STATUTORY INSTRUMENTS

2013 No. 602

The Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013

PART 2

POLICE

Agreements to investigate serious incidents

3.—(1) The Commissioner and the British Transport Police Authority may enter into an agreement for the Commissioner to investigate and report, where requested to do so by that Authority or the chief constable of the British Transport Police Force, on any serious incident involving the British Transport Police Force.

(2) A "serious incident involving the British Transport Police Force" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act(**1**) except that "a person serving with the police" means a constable of the British Transport Police Force and any other persons specified in the agreement who serve with that Force or who are employed by the British Transport Police Authority.

(3) The Commissioner and the Civil Nuclear Police Authority may enter into an agreement for the Commissioner to investigate and report, where requested to do so by that Authority or the chief constable of the Civil Nuclear Constabulary, on any serious incident involving the Civil Nuclear Constabulary.

(4) A "serious incident involving the Civil Nuclear Constabulary" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the Civil Nuclear Constabulary and any other persons specified in the agreement who serve with that Constabulary or who are employed by the Civil Nuclear Police Authority.

(5) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report, where requested to do so by the chief constable of the Ministry of Defence Police, on any serious incident involving the Ministry of Defence Police.

(6) A "serious incident involving the Ministry of Defence Police" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the Ministry of Defence Police.

(7) The Commissioner and SOCA may enter into an agreement for the Commissioner to investigate and report, where requested to do so by SOCA, on any serious incident involving SOCA.

(8) A "serious incident involving SOCA" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means a member of the staff of SOCA.

(**1**) Section 41B was inserted by section 64 of the Police and Fire Reform (Scotland) Act 2012 (asp 8) (the "2012 Act").

(9) The Commissioner and the Commissioners for Her Majesty's Revenue and Customs may enter into an agreement for the Commissioner to investigate and report, where requested to do so by the Commissioners for Revenue and Customs, on any serious incident involving Her Majesty's Revenue and Customs.

(10) A "serious incident involving Her Majesty's Revenue and Customs" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means an officer of Revenue and Customs, but only when acting in the exercise of such enforcement functions as may be specified in an agreement made under paragraph (9).

(11) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report on any serious incident involving an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum.

(12) A "serious incident involving an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum" has the same meaning as a "serious incident involving the police" in section 41B of the 2006 Act except that "a person serving with the police" means an immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum, but only when acting in the exercise of such enforcement functions as may specified in an agreement made under paragraph (11).

(13) An agreement made under paragraph (11) of this article must not establish and maintain procedures in relation to complaints about the exercise by any person of a function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999(**2**).

(14) The Commissioner and the Secretary of State may enter into an agreement for the Commissioner to investigate and report on a serious incident involving a general customs official.

(15) A "serious incident involving a general customs official" has the same meaning as in section 41B of the 2006 Act except that "a person serving with the police" means a general customs official or any other person exercising general customs functions under the authority of the Secretary of State or the Director of Border Revenue, but only when acting in the exercise of such enforcement functions as may be specified in an agreement under paragraph (14).

(16) The Commissioner and the Director of Border Revenue may enter into an agreement for the Commissioner to investigate and report on a serious incident involving a customs revenue official.

(17) A "serious incident involving a customs revenue official" has the same meaning as in section 41B of the 2006 Act except that "a person serving with the police" means a customs revenue official or any other person exercising customs revenue functions under the authority of the Director of Border Revenue, but only when acting in the exercise of such enforcement functions as may be specified in an agreement made under paragraph (16).

(18) An agreement made under this article is not to be made, varied or terminated without the approval of—

(a) the Scottish Ministers in a case where—

(i) the Secretary of State is a party to the agreement; or

(ii) the agreement is made under paragraph (9); and

(b) in all other cases, the Secretary of State and the Scottish Ministers.

(19) Where the Commissioner enters into an agreement under this article, for the purposes of section 33A of the 2006 Act(**3**) the Commissioner is to be regarded as having the functions set out in the agreement.

(20) An agreement made under this article—

(**2**) 1999 c.33.
(**3**) Section 33A was inserted by section 62 of the 2012 Act.

