

POLICE (NORTHERN IRELAND) ACT 2000

EXPLANATORY NOTES

COMMENTARY

Part Vi: the Police

Section 32: General Functions of the Police

49. This section sets out the general duties and powers of members of the police. It replaces, with modifications, section 18 of the 1998 Act. *Subsection (1)* states that the general duties of police officers are to protect life and property, to preserve order, to prevent crime and to bring offenders to justice. *Subsection (4)* requires officers to be guided by the code of ethics issued by the Policing Board under section 52 in carrying out their duties. *Subsection (5)* requires police officers to carry out their functions in co-operation with, and with the aim of securing the support of, the local community.

Section 33: General Functions of the Chief Constable

50. This section replaces section 19 of the 1998 Act. It provides that the police shall be under the direction and control of the Chief Constable and that he shall have regard to the policing plan and any code of practice affecting him.

Section 34: Exercise of Functions of the Chief Constable in Cases of Absence etc

51. Replaces section 20 of the 1998 Act with modification. It provides for there to be a Deputy Chief Constable and for the DCC to carry out the Chief Constable's functions in his absence.

Section 35: Appointment and Removal of Senior Officers

52. This section replaces section 21 of the 1998 Act and provides for the Board to appoint the Chief Constable and other senior police officers (Assistant Chief Constable and above), subject to the approval of the Secretary of State. *Subsection (3)* enables the Board to call upon any senior officer to retire in the interests of efficiency and effectiveness with the approval of the Secretary of State. The Secretary of State can require the Board to exercise this power in respect of the Chief Constable.

Sections 36, 37 and 39-41: Appointment and promotion of police officers

53. These sections make provision for the appointment of police officers below the rank of Assistant Chief Constable. The Chief Constable will continue to appoint and promote all such police officers (*section 36*) and reserve officers (*section 37*) in accordance with any regulations made by the Secretary of State. *Sections 39, 40 and 41* deal with a new category of "trainee" police officers. The creation of trainees is a consequence of the Patten Report's recommendation that recruits to the police should be attested as constables – and so acquire the powers of a constable – only upon successful completion of their recruit training. Under previous legislation (section 24 of the 1998 Act) recruits became constables immediately upon appointment before they had undertaken any training as a police officer. *Subsection (3) of section 36* requires that no one may

be appointed as a constable unless they have completed recruit training. A similar requirement is made in respect of reserve officers under [section 37](#). [Section 41](#) applies to trainee officers certain provisions which relate to police officers, such as the Chief Constable's liability for wrongful acts and the prohibition on membership of trade unions, to trainee officer. It also enables the Secretary of State to make regulations for the terms and conditions of trainee officers.

Section 38: Attestation of Constables

54. [Section 38](#) provides for a new form of the declaration made by recruits on appointment to the police on completion of their training. The section replaces section 24 and Schedule 2 of the 1998 Act. The new declaration contains references to upholding human rights and according equal respect to all individuals and their traditions and beliefs (provided these are lawful). As under the 1998 Act, recruits assume the powers of a constable upon making the declaration but new provisions (see above) require that they successfully complete their training first. The section also requires the Chief Constable to bring the terms of declaration to the attention of all serving officers, and to ensure that they understand it and the need to carry out their duties in accordance with it.

Section 42: Police Cadets

55. This section enables police cadets to be appointed by the Board, with the approval of the Chief Constable.

Sections 43, 44 and 45: Recruitment Arrangements

56. The Patten Report recommended that, while the Chief Constable should remain responsible and accountable for recruitment, the technical work of recruitment should be contracted out to an outside agency. Section 43 gives effect to this recommendation by enabling the Chief Constable to appoint an agent to carry out the recruitment of police officers and police support staff in accordance with any regulations made by the Secretary of State. The Secretary of State must consult the Chief Constable, the Board, the Equality Commission and the Police Association on the regulations. *Subsection (4)* of section 43 makes it clear that the Chief Constable retains overall liability for the recruitment process.
57. Detailed matters concerning the recruitment process will be set out in regulations made by the Secretary of State under *Subsection (1)* of section 44. The Secretary of State must consult as under section 43. *Subsection (3)* of section 44 sets out matters which must be covered in the regulations, including the involvement of lay representatives in the recruitment process and the review of decisions to reject candidates. *Subsections (5), (6) and (7)* require that the regulations provide for pools of qualified candidates for the police service and its support staff to be selected. Candidates for the police service (at constable level) will be selected from a pool for the purposes of appointment under section 46(1) (see below). In respect of police support staff, only where there are 6 or more posts of a similar nature and level to be filled at about the same time will selection be from a pool for the purposes of appointment in accordance with section 46(5) (see below).

