

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)

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Police

Chapter 1: the Scottish Police Services Authority

The Scottish Police Services Authority

Section 1 – Establishment of the Scottish Police Services Authority

8. This section establishes the Scottish Police Services Authority (“the Authority”) and gives effect to schedule 1 which sets out matters including the constitution, membership and staff of the Authority.

Section 2 – Duty to establish and maintain the Agency

9. This section places a duty on the Authority to establish and maintain an organisation to be known as the Scottish Crime and Drug Enforcement Agency (“the Agency”) which will replace the Scottish Drug Enforcement Agency (SDEA).
10. Subsection (2) sets out the core functions of the Agency. These are to prevent and detect serious organised crime, to contribute to the reduction of such crime and to the mitigation of its consequences and to gather, store and analyse information in connection with the above. In effect the purpose of the Agency is to reduce serious organised crime and the harm it causes. The function of mitigating the consequences of serious organised crime acknowledges that the prosecution of organised criminals is only one of the strategies that may be employed to tackle organised criminality.
11. Sub-section (3) enables the Agency to share, with specified organisations, information which it has gathered and stored for the purposes of carrying out its core functions. The specified organisations include other UK police forces, the Serious Organised Crime Agency (SOCA) and other law enforcement agencies.

Section 3 – Duty to provide the police support services

12. Section 3 provides that in addition to establishing and maintaining the Agency, the Authority must provide the ‘police support services’ set out in subsection (2). These include all the common police services currently established and provided by the Scottish Ministers under section 36 of the Police (Scotland) Act 1967, namely the Scottish Police College, the Scottish Criminal Record Office and the Scottish Police Information Strategy; and also the police forensic science services. The Authority will also carry out the functions of the Scottish Ministers which are delegated to it by the Scottish Ministers under Part V of the Police Act 1997 in relation to issuing criminal record certificates.

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13. Subsections (3) and (4) give the Authority flexibility in the ways in which it provides these services, so that it may establish organisations, may collaborate with other bodies, and may do anything incidental or ancillary to the provision of these services.
14. Subsections (5) and (6) make it clear that in all its activities the Authority must act in a way which is calculated to promote the efficiency and effectiveness of the police, having regard also to the contribution its services make to the efficiency and effectiveness of the wider criminal justice system.
15. Subsection (8) amends section 121 of the Police Act 1997 to provide that the functions of the Scottish Ministers under that Act in relation to the issuing of criminal record certificates (other than making regulations and orders) will be able to be carried out by the Authority.

Section 4 – Strategic priorities of the Authority

16. This section gives the Scottish Ministers the right to determine strategic priorities for the Authority, after consulting the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards. In practice here and elsewhere in this Chapter, this will mean the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Police Authorities Conveners Forum (SPACF). Subsection (3) requires the Scottish Ministers to publish any such strategic priorities which they make. As an example, a strategic priority may be to promote the efficiency and effectiveness of the police in Scotland.

Section 5 – Objectives of the Authority

17. This section requires the Authority to determine its objectives and keep them under review. These objectives must be consistent with any strategic priorities determined by the Scottish Ministers.

Section 6 – Annual plans of the Authority

18. This section requires the Authority to submit a draft 'annual plan' to the Scottish Ministers at least 3 months before the beginning of each financial year. The annual plan must include:
 - any strategic priorities determined by the Scottish Ministers and any directions issued by the Scottish Ministers;
 - the objectives which the Authority has determined for itself, and how it intends to meet them;
 - a statement of the financial resources that will be available to the Authority over the course of that year and how the Authority intends to allocate the funding.
19. Subsection (4) requires the Authority to consult people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations in preparing its annual plan. Subsection (5) requires the Scottish Ministers to approve the plan either as submitted or with such modifications as they consider appropriate within 2 months of the plan being submitted to them. Subsections (6) and (7) require the Authority to publish the plan once approved by Scottish Ministers and to send it to specified persons and bodies.

Section 7 – Annual reports of the Authority

20. This section requires the Authority to publish an annual report at the end of each financial year. The report must give an account of the Authority's activities for that year and must describe the extent to which the objectives (if necessary, as modified) have been implemented.

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21. Subsection (4) places a duty on the Authority to send a copy of the report to specified persons, including the Scottish Ministers. The Scottish Ministers must lay a copy of the report before the Scottish Parliament (subsection (5)).

Section 8 – Provision of information to the Scottish Ministers

22. This section gives the Authority a duty to comply with any reasonable request for information from the Scottish Ministers.