(a) may specify types or categories of serious incident which may or may not be investigated and reported on by the Commissioner;

(b) may make different provision for different purposes or circumstances;

(c) include provision for payment to the Commissioner for any function which the Commissioner may exercise under it;

(d) may make provision only in relation to Scotland.

Investigation of crimes and deaths

4. For the purposes of section 33A(b) of the 2006 Act, a person serving with the police includes—

(a) a constable of the British Transport Police Force, any person serving with that Force and any person employed by the British Transport Police Authority;

(b) a member of the Civil Nuclear Constabulary, any person serving with that Constabulary and any person employed by the Civil Nuclear Police Authority;

(c) a member of the Ministry of Defence Police;

(d) a member of the staff of SOCA;

(e) an officer of Revenue and Customs, but only when acting in the exercise of enforcement functions;

(f) a general customs official and any other person exercising general customs functions under the authority of the Secretary of State or the Director of Border Revenue, but only when acting in the exercise of enforcement functions;

(g) a customs revenue official and any other person exercising customs revenue functions under the authority of the Director of Border Revenue, but only when acting in the exercise of enforcement functions;

(h) an immigration officer and an official of the Secretary of State exercising functions relating to asylum and immigration, but only when acting in the exercise of enforcement functions.

Assistance by British Transport Police Force to Police Service of Scotland

5.—(1) The chief constable of the British Transport Police Force may provide constables or other assistance for the purposes of enabling the Police Service of Scotland to meet any special demand on its resources.

(2) Such assistance—

(a) may be provided at the request of the chief constable of the Police Service of Scotland;

(b) must be provided if the Secretary of State, on being satisfied that it is expedient in the interests of public safety that the Police Service of Scotland should be reinforced or should receive other resources for the purposes of enabling it to meet any special demand on its resources, so directs.

(3) Assistance is to be provided on such terms as may be agreed between the British Transport Police Authority and the Scottish Police Authority (including terms for meeting the costs of such assistance) or, failing such agreement, on such terms as may be determined by the Secretary of State and the Scottish Ministers (acting jointly).

(4) A constable providing assistance in pursuance of this article—

(a) is under the direction and control of the chief constable of the Police Service of Scotland;

(b) has all the functions conferred on a constable of the Police Service of Scotland; and

(c) has all the powers and privileges of a constable serving with the Police Service of Scotland.

(5) Section 24 of the 2012 Act applies in relation to a constable providing assistance under this article as it applies in relation to a constable engaged on service with the Police Service of Scotland.

Assistance by Police Service of Scotland to British Transport Police Force

6.—(1) The chief constable of the Police Service of Scotland may, at the request of the chief constable of the British Transport Police Force, provide constables or other assistance for the purposes of enabling the British Transport Police Force to meet any special demand on its resources.

(2) Assistance is to be provided on such terms as may be agreed between the Scottish Police Authority and the British Transport Police Authority (including terms for meeting the costs of such assistance) or, failing such agreement, on such terms as may be determined by the Secretary of State and the Scottish Ministers (acting jointly).

(3) A constable providing assistance in pursuance of this article—

(a) is under the direction and control of the chief constable of the British Transport Police Force;

(b) has all the functions conferred on a constable of that Force; and

(c) has all the powers and privileges of a constable serving with that Force.

(4) The chief constable of the British Transport Police Force, and the British Transport Police Authority, are liable in respect of unlawful conduct of a constable providing assistance in pursuance of this article to the same extent as they are liable for the unlawful conduct of a constable of the British Transport Police Force.

Liability for unlawful conduct of member of Ministry of Defence Police

7. Section 24 of the 2012 Act applies in relation to a member of the Ministry of Defence Police providing assistance to the Police Service of Scotland in pursuance of section 2A of the 1987 Act(**4**) as it applies to a constable engaged on service with the Police Service of Scotland.

Collaboration agreements

8.—(1) If it appears to the chief constables of two or more relevant police forces that any of those forces' functions can be discharged more effectively by constables of those forces acting jointly, they may, with the approval of the relevant police authorities for those forces, make an agreement for that purpose.

