

*These notes relate to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Police**

##### *Chapter 1: the Scottish Police Services Authority*

#### **The Scottish Police Services Authority**

##### *Section 1 – Establishment of the Scottish Police Services Authority*

8. This section establishes the Scottish Police Services Authority (“the Authority”) and gives effect to schedule 1 which sets out matters including the constitution, membership and staff of the Authority.

##### *Section 2 – Duty to establish and maintain the Agency*

9. This section places a duty on the Authority to establish and maintain an organisation to be known as the Scottish Crime and Drug Enforcement Agency (“the Agency”) which will replace the Scottish Drug Enforcement Agency (SDEA).
10. Subsection (2) sets out the core functions of the Agency. These are to prevent and detect serious organised crime, to contribute to the reduction of such crime and to the mitigation of its consequences and to gather, store and analyse information in connection with the above. In effect the purpose of the Agency is to reduce serious organised crime and the harm it causes. The function of mitigating the consequences of serious organised crime acknowledges that the prosecution of organised criminals is only one of the strategies that may be employed to tackle organised criminality.
11. Sub-section (3) enables the Agency to share, with specified organisations, information which it has gathered and stored for the purposes of carrying out its core functions. The specified organisations include other UK police forces, the Serious Organised Crime Agency (SOCA) and other law enforcement agencies.

##### *Section 3 – Duty to provide the police support services*

12. Section 3 provides that in addition to establishing and maintaining the Agency, the Authority must provide the ‘police support services’ set out in subsection (2). These include all the common police services currently established and provided by the Scottish Ministers under section 36 of the Police (Scotland) Act 1967, namely the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy; and also the police forensic science services. The Authority will also carry out the functions of the Scottish Ministers which are delegated to it by the Scottish Ministers under Part V of the Police Act 1997 in relation to issuing criminal record certificates.

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13. Subsections (3) and (4) give the Authority flexibility in the ways in which it provides these services, so that it may establish organisations, may collaborate with other bodies, and may do anything incidental or ancillary to the provision of these services.
14. Subsections (5) and (6) make it clear that in all its activities the Authority must act in a way which is calculated to promote the efficiency and effectiveness of the police, having regard also to the contribution its services make to the efficiency and effectiveness of the wider criminal justice system.
15. Subsection (8) amends section 121 of the Police Act 1997 to provide that the functions of the Scottish Ministers under that Act in relation to the issuing of criminal record certificates (other than making regulations and orders) will be able to be carried out by the Authority.

#### ***Section 4 – Strategic priorities of the Authority***

16. This section gives the Scottish Ministers the right to determine strategic priorities for the Authority, after consulting the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards. In practice here and elsewhere in this Chapter, this will mean the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Police Authorities Conveners Forum (SPACF). Subsection (3) requires the Scottish Ministers to publish any such strategic priorities which they make. As an example, a strategic priority may be to promote the efficiency and effectiveness of the police in Scotland.

#### ***Section 5 – Objectives of the Authority***

17. This section requires the Authority to determine its objectives and keep them under review. These objectives must be consistent with any strategic priorities determined by the Scottish Ministers.

#### ***Section 6 – Annual plans of the Authority***

18. This section requires the Authority to submit a draft 'annual plan' to the Scottish Ministers at least 3 months before the beginning of each financial year. The annual plan must include:
  - any strategic priorities determined by the Scottish Ministers and any directions issued by the Scottish Ministers;
  - the objectives which the Authority has determined for itself, and how it intends to meet them;
  - a statement of the financial resources that will be available to the Authority over the course of that year and how the Authority intends to allocate the funding.
19. Subsection (4) requires the Authority to consult people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations in preparing its annual plan. Subsection (5) requires the Scottish Ministers to approve the plan either as submitted or with such modifications as they consider appropriate within 2 months of the plan being submitted to them. Subsections (6) and (7) require the Authority to publish the plan once approved by Scottish Ministers and to send it to specified persons and bodies.

