

## **POLICY NOTE**

### **THE POLICE AND FIRE REFORM (SCOTLAND) ACT 2012 (SUPPLEMENTARY, TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS) ORDER 2013**

#### **SSI 2013/xxx**

The above instrument was made in exercise of the powers conferred by section 126 and 127 of the Police and Fire Reform (Scotland) Act 2012. The instrument is subject to affirmative procedure.

#### **Policy Objectives**

1. This Order makes provisions to facilitate a smooth transition from the current police and fire and rescue service structure to the new arrangements established by the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”).
2. Under current legislation, the Police (Scotland) Act 1967 and the Fire (Scotland) Act 2005, each local authority is the police authority and the fire and rescue authority for its area. Fife and Dumfries and Galloway each operate their own police force and fire and rescue service independently. The others are organised into six police joint boards, each maintaining one police force, and six fire and rescue joint boards. (Fire and rescue authorities and joint boards are together known as “relevant authorities” – there is no single name for police authorities and joint boards.) The Police, Public Order and Criminal Justice (Scotland) Act 2006 also established the Scottish Police Services Authority (SPSA) which maintains the Scottish Crime and Drug Enforcement Agency (SCDEA), and the Police Complaints Commissioner for Scotland.
3. The 2012 Act removes police and fire and rescue functions from local government, and abolishes the SPSA and SCDEA. To take on those functions in their place it creates the Scottish Police Authority (SPA) which will maintain the Police Service of Scotland and provide forensic services, and the Scottish Fire and Rescue Service (SFRS). The transfer will take place on 1 April 2013.
4. Part 1 of the Order sets out definitions used in the rest of the Order.

#### **Part 2 – General Provisions**

5. Article 2 is a short-term provision which has effect for one year, from 1 April 2013 until 1 April 2014. It deals with documents which refer to any of the former police forces, police authorities or joint boards, or to the SPSA or SCDEA. If the document is otherwise valid and correct, it is to be treated as if the reference was to the Police Service of Scotland or SPA, as appropriate. This applies to documents issued by, to, or in relation to a constable of the Police Service, a member of police staff or a member of staff of the SPA.
6. Article 3 provides for continuity across the transfer to the new structure. A table of corresponding bodies and offices in the old and new structures is provided in paragraph (2). Paragraph (1) states that the transfer does not affect the validity of anything done by or on behalf of, to or in relation to any office-holder, person or body in the old structure.

Paragraph (2) allows for anything being done by or on behalf of, to, or in relation to any of them which is in progress at the transfer date to be continued with the corresponding person or body after that date. Paragraph (3) provides that anything done by or on behalf of, to, or in relation to anyone in the old structure before 1 April 2013 shall, if necessary, be treated after that date as if it was done by the corresponding person or body in the new structure. References in documents are to be understood in the same way. Paragraph (4) deals with situations where the person or office-holder has to be of a particular rank or capacity; references are to be translated across as if they refer to the equivalent rank or capacity in the new structure. All of this is subject to any express provision to the contrary in the Order, the 2012 Act or any other subordinate legislation made under the Act or in consequence of it.

7. Articles 4 and 5 are to ensure the continuity of statistics on police and fire and rescue activity. Article 4 requires the SPA to provide Scottish Ministers with reports, statistics or other information relating to the former police authorities, joint boards and police forces, and the SPSA and SCDEA. This includes information on those bodies, their functions and the state of crime before 1 April 2013. The chief constable of the Police Service of Scotland is required to provide the SPA with the equivalent information that the chief constable holds. Article 5 requires the SFRS to provide Scottish Ministers with reports, statistics and other information relating to the former relevant authorities, including the outcomes of fires and other incidents before 1 April 2013.

### Part 3 – Joint Boards

8. Part 3 deals with the preparation of the final accounts of joint boards. These are to be abolished on 1 April 2013, by the repeal in the 2012 Act of the legislation establishing them, and arrangements need to be made to complete their accounts for the financial year 2012-13. All property, rights, liabilities and obligations of the joint boards and police and fire and rescue authorities as at 31 March 2013 will transfer to the SPA and SFRS, as appropriate, according to transfer schemes drawn up under schedules 5 and 6 of the 2012 Act.
9. The Order provides that one local authority will be appointed as the “accounting authority” for each joint board. These are set out in the Schedule, together with a list of the “constituent local authorities” of each joint board. The accounting authority is charged with carrying out all the functions which would have fallen to the joint board in relation to drawing up its annual accounts and having them audited, and other reporting. The accounting authority also has a right to make any claims on behalf of the joint board for 2012-13, passing any sums received on to the SPA and SFRS. As local government bodies, the accounting requirements for joint boards are mainly set out in the Local Government (Scotland) Act 1973 and Regulations made under that Act, and the Local Government in Scotland Act 2003. The accounting authority also has to publish information on standards of performance by the joint board, under s.13 of the Local Government in Scotland Act 2003.
10. All of the constituent authorities of a joint board, and the SPA or SFRS, are required to co-operate and provide assistance to the accounting authority to enable the accounts to be closed. The accounting authority has a right of access to any documents they have which it needs, and may require information from anyone who formerly worked for the joint board, or for a constituent local authority and dealt with joint board functions. Auditors

