

POLICE AND FIRE REFORM (SCOTLAND) ACT 2012

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Police Reform

Chapter 2 – the Police Service of Scotland

Functions of Constables

31. **Sections 19 to 23** set out the functions, jurisdiction and duties of constables, and make provision about command and control. **Section 19** sets out that constables will have all of the functions conferred on them by this or any other enactment or by rule of law, and all the powers and privileges of a constable throughout Scotland. It also provides that senior officers and local commanders also have all of the additional functions conferred on them by this or any other enactment or by rule of law. **Section 20** sets out constables' general duties. These are largely a restatement of the duties placed on constables under the 1967 Act, restated and reframed to better reflect the role of modern policing. When taking lawful measures to bring offenders to justice, a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.
32. **Section 21** makes clear that constables are subject to the direction and control of the chief constable in relation to the performance of their duties, as are police staff and police cadets (who may also be dismissed by the chief constable). A constable must carry out lawful orders and punctually and promptly perform all of the duties which fall to him or her.
33. **Section 22** creates two offences which may be committed by constables: absence from duty without reasonable excuse or neglect or violation of duty (this also applies to police custody and security officers by virtue of section 28). **Section 23** provides for the offence of failing to return any relevant item to the SPA when ordered to do so, without reasonable excuse or the SPA's permission. An offence of failing to return any item on ceasing to be a constable, without reasonable excuse or the SPA's permission, is also provided. **Section 23** also creates a power for a sheriff or justice of the peace to grant a warrant for the search and removal of any relevant items. A relevant item is anything issued to a constable for the carrying out of the constable's functions, e.g. police uniform. The penalty for the offences of being absent from duty and failure to return equipment is imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale. The offence of neglect or violation of duty is subject to a maximum sentence of 2 years imprisonment or to a fine or to both if tried on indictment, or on summary conviction to imprisonment for a maximum term of 12 months or to a fine not exceeding the statutory maximum or both. This offence was triable summarily only under the 1967 Act.