

POLICE AND JUSTICE ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 1: Police Reform

Paragraphs 27 to 29: Power to give directions to police authority or chief officer of police

100. *Paragraphs 27 to 29* insert new sections 40, 40A and 40B into the 1996 Act, replacing the intervention powers in sections 40, 41A and 41B which were introduced by the Police Reform Act 2002 and which made provision for the making of directions where the whole or any part of a police force is considered to be under-performing or at risk of under-performing. The new sections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers and bring under-performance by police authorities within the scope of these powers. The amended powers place a duty upon the Secretary of State to consult Her Majesty's Inspectorate of Constabulary on the grounds for intervention and a duty to publish the Inspectorate's response.

New section 40 of the Police Act 1996: Power to give directions in relation to police force

101. Subsections (1) and (2) of new section 40 (inserted by paragraph 27) provide that the where the Secretary of State is satisfied that a police force is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a force will fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure, or prevent that failure, as the case may be.
102. These subsections widen the sources of information which the Secretary of State can draw upon in deciding whether to exercise these powers. These wider sources of information could include the findings of a public inquiry into a force or the national performance assessments of police forces which are now produced. Previously, the only source of information which could be considered was a report from Her Majesty's Inspectorate of Constabulary.
103. Subsection (3) of new section 40 provides that the Secretary of State may, when directing specified measures under subsection (1) or (2), specify the submission to him of an action plan setting out the measures to be taken to remedy the failure or to prevent the failure (as the case may be). This short subsection replaces the longer and more protracted existing sections 41A and 41B of the 1996 Act which are repealed by *paragraph 29*. Experience since the 2002 Act has shown that in most cases where serious under-performance has arisen, there have been opportunities for improvements, and non-statutory plans intended to address under-performance have already been

drawn up. However, this measure could be specified as part of the direction if no action plan existed.

104. Subsection (4) of new section 40 is intended to ensure that the power to give directions is only used as a last resort. A duty is placed on the Secretary of State to provide the police authority with the evidence that the force or part of the force is failing, and afford them the opportunity to make representations and any such proposals for the taking of remedial measures that would make the giving of the direction unnecessary. The Secretary of State will be under a duty to consider any such representations and any such proposals.
105. Subsection (5) of new section 40 provides that if the Secretary of State is satisfied that the police authority has already been made aware of the matters which give rise to the need for a direction to be given, had sufficient information to identify the remedial measures to address this without the need for a direction, and had a reasonable opportunity to take such measures, then the obligation on the Secretary of State to give the police authority further opportunities to deal with the issues at hand and to make representations on them (in subsection (4)) shall not apply.
106. Subsection (6) of new section 40 provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
107. Subsection (7) of new section 40 requires a police authority given a direction under section 40 to comply with it.

New section 40A of the Police Act 1996: Power to give directions in relation to police authority

108. New section 40A of the 1996 Act is in similar terms to new section 40.
109. Subsections (1) and (2) of new section 40A provide the same intervention trigger as that for directions in relation to police forces. Where the Secretary of State is satisfied that a police authority is failing to discharge any of its functions effectively, whether generally or in particular respects, or where he is of the view that a police authority will so fail unless remedial measures are taken, he may direct the police authority to take specified measures to remedy that failure or to prevent that failure, as the case may be.
110. Subsection (3) provides that directions to police authorities may specify the submission to the Secretary of State of an action plan setting out the measures which are intended to remedy the failure in question or (as the case may be) prevent such a failure occurring.
111. Subsections (4) and (5) of new section 40A provide the same opportunity for police authorities to be given the relevant information and make representations and remedial measures as are set out for police forces in new section 40(4) and (5).
112. Subsection (6) of new section 40A provides that the Secretary of State must, before directing specified measures under subsection (1) or (2), make Her Majesty's Chief Inspector of Constabulary aware of the matters which give rise to the need for the direction and provide Her Majesty's Chief Inspector of Constabulary with an opportunity to make written observations which will be published in such a manner that the Secretary of State feels appropriate.
113. Subsection (7) of new section 40A requires that a police authority that is given a direction under this section shall comply with it.

114. Subsection (8) of new section 40A confirms that the Secretary of State may exercise his powers under both new section 40 and new section 40A in respect of the same or different matters and at the same time or at different times.

New Section 40B of the 1996 Act: Procedure for directions under section 40 or 40A

115. New section 40B reproduces much of existing section 41B of the 1996 Act, which is repealed by *paragraph 29*. It provides the Secretary of State with a power to make further provision in regulations as to the procedure to be followed where a proposal is made for the giving of a direction under new section 40A or 40B in relation to a police force or police authority.
116. Subsection (2) of new section 40B provides that before making any regulations, the Secretary of State shall consult with the APA, ACPO and any such other persons as he thinks fit. Such regulations may make different provision for different cases and circumstances (subsection (3) of new section 40B). Regulations made under this section are subject to the affirmative resolution procedure (subsection (4) of new section 40B).
117. Subsection (5) of new section 40B requires the Secretary of State to notify a chief officer of police of a direction issued to the police authority which has responsibility for his force.
118. Subsections (6) and (7) of new section 40B provide that the Secretary of State must lay a copy of the direction, in relation to a force or police authority, and a report about it before Parliament. The report may relate to more than one direction.
119. *Paragraph 28* amends section 41 of the 1996 Act to ensure that the power the Secretary of State has under that section to include in a direction to a police authority that its budget requirement for any financial year is not to be less than a specified amount covers a direction under new section 40A as well as under the substituted section 40.