also have a right of access to those documents and people. The completed accounts, and the certified audited accounts, are to be submitted to the accounting authority and copied to each of the constituent authorities and the SPA or SFRS, as appropriate.

11. Dumfries and Galloway Council and Fife Council will complete their accounts for 2012-13 as usual, including their police and fire and rescue functions.

#### Part 4 – SPSA and SCDEA

12. Article 11 sets out the arrangements for drawing up the final accounts for the SPSA and SCDEA. These will be completed by the SPA, following the requirements placed on the SPSA and SCDEA by the Police, Public Order and Criminal Justice (Scotland) Act 2006.

#### Part 5- Police Appeals Tribunals

13. Article 12 deals with the arrangements for appeals which have been made to the police appeals tribunals and are pending on 1 April 2013. It provides for a saving of section 30 of the 1967 Act and its associated Schedule 3 so that appeals still in progress may continue under those arrangements. If the tribunal has already been empaneled prior to 1 April 2013, then that panel will hear the appeal and reach a decision. If a tribunal has not been empaneled then the SPA will fulfil the role assigned to the police authority in Schedule 3 of the 1967 Act. Paragraph (2)(c) provides the right to representation by the relevant individuals in the single service structure if a hearing is undertaken after 1 April. The SPA is to pay the remuneration and expenses for tribunal members and the appellant for appeals dealt with under these arrangements.

#### Part 6 – Miscellaneous

14. Articles 13 to 15 make specific transitional provision in relation to certain legislation which is not covered by the general provision made by article 3.

#### Complaints

15. Article 16 provides for continuity and effective handling of complaints about the former police bodies and their constables and staff. Paragraph (2) deems complaints about those bodies or people made after 1 April 2013 to be “relevant complaints” for the purposes of Chapter 2 of Part 1 of the 2006 Act and Chapter 10 of Part 1 of the 2012 Act. Paragraph (4) deals with on-going complaints and deems complaints made before 1st April 2013 which were relevant complaints to continue to be relevant complaints for the purposes of the 2006 Act. For both categories of complaint, paragraph (5) allows for the SPA to be the “relevant authority” under the 2006 Act, if the complaint is about a member or staff of the former joint police boards/authorities, senior officers of the former forces or the Director General of the SCDEA. The Chief Constable is the “relevant authority” if the complaint is about a former police force, constables of superintendent rank or below and staff of the SCDEA.

## Rewards

16. Article 17 enables the SPA, on the recommendation of the chief constable, to pay for rewards for exceptional diligence by constables and staff from the former police forces under section 46 of the 1967 Act.

## HMICS

17. Article 18 ensures the continuity of any on-going inspections and inquiries by Her Majesty's Inspectorate of Constabulary which started before 1 April 2013. Any reports which result from such inquiries are to be deemed as if they were reports under section 78 of 79 of the 2012 Act for the purpose of section 80, so that the SPA and Chief Constable must have regard to them.

## **Consultation**

18. No public consultation has been carried out for this Order. The Scottish Government conducted parallel formal consultation on police and on fire and rescue service reform from 10 February to 5 May 2011. These are available on the Scottish Government website, along with reports on the responses.

Police: <http://www.scotland.gov.uk/Publications/2011/02/10120102/0>

Responses: <http://www.scotland.gov.uk/Publications/2011/06/20115001/0>

Fire and Rescue: <http://www.scotland.gov.uk/Publications/2011/02/21161910/0>

Responses: <http://www.scotland.gov.uk/Publications/2011/06/14113246/0>

A further consultation on the legislative framework was carried out between September and November 2011:

<http://www.scotland.gov.uk/Publications/2011/09/15110325/0>

A detailed report on the outcome was published on 10 February 2012

<http://www.scotland.gov.uk/Publications/2012/02/1912>

## **Impact Assessments**

19. This Order has no effect on any equality issues. An Equality Impact Assessment was carried out for the Police and Fire Reform (Scotland) Bill and is available on the Scottish Government website.

<http://www.scotland.gov.uk/Topics/Justice/public-safety/Police/ConsultationFuturePolicin/EQIA>

## **Financial Effects**

20. The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Safer Communities Directorate  
18 February 2013