#### ***Section 7 – Annual reports of the Authority***

20. This section requires the Authority to publish an annual report at the end of each financial year. The report must give an account of the Authority's activities for that year and must describe the extent to which the objectives (if necessary, as modified) have been implemented.

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21. Subsection (4) places a duty on the Authority to send a copy of the report to specified persons, including the Scottish Ministers. The Scottish Ministers must lay a copy of the report before the Scottish Parliament (subsection (5)).

***Section 8 – Provision of information to the Scottish Ministers***

22. This section gives the Authority a duty to comply with any reasonable request for information from the Scottish Ministers.

***Section 9 – Liability for wrongful acts of certain persons seconded to the Authority***

23. This section establishes that liability in respect of any wrongful acts committed by persons on secondment to the Authority rests with the Authority rather than the chief constable of the seconding force. (This includes support staff members of the Agency but not police members of the Agency for which separate arrangements are made under section 22.) This liability provision is consistent with the current position for constables seconded on central service under section 38 of the Police (Scotland) Act 1967 to common police services provided by the Scottish Ministers under section 36 of that Act - where section 38(3B) provides that the Scottish Ministers are liable in reparation for wrongful acts or omissions of those constables.
24. Neither this section nor section 22 makes any provision in respect of employees of the Authority, including employees who are also members of the Agency because, as the employer, the Authority will be vicariously liable for any unlawful acts committed by its employees in the course of their employment.

***Section 10 – Grants***

25. This section establishes that the Authority and the Agency are to be funded by grants from the Scottish Ministers. Subsection (2) requires the Scottish Ministers to specify the amount of grant which is to be used for the purposes of the Agency, and subsections (3) and (5) empower the Scottish Ministers to set other terms and conditions around the use of the funding. However, subsection (4) provides that the Scottish Ministers cannot impose terms and conditions which would impinge on the operational independence of the Agency. Subsection (7) requires the Scottish Ministers to consult the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards before making such grants.

***Section 11 – Charges by the Authority and other receipts***

26. This section empowers the Authority to charge for any goods or services it or the Agency provides (for example, for training provided to non-Scottish forces or for disclosure certificates), and requires that such income should be payable to the Scottish Ministers unless they decide otherwise in respect of any part of this income.

**The Scottish Crime and Drug Enforcement Agency**

***Section 12 – Members of the Agency***

27. This section sets out who will be members of the Agency. The members will comprise a Director General (subsection (1)(a)), Deputy Director General (subsection (1)(b)), persons appointed as police members whether on secondment from Scottish or other UK police forces or directly recruited by the Authority and allocated to the Agency (subsection (1)(c)) and support staff members appointed by the Authority, (subsection (1)(d)).
28. Subsection (2) gives effect to schedule 2 which sets out the provisions in relation to membership of the Agency.

### ***Section 13 – Strategic priorities of the Agency***

29. This section gives the Scottish Ministers the power to set strategic priorities for the Agency. Such priorities may, for example, cover the disruption of serious organised crime networks. These strategic priorities are to be set in consultation with the Authority, the Director General of the Agency, persons representing the interests of the chief constable of each Scottish police force and persons representing the interests of unitary police authorities and joint police boards.
30. Subsection (2) provides that the Scottish Ministers cannot determine strategic priorities which would impinge on the operational independence of the Agency.

### ***Section 14 – Annual plans of the Agency***

31. This section requires the Director General of the Agency to prepare an 'annual plan' at least 3 months before the beginning of each financial year setting out how the Agency intends to carry out its functions and submit it to the Authority. The annual plan must include:
  - the strategic priorities set by the Scottish Ministers (subsection (2)(a));
  - details of any directions made by the Scottish Ministers under section 30 (subsection (2)(b));
  - a statement of the financial resources that will be available to the Agency over the course of that year (subsection (2)(c));
  - a statement of how the Director General intends to allocate the funding (subsection (2)(d)).
32. Subsection (3) requires the Authority to approve the plan either as submitted or with modifications as it considers appropriate within 2 months of the plan being submitted to it. Subsection (4) ensures that the Authority cannot make any modifications which would impinge on the operational independence of the Agency. Subsection (5) makes it clear that it is the Director General's responsibility to publish and circulate the annual plan once it has been approved. Circulation must include those persons listed at subsection (6).

