restricted post; and
- (b) that, accordingly, the post is not to be specified in the list maintained by the Authority under article J6(2) above or, as the case may be, is to be removed from that list.

(5) A person appointed under section 3 of the 1989 Act shall not give a direction under paragraph (2)(b) above in respect of any post under the Authority except where he is satisfied that the post—

- (a) is a post the duties of which fall within article J6(3) above; and
- (b) is neither included in any list maintained by the Authority in accordance with article C7 or article J6(2) above, nor of a description specified for the purposes of article J6(2)(a) above.

(6) It shall be the duty of the Authority—

- (a) to give a person appointed under section 3 of the 1989 Act all such information as that person may reasonably require for the purpose of carrying out his functions under this article;
- (b) to comply with any direction under this article with respect to the list maintained by the Authority; and
- (c) on being given a direction by virtue of paragraph (2)(b) above, to notify the terms of the direction to the holder for the time being of the post to which the direction relates.

(7) It shall be the duty of a person appointed under section 3 of the 1989 Act, in carrying out his functions under this article, to give priority, according to the time available before the election, to any application made by virtue of paragraph (2)(a) above by a person who certifies that it is made for the purpose of enabling him to be a candidate in a forthcoming election.

### **Designation and reports of head of paid service**

**J8.**—(1) It shall be the duty of the Authority—

- (a) to designate one of its officers as the head of its paid service; and
- (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow his duties under this article to be performed.

(2) It shall be the duty of the head of the Authority's paid service, where he considers it appropriate to do so in respect of any proposals of his with respect to any of the matters specified in paragraph (3) below, to prepare a report to the Authority setting out his proposals.

(3) Those matters are—

- (a) the manner in which the discharge by the Authority of its different functions is co-ordinated;
- (b) the number and grades of staff required by the Authority for the discharge of its functions;
- (c) the organisation of the Authority's staff; and
- (d) the appointment and proper management of the Authority's staff.

(4) It shall be the duty of the head of the Authority's paid service, as soon as practicable after he has prepared a report under this article, to arrange for a copy of it to be sent to each member of the Authority.

(5) It shall be the duty of the Authority to consider any report under this article by the head of its paid service at a meeting held not more than three months after copies of the report are first sent to members of the Authority; and nothing in article D1 above shall apply to the duty imposed by virtue of this paragraph.

### **Designation and reports of monitoring officer**

**J9.**—(1) It shall be the duty of the Authority—

- (a) to designate one of its officers (to be known as “the monitoring officer”) as the officer responsible for performing the duties imposed by this article, and
- (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed,

and the officer so designated may be the head of the Authority's paid service or the clerk to the Authority but shall not be its chief finance officer.

(2) It shall be the duty of the Authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the Authority, by any committee of the Authority or by any person holding any office or employment under the Authority constitutes, has given rise to or is likely to or would give rise to—

- (a) a contravention by the Authority, by any committee of the Authority or by any person holding any office or employment under the Authority of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
- (b) any such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974(2), as applied by Part L below,

to prepare a report to the Authority with respect to that proposal, decision or omission.

(3) It shall be the duty of the Authority's monitoring officer—

- (a) in preparing a report under this article to consult so far as practicable with the person who is for the time being designated the head of the Authority's paid service under article 58 above and with its chief finance officer; and
- (b) as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the Authority.

(4) It shall be the duty of the Authority—

- (a) to consider any report under this article by a monitoring officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the Authority; and
- (b) without prejudice to any duty imposed by virtue of article F4 above (Authority's duties as regards reports) or otherwise, to ensure that no step is taken for giving effect to any

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(2) 1974 c. 7.

proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report; and nothing in article D1 shall apply to the duty imposed by virtue of sub-paragraph (a) above.

(5) For the purposes of sub-paragraph (b) of paragraph (5) above the implementation of a proposal or decision to which a report under this article relates shall be suspended in consequence of the report until the end of the first business day after the day on which consideration of that report under sub-paragraph (a) of that paragraph is concluded.

(6) The duties of the Authority's monitoring officer under this article shall be performed by him personally or, where he is unable to act owing to absence or illness, personally by such member of his staff as he has for the time being nominated as his deputy for the purposes of this article.

(7) In this article "chief finance officer", in relation to the Authority, means the officer having responsibility, for the purposes of article F1, for the administration of the Authority's financial affairs.

### **All staff to be appointed on merit**

**J10.**—(1) Every appointment of a person to a paid office or employment under the Authority shall be made on merit.

(2) Paragraph (1) above applies to all appointments made by, or by any committee or sub-committee of, the Authority but has effect subject to—

- (a) section 7 of the Sex Discrimination Act 1975<sup>(3)</sup> (discrimination permitted in relation to employment where sex of employee is a genuine occupational qualification);
- (b) section 5 of the Race Relations Act 1976<sup>(4)</sup> (discrimination permitted in relation to employment where being of a particular racial group is a genuine occupational qualification);
- (c) sections 5 and 6 of the Disability Discrimination Act 1995<sup>(5)</sup> (meaning of discrimination and duty to make adjustments); and
- (d) article F2 above (qualifications of responsible officer).