(2) If it appears to two or more relevant police authorities that any premises, equipment or other material or facilities can with advantage be provided jointly for the relevant police forces they maintain, they may make an agreement for that purpose.

(3) Any expenditure incurred under an agreement made under paragraph (1) or (2) is to be borne by the relevant police authorities in such proportions as they may agree.

(4) Failing an agreement made under paragraph (3), the expenditure incurred under an agreement made under paragraph (1) or (2) is to be borne by the relevant police authorities in such proportions as may be determined by—

(a) where the relevant police authorities include the Scottish Police Authority, the Scottish Ministers and the Secretary of State (acting jointly);

(b) in any other case, the Secretary of State.

(5) The Secretary of State may direct—

(**4**) Section 2A was inserted by the Anti-terrorism, Crime and Security Act 2001 (c.24), section 99. There are amendments to section 2A not relevant to this Order.

(a) the chief constable of the British Transport Police Force or the British Transport Police Authority;

(b) the chief constable of the Civil Nuclear Constabulary or the Civil Nuclear Police Authority; or

(c) the chief constable of the Ministry of Defence Police,

to seek to enter into an agreement under this article for such purposes, and on such terms, as may be specified in the direction.

(6) In this article—

"relevant police authority" means—

(a) in relation to the Police Service of Scotland, the Scottish Police Authority;

(b) in relation to the British Transport Police Force, the British Transport Police Authority;

(c) in relation to the Civil Nuclear Constabulary, the Civil Nuclear Police Authority;

(d) in relation to the Ministry of Defence Police, the Secretary of State;

"relevant police force" means—

(e) the Police Service of Scotland;

(f) the British Transport Police Force;

(g) the Civil Nuclear Constabulary;

(h) the Ministry of Defence Police.

1Causing disaffection

9.—(1) It is an offence—

(a) to cause disaffection amongst the members of a relevant police force; or

(b) to induce a member of a relevant police force to withhold services.

(2) A person who is guilty of an offence under paragraph (1) is liable—

(a) on summary conviction, to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.

(3) A person convicted of an offence under paragraph (1) is disqualified from being and from ever becoming a member of a relevant police force.

(4) A "member of a relevant police force" means—

(a) a constable of the Police Service of Scotland;

(b) a member of the British Transport Police Force;

(c) a member of the Civil Nuclear Constabulary.

Offences: extension for other police forces

10.—(1) Sections 90 and 91 of the 2012 Act apply in relation to the following persons as they apply in relation to a person acting as a constable of the Police Service of Scotland—

(a) a member of the Civil Nuclear Constabulary who—

(i) is exercising any of the powers and privileges conferred on that member by section 56 of the Energy Act 2004(**5**); or

(**5**) 2004 c.20.

(ii) is otherwise performing duties under the direction and control of the chief constable of the Civil Nuclear Constabulary or as an employee of the Civil Nuclear Police Authority;

(b) a member of the Ministry of Defence Police who—

(i) is exercising any of the powers and privileges conferred on that member by section 2 of the 1987 Act(**6**);

(ii) is otherwise performing duties under the direction and control of the chief constable of the Ministry of Defence Police; or

(iii) is exercising any of the powers and privileges conferred on that member by section 2A(2)(b) of the 1987 Act.

(2) Section 92 of the 2012 Act has effect in relation to the Civil Nuclear Constabulary as if—

(a) references in that section to a constable included references to a member of that Constabulary;

(b) references in that section to police uniform included references to the uniform of that Constabulary; and

(c) references in that section to acting without the permission of the Scottish Police Authority were omitted.

2Grants for safeguarding national security

11.—(1) The Secretary of State or the Scottish Ministers may make grants to the Scottish Police Authority in connection with safeguarding national security.

(2) Grants may be made subject to conditions.

(3) The Secretary of State may exercise powers under this article only with the consent of the Treasury.