Section 9 – Liability for wrongful acts of certain persons seconded to the Authority

23. This section establishes that liability in respect of any wrongful acts committed by persons on secondment to the Authority rests with the Authority rather than the chief constable of the seconding force. (This includes support staff members of the Agency but not police members of the Agency for which separate arrangements are made under section 22.) This liability provision is consistent with the current position for constables seconded on central service under section 38 of the Police (Scotland) Act 1967 to common police services provided by the Scottish Ministers under section 36 of that Act - where section 38(3B) provides that the Scottish Ministers are liable in reparation for wrongful acts or omissions of those constables.
24. Neither this section nor section 22 makes any provision in respect of employees of the Authority, including employees who are also members of the Agency because, as the employer, the Authority will be vicariously liable for any unlawful acts committed by its employees in the course of their employment.

Section 10 – Grants

25. This section establishes that the Authority and the Agency are to be funded by grants from the Scottish Ministers. Subsection (2) requires the Scottish Ministers to specify the amount of grant which is to be used for the purposes of the Agency, and subsections (3) and (5) empower the Scottish Ministers to set other terms and conditions around the use of the funding. However, subsection (4) provides that the Scottish Ministers cannot impose terms and conditions which would impinge on the operational independence of the Agency. Subsection (7) requires the Scottish Ministers to consult the Authority, the Director General of the Agency, and people who represent the interests of chief constables, unitary police authorities and joint police boards before making such grants.

Section 11 – Charges by the Authority and other receipts

26. This section empowers the Authority to charge for any goods or services it or the Agency provides (for example, for training provided to non-Scottish forces or for disclosure certificates), and requires that such income should be payable to the Scottish Ministers unless they decide otherwise in respect of any part of this income.

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));
 - 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.

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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 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.

The police support services

Section 24 – The police support services: modification by order

48. This section gives the Scottish Ministers the power by order made by statutory instrument to add new services, or amend or remove existing services, from the list of police support services to be provided by the Authority. Before exercising this power the Scottish Ministers must consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisation.

Section 25 – Use of the police support services

49. This section empowers the Scottish Ministers, in the interests of the efficiency and effectiveness of the police, to make regulations requiring all police forces (or a selection of them) to make use of particular police support services. The purpose of such regulations would be to avoid inefficient duplication of effort which might result if, for example, some police forces used databases provided by the Authority while others chose to develop their own. This is not an entirely new power as the Scottish Ministers currently have a similar power under section 36(2) of the 1967 Act to make regulations requiring police forces to use common police services provided and maintained under section 36 of the 1967 Act.
50. Subsection (4) requires the Scottish Ministers to consult the Authority, people who represent the interests of chief constables, unitary police authorities and joint police boards and any other appropriate organisations before using this power.

Inspections

Section 26 – Inspections of the Authority’s services and the Agency

51. This section requires the inspectors of constabulary appointed under section 33 of the Police (Scotland) Act 1967 (i.e. Her Majesty’s Inspectorate of Constabulary (HMIC)) to carry out periodic inspections of the Authority and the Agency and to publish the reports of these inspections. HMIC already have this duty in respect of police forces.

Section 27 – Inspections of the Authority at request of the Scottish Ministers

52. This section gives the Scottish Ministers the power to require HMIC to carry out an inspection, and publish a report, on the Authority (including the Agency) or any of its functions or activities. The Scottish Ministers already have this power in respect of inspections of police forces.

Section 28 – Reports on inspections: powers of the Scottish Ministers

Section 29 – Revision of inadequate action plan

53. These sections give the Scottish Ministers powers by which to secure remedial action if a report by HMIC advises that any part of the Authority or the Agency is, or is likely to become, inefficient or ineffective. The powers broadly mirror those which the Scottish Ministers have in respect of police forces. In such circumstances the Scottish Ministers are empowered to require the Authority to submit an action plan setting out its proposed remedial measures (or alternatively to modify an existing action plan if there is one) within a deadline of between 4 and 12 weeks. Under section 29, if the Scottish Ministers consider the action plan inadequate they may inform the Authority of that fact and their reasons. In that event the Authority must consider whether to revise the action plan.

Miscellaneous and general

Section 30 – Directions

54. This section gives the Scottish Ministers power to make directions to the Authority and/or the Agency on any matter other than the operational matters of the Agency.

Section 31 – Transfer of staff, property etc.

55. This section gives effect to schedule 3 which is concerned with the transfer of staff and property etc. from the existing common police services to the Authority, and the Agency.

Section 32 – Interpretation of Chapter 1

56. This section provides definitions for various key terms used in this Chapter of the Act.

Chapter 2: Complaints and Misconduct

The Police Complaints Commissioner for Scotland

Section 33 – The Police Complaints Commissioner for Scotland

57. This section establishes a Police Complaints Commissioner for Scotland, to be appointed by the Scottish Ministers. More detail on the position of Commissioner is laid out at schedule 4.