Sections 45, 46 and 47: Temporary Provisions Concerning Composition of the Police

58. The Patten Report recommended exceptional recruitment measures to address imbalances in the religious background of the membership of the police and police support staff. The Report said that candidates should reach a specified standard of merit and be selected from a qualified pool on the basis that one half would be Catholics. Sections 46 and 47 give effect to the Report's recommendations.
59. [Section 46\(1\)](#) and [\(5\)](#) requires the Chief Constable to appoint from a pool of qualified candidates for the police and its support staff (where there are 6 or more vacancies)

an even number of candidates one half of whom are to be treated as Roman Catholic and one half not ("50:50 recruitment"). Subsections (2), (3), (6) and (7) provide for the Secretary of State, after consulting the Board and the Chief Constable, to make an order modifying the 50:50 recruitment provisions for police trainees and police support staff where insufficient numbers of qualified candidates of one community background have come forward to fill one half of the vacancies; and, in the case of police trainees, for the purpose of redressing any imbalance arising where one or more such orders have been made in the previous three years. Subsection (4) limits the Secretary of State's order-making power to "aggregate" recruitment quotas under subsection (3)(b) to 75% of either community. Subsections (8) and (9) apply existing fair employment monitoring procedures for the purpose of determining perceived community background. Subsections (10) and (11) amend fair employment and race relations legislation to except selection from the pool of qualified candidates on the 50:50 basis of perceived community background. The amendment to fair employment legislation also excepts local recruitment of Part Time Reserve members of the police from being unlawful under the terms of the Fair Employment and Treatment (Northern Ireland) Order 1998.

60. Section 45 provides for the appointment of suitably qualified police officers from forces outside Northern Ireland. It obliges the Board, in the case of senior officers, and the Chief Constable, in relation to other ranks, to encourage such applications. In doing so the Board and the Chief Constable must have regard to the progress that has been made towards making the police service representative of the community in Northern Ireland.
61. Section 47 provides that the exceptional measures concerning the composition of the police and its support staff will expire on the third anniversary of their coming into force unless they are specifically renewed by an order made by the Secretary of State. In deciding whether the provisions should be renewed the Secretary of State must take account of the progress which has been made towards securing that membership of the police and police support staff is representative of the community in Northern Ireland. The Secretary of State must consult the Policing Board before making an order.

Section 48: Action Plans

62. Section 48 requires the Board to make an action plan for monitoring and increasing the number of women working in policing. The Board may request the Chief Constable to provide a draft plan in respect of the police and is obliged to consult the Equality Commission for Northern Ireland, the Secretary of State and the Chief Constable before issuing a plan.

Section 49: Severance Arrangements

63. The Patten Report envisages a reduction in the overall size of the regular police service from 8400 officers to 7500. To achieve this reduction and to enable recruitment, approximately 4500 officers will leave the police over a 10-year period. The Full Time Reserve (2500 officers) will be phased out. Section 49 provides for the Secretary of State to make special provision in pensions regulations to provide for the introduction of a temporary voluntary, early retirement and early severance scheme. The voluntary scheme will apply to all members of the Royal Ulster Constabulary and Royal Ulster Constabulary Reserve who joined the police force before 1 July 1995. The scheme offers enhancements to existing pension arrangements and special compensatory lump sums. These provisions will not be subject to consultation with the Police Negotiation Board.

Section 50: Service by Members of the Police Service Reserve of Northern Ireland with Other Services

64. This section makes an amendment to section 27 of the 1998 Act. That section deals with the terms and conditions of police officers while engaged in police services outside the

Royal Ulster Constabulary. Hitherto the section only provided for regular members of the Royal Ulster Constabulary to engage in such service. The amendment to section 27 allows reservists also to participate.

Section 51: Notifiable Memberships

65. Under this section the Chief Constable will require each member of the police force to inform him of any “notifiable membership” he believes he has. A notifiable membership is defined as membership of an organisation which might reasonably be regarded as affecting a police officer’s ability to discharge his duties effectively and impartially (*subsection (1)*). The Chief Constable may provide guidance to police officers on notifiable memberships, after consulting the Board, the Secretary of State and the Northern Ireland Human Rights Commission.
66. The section places safeguards on the handling and disclosure of information provided to the Chief Constable. *Subsection (10)* provides for an offence of wrongful disclosure. Information will be made available, on request, to the Police Ombudsman and statistical information must be published by the Chief Constable in his annual report.

Section 52: Code of Ethics

67. This section requires the Board to issue, following consultation, a code of ethics for laying down standards of conduct and practice for police officers and making officers aware of the rights and obligations arising out of the European Convention of Human Rights. The code will be drafted by the Chief Constable for the Board’s approval. In preparing the code both the Board and the Chief Constable are required to have regard to the terms of the declaration made by constables under section 38. The Chief Constable is required to take steps to ensure that all officers have read and understood the Code (*subsection (8)*). The Board will keep those steps under review (*subsection (9)*). The Secretary of State must, so far as practicable, ensure the provisions of the code are reflected in police conduct regulations (*subsection (10)*).

Section 53: Guidance on Public Order Equipment

68. This section allows the Secretary of State, after consulting the Board, the Chief Constable, the Ombudsman and the Police Association, to issue guidance to members of the police on the use of public order equipment. The section is, in particular, intended to allow the Secretary of State to issue guidance on the use of plastic baton rounds. Any guidance issued is to be published.

Section 54: Regulation as to Emblems and Flags

69. *Section 54* enables the Secretary of State to make regulations governing the design and use of emblems and flags for policing. Before issuing such regulations he must consult the Board, the Chief Constable, the Police Association and any other person or body appearing to him to have an interest in the matter.

Section 55: Identification of Police Officers

70. *Section 55* requires the Chief Constable to make arrangements for police officers to have a unique identification number which should be clearly visible while they are in uniform.

Section 56: Co-operation with the Garda Síochána

71. *Section 56* requires the Board and the Chief Constable to implement any arrangements for cross border co-operation between the police and the Garda Síochána which are agreed between the British and Irish Governments.