### **Duty to adopt standing orders with respect to staff**

**J11.**—(1) Where the Secretary of State by regulations made under section 8 of the 1989 Act requires the NCS Service Authority for the purposes of that Act—

- (a) to incorporate such provisions as may be prescribed by the regulations in standing orders relating to its staff; and
- (b) to make or refrain from making such other modifications of any such standing orders as may be so prescribed,

the Authority shall be under the same duties in relation to standing orders made by it under this Order.

(2) For the purposes of this article standing orders relate to the staff of the Authority if they make provision for regulating—

- (a) the appointment of persons to paid office or employment under the Authority; or
- (b) the dismissal of persons holding such office or employment and the taking of other disciplinary action against such persons.

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(3) 1975 c. 65.

(4) 1976 c. 74.

(5) 1995 c. 50.

### **Limit on paid leave for local authority duties**

**J12.**—(1) Notwithstanding anything in subsection (4) of section 50 of the Employment Rights Act 1996<sup>(6)</sup> (conditions of time off for public duties), where—

- (a) the Authority permits an employee of it to take time off for the purpose of performing the duties of a member of a relevant council; and
- (b) those duties do not include the duties of chairman of the council,

it shall be unlawful for the Authority to make any payment of remuneration or other payment to that employee in respect of so much (if any) of any time off for that purpose as is in excess of two hundred and eight hours in any one financial year and is time off to which the employee would not be entitled apart from his membership of that council.

(2) In this article—

“chairman” in relation to a relevant council, includes any corresponding office the holder of which is referred to as mayor or Lord Mayor or by any other description;

“employee” has the same meaning as in the Employment Rights Act 1996;

“relevant council” means the council of any county, district or London borough, the Common Council of the City of London, a parish or community council or any council in Scotland which is a local authority for the purposes of section 50 of the Employment Rights Act 1996 (time off for public duties);

and paragraph (3) of section 50 of the Employment Rights Act 1996 (meaning of duties of a member of a body) shall apply for the purposes of this article as it applies for the purposes of that section.

### **Confidentiality of staff records**

**J13.**—(1) Nothing in this Order shall entitle any person—

- (a) to inspect so much of any document as contains personal information about a member of the Authority’s staff; or
- (b) to require any such information to be disclosed in answer to any question.

(2) Information shall be regarded as personal information about a member of the Authority’s staff if it relates specifically to a particular individual and is available to that body for reasons connected with the fact—

- (a) that that individual holds or has held any office or employment under the Authority; or
- (b) that payments or other benefits in respect of any office or employment under any other person are or have been made or provided to that individual by the Authority.

(3) In this article “document” includes accounts, books, deeds, contracts, bills, vouchers and receipts; and references in this article to a payment made or benefit provided to an individual in respect of any office or employment include references to a payment made or benefit provided to him in respect of his ceasing to hold the office or employment.

### **Power to forgo repayment on advances of remuneration paid to deceased employees**

**J14.**—(1) If a person in the employment of the Authority—

- (a) receives from the Authority remuneration in respect of a future period on the assumption that he will be employed in that employment throughout that period; and
- (b) dies before the expiration of that period,

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(6) 1996 c. 18.

the Authority may, subject to the following paragraph, forgo the repayment of so much of the remuneration as relates to the period after his death.

(2) The Authority shall not be entitled to forgo such a repayment in respect of a period after the relevant death if—

- (a) a pension is payable for that period in respect of the deceased out of money provided by Parliament or out of a fund which is maintained by the Authority or into which contributions have been paid by the Authority in respect of service of the deceased; and
- (b) the rate of the pension is not less than the rate of relevant remuneration which was received by the deceased for his last year of service in the employment in question or, if relevant remuneration at different rates was received by him for that year, is not less than the highest of those rates;

and in sub-paragraph (b) of this paragraph “relevant remuneration”, in relation to a deceased person and a year, mean remuneration which would have fallen to be taken into account in respect of that year in calculating a retirement pension payable to him in respect of the employment in question on his attaining pensionable age and being granted such a retirement pension.

(3) For the purposes of this article a member of NCIS within section 9(1)(a) or (b) of the Police Act 1997 shall be treated as employed by the Authority and references to employment shall be construed accordingly.

#### **Security to be taken in relation to officers**

**J15.**—(1) The Authority shall, in the case of an officer employed by it, whether under this Order or any other enactment, who by reason of his office or employment is likely to be entrusted with the custody or control of money, and may in the case of any other officer employed by it, take such security, for the faithful execution of his office and for his duly accounting for all money or property which may be entrusted to him, as the Authority considers sufficient.

(2) The Authority may, in the case of a person not employed by it but who is likely to be entrusted with the custody or control of money or property belonging to the Authority, take such security as it thinks sufficient for the person duly accounting for all such money or property.

(3) The Authority shall defray the cost of any security taken under this article, and every such security shall be produced to the auditor at the audit of the accounts of the Authority.