### ***Section 15 – Annual reports of the Agency***

33. This section requires the Director General of the Agency to publish an annual report at the end of each financial year. The report must include a report on the carrying out of the Agency's functions during that year and an assessment of the extent to which the annual plan has been implemented (subsection (2)).
34. Subsection (3) places a duty on the Director General of the Agency to ensure that a copy of the report is sent to specified persons. Copies of the report sent to the Scottish Ministers must be laid before the Scottish Parliament (subsection (4)).

### ***Section 16 – General functions of Director General of the Agency***

35. This section provides that in carrying out his or her functions the Director General must have regard to the Agency's annual plan but the Director General will be responsible for directing and controlling the Agency. This is to ensure the Director General's formal autonomy in operational matters.

### ***Section 17 – Powers of the Agency***

36. This section sets out the powers of the Agency. These are similar to the powers of the Serious and Organised Crime Agency (SOCA) under the Serious Organised Crime and Police Act 2005.

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37. The powers include acting on request in support of certain other bodies in the pursuit of their functions; and co-operating with other bodies, including overseas agencies, in pursuit of the Agency's functions.
38. Subsection (3) gives the Agency the power to provide assistance in response to requests made by bodies operating abroad. Requests by overseas authorities to obtain evidence under section 13 of the Crime (International Co-operation) Act 2003 are excluded from this provision (section 17(4)).

***Section 18 – Scottish Ministers' power to modify section 17***

39. This section provides the Scottish Ministers with a power by order made by statutory instrument to modify section 17 to add, remove or amend the powers of the Agency provided for in section 17. The Scottish Ministers must consult before exercising this power. An order under section 18 is subject to affirmative resolution procedure.

***Section 19 – Disclosure of information by the Agency***

40. This section provides that the Agency may disclose information to any person or body for any of the "permitted purposes" set out in subsection (2)(a) to (e). Under subsection (2)(f) the Scottish Ministers will be able to add to the list of disclosure purposes by order. Subsection (3) disapplies any statutory or other restriction on the disclosure of information, in respect of any disclosure made by the Agency for a permitted purpose. However, this provision does not override any statutory restrictions or obligation in legislation which is reserved within the meaning of the Scotland Act 1998. This means that information must be disclosed in accordance with the Data Protection Act 1998 (and any other restrictions in other reserved legislation) insofar as that legislation applies to the information.
41. Subsections (4) and (5) place restrictions on the onward disclosure of information that has been disclosed by the Agency. In the case of information disclosed by the Agency to a person or body, it provides that this information may only be passed on, with the consent of the Agency, for a purpose connected with the functions of that person or body, for the purpose for which the information was originally disclosed by the Agency, or for any other of the permitted purposes listed in subsection (2).

***Section 20 – Disclosure of information to the Agency***

42. This section enables any person to disclose information to the Agency where the aim is to assist the Agency in the pursuit of any of its functions. Subsection (2) disapplies any statutory or other restriction on the disclosure of information, in respect of any disclosure made to the Agency in this regard. However, this provision does not override any statutory restrictions or obligation in legislation which is reserved within the meaning of the Scotland Act 1998. This means that information must be disclosed in accordance with the Data Protection Act 1998 (and any other restrictions in other reserved legislation) insofar as that legislation applies to the information.

***Section 21 – Direction by Director General of Agency***

43. This section provides that the functions of the Deputy Director General and police members of the Agency are subject to the direction of the Director General. Subsection (2) provides that in giving such directions the Director General must comply with any instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences in Scotland or any instructions given by the Lord Advocate in relation to reporting for the purposes of prosecution of alleged offences. This provision is modelled on section 17 of the Police (Scotland) Act 1967 which makes similar provision in relation to police constables and chief constables.

