

*These notes relate to the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10) (asp 10) which received Royal Assent on 4 July 2006*

# **POLICE, PUBLIC ORDER AND CRIMINAL JUSTICE (SCOTLAND) ACT 2006 (ASP 10)**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: Police**

##### *Chapter 1: the Scottish Police Services Authority*

#### **The Scottish Crime and Drug Enforcement Agency**

##### *Section 12 – Members of the Agency*

27. This section sets out who will be members of the Agency. The members will comprise a Director General (subsection (1)(a)), Deputy Director General (subsection (1)(b)), persons appointed as police members whether on secondment from Scottish or other UK police forces or directly recruited by the Authority and allocated to the Agency (subsection (1)(c)) and support staff members appointed by the Authority, (subsection (1)(d)).
28. Subsection (2) gives effect to schedule 2 which sets out the provisions in relation to membership of the Agency.

##### *Section 13 – Strategic priorities of the Agency*

29. This section gives the Scottish Ministers the power to set strategic priorities for the Agency. Such priorities may, for example, cover the disruption of serious organised crime networks. These strategic priorities are to be set in consultation with the Authority, the Director General of the Agency, persons representing the interests of the chief constable of each Scottish police force and persons representing the interests of unitary police authorities and joint police boards.
30. Subsection (2) provides that the Scottish Ministers cannot determine strategic priorities which would impinge on the operational independence of the Agency.

##### *Section 14 – Annual plans of the Agency*

31. This section requires the Director General of the Agency to prepare an 'annual plan' at least 3 months before the beginning of each financial year setting out how the Agency intends to carry out its functions and submit it to the Authority. The annual plan must include:
  - the strategic priorities set by the Scottish Ministers (subsection (2)(a));
  - details of any directions made by the Scottish Ministers under section 30 (subsection (2)(b));

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- a statement of the financial resources that will be available to the Agency over the course of that year (subsection (2)(c));
  - a statement of how the Director General intends to allocate the funding (subsection (2)(d)).
32. Subsection (3) requires the Authority to approve the plan either as submitted or with modifications as it considers appropriate within 2 months of the plan being submitted to it. Subsection (4) ensures that the Authority cannot make any modifications which would impinge on the operational independence of the Agency. Subsection (5) makes it clear that it is the Director General's responsibility to publish and circulate the annual plan once it has been approved. Circulation must include those persons listed at subsection (6).

### ***Section 15 – Annual reports of the Agency***

33. This section requires the Director General of the Agency to publish an annual report at the end of each financial year. The report must include a report on the carrying out of the Agency's functions during that year and an assessment of the extent to which the annual plan has been implemented (subsection (2)).
34. Subsection (3) places a duty on the Director General of the Agency to ensure that a copy of the report is sent to specified persons. Copies of the report sent to the Scottish Ministers must be laid before the Scottish Parliament (subsection (4)).

### ***Section 16 – General functions of Director General of the Agency***

35. This section provides that in carrying out his or her functions the Director General must have regard to the Agency's annual plan but the Director General will be responsible for directing and controlling the Agency. This is to ensure the Director General's formal autonomy in operational matters.

### ***Section 17 – Powers of the Agency***

36. This section sets out the powers of the Agency. These are similar to the powers of the Serious and Organised Crime Agency (SOCA) under the Serious Organised Crime and Police Act 2005.
37. The powers include acting on request in support of certain other bodies in the pursuit of their functions; and co-operating with other bodies, including overseas agencies, in pursuit of the Agency's functions.
38. Subsection (3) gives the Agency the power to provide assistance in response to requests made by bodies operating abroad. Requests by overseas authorities to obtain evidence under section 13 of the Crime (International Co-operation) Act 2003 are excluded from this provision (section 17(4)).

### ***Section 18 – Scottish Ministers' power to modify section 17***

39. This section provides the Scottish Ministers with a power by order made by statutory instrument to modify section 17 to add, remove or amend the powers of the Agency provided for in section 17. The Scottish Ministers must consult before exercising this power. An order under section 18 is subject to affirmative resolution procedure.

### ***Section 19 – Disclosure of information by the Agency***

40. This section provides that the Agency may disclose information to any person or body for any of the "permitted purposes" set out in subsection (2)(a) to (e). Under subsection (2)(f) the Scottish Ministers will be able to add to the list of disclosure purposes by order. Subsection (3) disapplies any statutory or other restriction on the

disclosure of information, in respect of any disclosure made by the Agency for a permitted purpose. However, this provision does not override any statutory restrictions or obligation in legislation which is reserved within the meaning of the Scotland Act 1998. This means that information must be disclosed in accordance with the Data Protection Act 1998 (and any other restrictions in other reserved legislation) insofar as that legislation applies to the information.

41. Subsections (4) and (5) place restrictions on the onward disclosure of information that has been disclosed by the Agency. In the case of information disclosed by the Agency to a person or body, it provides that this information may only be passed on, with the consent of the Agency, for a purpose connected with the functions of that person or body, for the purpose for which the information was originally disclosed by the Agency, or for any other of the permitted purposes listed in subsection (2).

### ***Section 20 – Disclosure of information to the Agency***

42. This section enables any person to disclose information to the Agency where the aim is to assist the Agency in the pursuit of any of its functions. Subsection (2) disapplies any statutory or other restriction on the disclosure of information, in respect of any disclosure made to the Agency in this regard. However, this provision does not override any statutory restrictions or obligation in legislation which is reserved within the meaning of the Scotland Act 1998. This means that information must be disclosed in accordance with the Data Protection Act 1998 (and any other restrictions in other reserved legislation) insofar as that legislation applies to the information.

### ***Section 21 – Direction by Director General of Agency***

43. This section provides that the functions of the Deputy Director General and police members of the Agency are subject to the direction of the Director General. Subsection (2) provides that in giving such directions the Director General must comply with any instructions given by the Lord Advocate or procurator fiscal in relation to the investigation of offences in Scotland or any instructions given by the Lord Advocate in relation to reporting for the purposes of prosecution of alleged offences. This provision is modelled on section 17 of the Police (Scotland) Act 1967 which makes similar provision in relation to police constables and chief constables.

### ***Section 22 – Liability for wrongful acts of police members of the Agency***

44. This section establishes that it is the Director General of the Agency who is liable in respect of any unlawful conduct by police members of the Agency. This includes both constables who are seconded to the Agency from police forces (via the Authority) and constables of the Agency who are directly recruited. This is a change from the current position in respect of constables seconded to the Operational and Intelligence Group of the SDEA as in those circumstances it is the chief constable of the seconded officer's home police force who remains liable for any wrongful acts. It will however bring the Authority/Agency model in line with the current police authority/chief constable model whereby a chief constable is liable in reparation for the acts or omissions of constables in his or her force (see section 39 of the 1967 Act).
45. Subsection (2) makes it clear that whilst vicariously liable for wrongful acts of police members the Director General of the Agency is not personally liable and provides that it will be the Authority which is responsible for paying any awards due under this section, subject to the restrictions set out. Again, this is in line with the police authority/chief constable model in section 39(2) of the 1967 Act.

### ***Section 23 – Regulations relating to the Agency***

46. This section introduces a power for the Scottish Ministers to make regulations in respect of the Agency, similar to those contained in section 26 of the Police (Scotland) Act

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1967. This is intended to bring the Agency into line with police forces as regards the framework that applies to the appointment and regulation of police constables.

47. The regulations may cover such issues as pay and allowances, rank structure and promotion.