#### **Accountability of officers**

**J16.**—(1) Every officer employed by the Authority shall at such times during the continuance of his office or within three months after ceasing to hold it, and in such manner as the Authority directs, make out and deliver to the Authority, or in accordance with its directions, a true account in writing of all money and property committed to his charge, and of his receipts and payments, with vouchers and other documents and records supporting the entries therein, and a list of persons from whom or to whom money is due in connection with his office, showing the amount due from or to each.

(2) Every such officer shall pay all money due from him to the proper officer of the Authority or in accordance with its directions.

#### **Members of the Authority not to be appointed as officers**

**J17.** A person shall, so long as he is, and for twelve months after he ceases to be, a member of the Authority, be disqualified for being appointed by the Authority to any paid office.



### **Disclosure by officers of interest in contracts**

**J18.**—(1) If it comes to the knowledge of an officer employed, by the Authority that a contract in which he has any pecuniary interest, whether direct or indirect (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the Authority or any committee thereof, he shall as soon as practicable give notice in writing to the Authority of the fact that he is interested therein.

(2) For the purposes of this article an officer shall be treated as having indirectly a pecuniary interest in a contract or proposed contract if he would have been so treated by virtue of article E1 above had he been a member of the Authority.

(3) An officer of the Authority shall not, under colour of his office or employment, accept any fee or reward whatsoever other than his proper remuneration.

(4) Any person who contravenes the provisions of paragraphs (1) to (3) above shall be liable on summary conviction to a fine not exceeding level 4 of the standard scale.

### **Payment of salary etc. due to mentally disordered person**

**J19.**—(1) Subject to the provisions of this article, the power of the Authority to pay remuneration to its officers shall include power, where the Authority is satisfied after considering medical evidence that the person to whom, apart from this article, any sum to which this article applies is payable (hereafter in this article referred to as “the patient”) is incapable, by reason of mental disorder within the meaning of the Mental Health Act 1983(7), of managing and administering his property and affairs, to pay that sum or such part thereof as the Authority think fit to the institution or person having the care of the patient to be applied for his benefit and to pay the remainder, if any, or such part thereof as the Authority think fit—

- (a) to or for the benefit of persons who appear to the Authority to be members of the patient’s family or other persons for whom the patient might be expected to provide if he were not mentally disordered; or
- (b) in reimbursement, with or without interests, of money applied by any person either in payment of the patient’s debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in the foregoing subparagraph.

(2) This article applies to any sum payable by the Authority to an officer or pensioner of the Authority, or to the widow or widower or a child of a deceased officer or pensioner thereof, by way of remuneration, pension, superannuation or other allowance, gratuity or annuity, or by way of repayment (with or without interest) of contribution made to any superannuation or other fund; and in this paragraph the expression “pensioner” includes a person entitled to any pecuniary benefit under any enactment or scheme for the establishment of a superannuation fund or a superannuation and provident fund administered by the Authority.

(3) The Authority shall not in exercise of the powers conferred by paragraph (1) above apply in any year in respect of any one person more than &1,500. i

(4) Before exercising its powers under this article in relation to any patient the Authority shall give to the authority having jurisdiction under Part VII of the said Act of 1983 notice in writing of their intention so to do, specifying the name and address of the patient and the amount and nature of the sums in respect of which the Authority intend to exercise those powers, and the Authority shall, at the same time, give notice in writing to the patient in a form approved by the authority having jurisdiction as aforesaid; and, except with the approval of the authority having jurisdiction as aforesaid, the Authority shall not make the first payment under this article in relation to that patient

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(7) 1983 c. 20.

before the expiration of the period of fourteen days beginning with the date of the service of the notice.

(5) If at any time the authority having jurisdiction as aforesaid gives to the Authority notice in writing that the first-mentioned authority objects to the exercise by the Authority of its said powers in relation to any patient, those powers shall, as from the date of the receipt by the Authority of the notice, cease to be exercisable by the Authority in relation to the patient unless and until the first-mentioned authority withdraws the notice.

(6) The Authority shall be discharged from all liability in respect of any payment or application of money effected by the Authority in exercise of its powers under this article.

### **Payments due to deceased officers**

**J20.**—(1) If, on the death of any person who is or has been an officer of the Authority, there is due to him or his legal personal representatives from the Authority a sum not exceeding £5,000 and not being a pension, allowance or gratuity payable by virtue of section 7 of the Superannuation Act 1972<sup>(8)</sup>, the Authority may, without requiring the production of probate or letters of administration of the estate of the officer, pay the whole or any part of that sum to the officer's personal representatives or to the person, or to or among any one or more of any persons, appearing to the Authority to be beneficially entitled to the estate of the officer, and any person to whom such a payment is made, and not the Authority, shall be liable to account for the sum paid to him under this paragraph.

(2) The Authority may, if it thinks fit, pay out of the said sum the funeral expenses of the officer or so much thereof as it considers reasonable.

(3) Paragraph (1) above shall be included among the provisions with respect to which the Treasury may make an order under section 6(1) of the Administration of Estates (Small Payments) Act 1965<sup>(9)</sup>, substituting for the references to £500 references to such higher amount as may be specified in the order.

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<sup>(8)</sup> 1972 c. 11.

<sup>(9)</sup> 1965 c. 32.