***Section 22 – Liability for wrongful acts of police members of the Agency***

44. This section establishes that it is the Director General of the Agency who is liable in respect of any unlawful conduct by police members of the Agency. This includes both constables who are seconded to the Agency from police forces (via the Authority) and constables of the Agency who are directly recruited. This is a change from the current position in respect of constables seconded to the Operational and Intelligence Group of the SDEA as in those circumstances it is the chief constable of the seconded officer's home police force who remains liable for any wrongful acts. It will however bring the Authority/Agency model in line with the current police authority/chief constable model whereby a chief constable is liable in reparation for the acts or omissions of constables in his or her force (see section 39 of the 1967 Act).
45. Subsection (2) makes it clear that whilst vicariously liable for wrongful acts of police members the Director General of the Agency is not personally liable and provides that it will be the Authority which is responsible for paying any awards due under this section, subject to the restrictions set out. Again, this is in line with the police authority/chief constable model in section 39(2) of the 1967 Act.

***Section 23 – Regulations relating to the Agency***

46. This section introduces a power for the Scottish Ministers to make regulations in respect of the Agency, similar to those contained in section 26 of the Police (Scotland) Act 1967. This is intended to bring the Agency into line with police forces as regards the framework that applies to the appointment and regulation of police constables.
47. The regulations may cover such issues as pay and allowances, rank structure and promotion.

**The police support services**

***Section 24 – The police support services: modification by order***

48. This section gives the Scottish Ministers the power by order made by statutory instrument to add new services, or amend or remove existing services, from the list of police support services to be provided by the Authority. Before exercising this power the Scottish Ministers must consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisation.

***Section 25 – Use of the police support services***

49. This section empowers the Scottish Ministers, in the interests of the efficiency and effectiveness of the police, to make regulations requiring all police forces (or a selection of them) to make use of particular police support services. The purpose of such regulations would be to avoid inefficient duplication of effort which might result if, for example, some police forces used databases provided by the Authority while others chose to develop their own. This is not an entirely new power as the Scottish Ministers currently have a similar power under section 36(2) of the 1967 Act to make regulations requiring police forces to use common police services provided and maintained under section 36 of the 1967 Act.
50. Subsection (4) requires the Scottish Ministers to consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations before using this power.

## **Inspections**

### ***Section 26 – Inspections of the Authority’s services and the Agency***

51. This section requires the inspectors of constabulary appointed under section 33 of the Police (Scotland) Act 1967 (i.e. Her Majesty’s Inspectorate of Constabulary (HMIC)) to carry out periodic inspections of the Authority and the Agency and to publish the reports of these inspections. HMIC already have this duty in respect of police forces.

### ***Section 27 – Inspections of the Authority at request of the Scottish Ministers***

52. This section gives the Scottish Ministers the power to require HMIC to carry out an inspection, and publish a report, on the Authority (including the Agency) or any of its functions or activities. The Scottish Ministers already have this power in respect of inspections of police forces.

### ***Section 28 – Reports on inspections: powers of the Scottish Ministers***

### ***Section 29 – Revision of inadequate action plan***

53. These sections give the Scottish Ministers powers by which to secure remedial action if a report by HMIC advises that any part of the Authority or the Agency is, or is likely to become, inefficient or ineffective. The powers broadly mirror those which the Scottish Ministers have in respect of police forces. In such circumstances the Scottish Ministers are empowered to require the Authority to submit an action plan setting out its proposed remedial measures (or alternatively to modify an existing action plan if there is one) within a deadline of between 4 and 12 weeks. Under section 29, if the Scottish Ministers consider the action plan inadequate they may inform the Authority of that fact and their reasons. In that event the Authority must consider whether to revise the action plan.

## **Miscellaneous and general**

### ***Section 30 – Directions***

54. This section gives the Scottish Ministers power to make directions to the Authority and/or the Agency on any matter other than the operational matters of the Agency.

### ***Section 31 – Transfer of staff, property etc.***

55. This section gives effect to schedule 3 which is concerned with the transfer of staff and property etc. from the existing common police services to the Authority, and the Agency.

### ***Section 32 – Interpretation of Chapter 1***

56. This section provides definitions for various key terms used in this Chapter of the Act.