Independent custody visiting

12.—(1) The Scottish Police Authority must ensure that a copy of any report submitted in pursuance of section 94(2)(c) of the 2012 Act in relation to a visit of a person detained under section 41 of the Terrorism Act 2000(**7**) is given to the person appointed under section 36(1) of the Terrorism Act 2006(**8**).

(2) Arrangements made by the Scottish Police Authority under section 94(1) of the 2012 Act may—

(a) authorise independent custody visitors to listen to the audio recordings and view the video recordings (with or without sound) of any interview with a person detained under section 41 of the Terrorism Act 2000 which has been conducted by a constable while the person has been detained;

(b) provide that access to the whole or part of an audio or video recording of such an interview is to be denied to independent custody visitors if—

(i) it appears to a constable of the rank of inspector (or above) that there are grounds for denying access at the time it is requested;

(**6**) Section 2 has been modified by the Anti-terrorism, Crime and Security Act 2001 (c.24), section 98 and Schedule 8, Part 6, the Railways and Transport Safety Act 2003 (c.20), Schedule 5, paragraph 4, the Energy Act 2004 (c.20), Schedule 14, paragraph 5 and Schedule 23, the Serious Crime Act 2007 (c.27), section 63 and Schedule 6, paragraph 14 and the Bribery Act 2010 (c.23), Schedule 1, paragraph 1.

(**7**) 2000 c.11.

(**8**) 2006 c.11. Section 36 was amended by the Coroners and Justice Act 2009 (c.25), section 117.

(ii) those grounds are grounds which are specified for the purposes of head (i) in the arrangements; and

(iii) any other procedural requirements imposed by the arrangements in relation to denial of access to such recordings are met.

(3) Grounds are not to be specified for the purposes of paragraph (2)(b)(i) unless they are grounds for the time being set out for the purposes of this article in the guidance issued by the Secretary of State under paragraph (4).

(4) The Secretary of State may issue guidance about independent custody visiting in relation to persons detained under section 41 of the Terrorism Act 2000, and the Scottish Police Authority and members of its staff, the Police Service of Scotland and police staff and independent custody visitors must have regard to any such guidance.

(5) Before issuing guidance, the Secretary of State must consult—

(a) the Scottish Police Authority;

(b) the chief constable of the Police Service of Scotland;

(c) independent custody visitors or such persons as appear to the Secretary of State to be representative of independent custody visitors;

(d) the Scottish Ministers; and

(e) such other persons as the Secretary of State considers appropriate.

(6) The Secretary of State must lay a copy of the guidance issued before Parliament.

(7) Arrangements made by the Scottish Police Authority under section 95(1) of the 2012 Act may allow access to a detainee to be refused where—

(a) there are urgent and compelling grounds of national defence in the place to be visited that temporarily prevent the carrying out of such a visit; and

(b) the Scottish Ministers have notified the Authority that such grounds exist and that access should accordingly be refused.

(8) For the purposes of paragraph (7) above and section 95(4)(b) of the 2012 Act, the Scottish Ministers must not invoke a declared state of emergency as the sole reason to notify the Authority that access is to be refused.

Provision of goods and services

13. The functions conferred by subsections (1), (3) and (5) of section 87 of the 2012 Act are exercisable in or as regards places outwith Scotland.

2Pensions: special constables and police cadets

14.—(1) Regulations under section 48 of the 2012 Act may make provision relating to the payment of pensions and other benefits to or in respect of—

(a) special constables appointed under section 9 of the 2012 Act; or

(b) police cadets appointed under section 25 of the 2012 Act.

(2) Before making regulations relating to the payment of pensions and other benefits, the Scottish Ministers must consult the Police Negotiating Board for the United Kingdom.

(3) For the purposes of paragraph (1), regulations under section 48 of the 2012 Act may—

(a) apply, subject to such modifications as may be prescribed by the regulations, any provisions made by or under any enactment relating to the pensions and other benefits payable to or in respect of constables;

(b) be framed so as to have effect as from a date earlier than the making of the regulations.

(4) Section 54(2) of the 2012 Act does not apply in respect of provision made in relation to this article.