Supervision of complaints

Section 34 – “Relevant complaint” and “person serving with the police”

58. This section provides a definition of the kind of complaints that the Commissioner will be able to consider for review. A person can make a general complaint about one of the bodies listed in subsection (2) or about an act or omission by a person who is serving with the police. Subsection (7) sets out what is meant by serving with the police.
59. Subsection (6) sets out who can make a complaint which may be reviewed by the Commissioner. The section further provides that a complaint need not identify an individual police officer who is the subject of it, in order to be eligible for review by the Commissioner. Subsection (3) specifically provides that the Commissioner will not have jurisdiction to deal with complaints made against the police which contain allegations of criminal behaviour. Overseeing the investigation of criminal complaints will continue to be the responsibility of the area procurator fiscal. The Commissioner will also not review complaints about any matter which is related to a person's employment or service with the police force, even if that person is no longer serving with the police. On the other hand, subsection (4) provides that the Commissioner will be able to review complaints made about off-duty behaviour of any person serving with the police.

Section 35 – Examination of manner of handling of complaint

60. This section outlines the manner in which the Commissioner can review the way in which a complaint against the police has been handled. Such a review can be requested either by the complainer (for example, if dissatisfied with the way their complaint has been handled) or by the police organisation concerned (for example, if it believes it has gone as far as it can to resolve the complaint and considers there is merit in the Commissioner looking at the matter). The Commissioner may only carry out a review requested by a police organisation if satisfied that the organisation has already taken reasonable steps to deal with the complaint itself.
61. Subsection (3) places the Commissioner under a duty to inform the complainer and any person who is serving with the police who may be the subject of a complaint, about the outcome of a review and what action the Commissioner proposes to take. The Commissioner is also required to produce a report of the complaint handling review and send this to the appropriate authority in relation to the complaint (as defined in section 41). Subsection (5) enables the Scottish Ministers to make regulations which set out exceptions to this duty but only in certain circumstances.
62. The section goes on to lay out the process through which, following a review, the Commissioner can direct that a complaint be reconsidered. The Commissioner can direct either the appropriate authority in relation to the complaint, or another relevant authority (as defined in section 47) to reconsider the complaint. The authority which reconsiders the complaint is known as the reconsidering authority. There may be occasions when the Commissioner decides, in light of the circumstances of the complaint, that it is more appropriate that a different police force or another relevant authority considers how that complaint was handled, rather than the force or authority which initially received the complaint.
63. Subsection (10) provides that where a relevant complaint has led to police disciplinary procedures being invoked (as set out in any regulations made under section 26(2A)(a) of the Police (Scotland) Act 1967), the Commissioner's power to intervene and issue a reconsideration direction is limited to the application of those disciplinary procedures. This means that if the Commissioner considers that these procedures have not been adhered to following a complaint made by a member of the public, he or she can issue a direction for the appropriate authority in relation to the complaint to reconsider the application of those procedures; but he or she cannot direct that appropriate authority to reach a different disciplinary conclusion or outcome.

64. Subsection (11)(b) allows the Commissioner directly to supervise any reconsideration process should he or she choose to do so.

Section 36 – Duty of Commissioner not to proceed with certain complaint handling reviews

65. This section places a duty on the Commissioner to discontinue, or not proceed with, a complaint handling review under certain circumstances. There will be circumstances where it will not be appropriate for a review of a complaint to be pursued by the Commissioner, for example if a complainer has made complaints of a vexatious nature or if allegations of a criminal nature come to light. Subsection (3) provides that these circumstances will be specified in regulations made by the Scottish Ministers and subject to negative resolution procedure. Subsection (4) outlines the process that must be followed by the Commissioner should a complaint handling review be discontinued or not proceeded with.

Section 37 – Appointment of person to reconsider complaint

66. This section explains how someone is appointed to carry out the reconsideration of a complaint against the police. This person will be appointed by the reconsidering authority which is charged with reconsidering the complaint, but if the Commissioner is directly supervising the reconsideration process, the appointment would be subject to approval by the Commissioner.

Section 38 – Reconsideration of complaint: duties to keep persons informed

67. This section places a duty on the reconsidering authority or the Commissioner (if he or she decides to supervise the reconsideration of a complaint), to keep the complainer, the appropriate authority in relation to the complaint, and any person who may be the subject of a complaint, informed of the progress of any reconsideration. This section also sets out that the reconsidering authority or the Commissioner (as appropriate) must inform these persons of what action may be taken following the reconsideration of the complaint and the outcome of the process. Subsection (5) places a duty on any person charged with carrying out a reconsideration to provide the Commissioner with any information that he or she requires to carry out his or her functions.

Section 39 – Power of Commissioner to discontinue reconsideration

68. This section gives the Commissioner the power to discontinue the reconsideration of any complaint in certain circumstances. Subsection (2) provides that these circumstances will be specified in regulations made by the Scottish Ministers and subject to negative resolution procedure. Subsection (3) outlines the process that must be followed by the Commissioner should the reconsideration of a complaint be discontinued.

Section 40 – Final reports on reconsideration

69. This section places a duty on anyone appointed to carry out a reconsideration, upon its completion, to submit a report to the Commissioner. A copy of that report must also be passed to the appropriate authority in relation to the complaint and, where different, the reconsidering authority.

Section 41 – Appropriate authority in relation to a complaint

70. This section describes which police organisation is the appropriate authority for a complaint, depending on the person or the organisation in respect of whom the complaint is made.

Other functions

Section 42 – General functions of the Commissioner

71. This section sets out the general functions of the Commissioner, which are mainly to ensure that each relevant authority has in place effective and efficient complaints handling systems. The Commissioner can also provide advice and make recommendations on how those systems and procedures can be improved or modified.

Section 43 – Reports to the Scottish Ministers

72. This section places a duty on the Commissioner to provide an annual report on the carrying out of his or her functions to the Scottish Ministers, each relevant authority and HMIC. The Commissioner must also provide reports on anything within his or her remit that the Scottish Ministers might require, and can also provide reports to the Scottish Ministers on anything which he or she considers appropriate.
73. Subsection (5) places a duty on the Scottish Ministers to lay before Parliament and publish all annual reports produced by the Commissioner. The Scottish Ministers must also publish and lay before Parliament any other reports which they receive from the Commissioner but only if they think it is appropriate to do so.

Section 44 – Provision of information to the Commissioner

74. This section places a duty on relevant authorities to provide, at the request of the Commissioner, information and documents required in order to carry out the Commissioner's functions.

Section 45 – Power of Commissioner to issue guidance

75. This section allows the Commissioner to issue guidance regarding the handling of complaints or any other matter specified within this Chapter of the Act. Subsection (2) requires the Commissioner to consult relevant persons and organisations before issuing guidance. Subsection (3) places a duty on those issued with guidance by the Commissioner to have regard to the terms of that guidance.

Section 46 – Disclosure of information by and to the Commissioner

76. This section enables the Commissioner to pass information to others and receive information from others when such information is necessary either for the Commissioner to fulfil his or her functions or for another public body or office-holder to fulfil their functions.
77. Subsections (2) and (3) place restrictions on the onward disclosure of information which the Commissioner gives to any body or office holder. Any body or office-holder that wants to disclose information which the Commissioner has given them can do so only if they have obtained the consent of the Commissioner, and the disclosure of this information is for a purpose connected with the body's or the office-holder's functions.

Supplementary

Section 47 – Interpretation of Chapter 2

78. This section provides definitions for various key terms used in this Chapter of the Act.

Chapter 3: Other Provisions

Section 48 – Allowances payable to special constables

79. This section amends section 3 of the Police (Scotland) Act 1967 to clarify the basis upon which certain allowances to be known as periodic payments can be paid to

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special constables. Special constables are volunteer police officers who do not receive a salary but may receive various allowances. This section will allow special constables to receive periodic payments in recognition of their commitment to serve for a set number of hours, as set out in regulations made by the Scottish Ministers.

Section 49 – Appointments of assistant inspectors of constabulary and staff officers

80. This section amends section 34 of the Police (Scotland) Act 1967 so as to remove the current restrictions on the appointment of staff officers to the inspectors of constabulary. At present, only constables from Scottish forces can be appointed as staff officers. The amendment makes clear that any person is eligible to be appointed and that these appointments will be made by the chief inspector of constabulary.

Section 50 – Constables engaged on service outside their force

81. This section amends section 38A of the Police (Scotland) Act 1967.
82. Subsection (2) amends section 38A of the 1967 Act to ensure that constables engaged on certain types of relevant service can still be represented by the Police Federation of their home force.
83. Subsection (3) makes provision to allow the Scottish Ministers, by order made by statutory instrument subject to negative resolution procedure, to add to the types of service undertaken by constables which can be regarded as relevant service for the purposes of the 1967 Act. This is to allow flexibility for the future as new bodies are created in which Scottish constables may be engaged on periods of temporary service. Some examples of the types of service currently listed as being relevant service are, for example, service with the Independent Police Complaints Commission for England and Wales, service under the International Development Act 2002 and service with the Scottish Ministers in connection with their functions under the Proceeds of Crime (Scotland) Act 2002. Providing such constables to be on relevant service within the meaning of section 38A ensures that they retain relevant rights in respect of pay and pension and can continue to be promoted in their police force as if they were still serving in it.