

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

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

226. [Paragraph 2](#) establishes that the Authority is independent of the Crown.
227. [Paragraph 3](#) sets out the membership of the Authority. Appointments are to be made by the Scottish Ministers. There are three different categories of member: police force members, who must be serving chief constables in a Scottish force; police authority members, who must be conveners of unitary police authorities or joint police boards; and lay members, who cannot be police officers or members of local authorities. The Board of the Authority will be appointed by the Scottish Ministers and must normally comprise between 7-10 people including a lay convener and, in addition, at least 2 of each category of member. However, under sub-paragraph (5), the requirement for there to be at least 2 members in each category falls if, in the opinion of the Scottish Ministers, adherence to this requirement would prevent or impede the effective working of the Board (for example, if it were not possible to find more than one police authority/board convener or more than one chief police officer willing to serve on the Board). Sub-paragraph (8) provides that the requirement for there to be at least 2 members from each category also falls if those responsible for nominating members fail to comply with a request for nominations from the Scottish Ministers within a reasonable time. Police authority and police force members may be appointed by Scottish Ministers only if they are nominated for appointment by their representative bodies. Constables of police forces in the United Kingdom and Islands, members of local authorities and members of the Authority's staff are disqualified from appointment as a lay member of the Authority.
228. Under sub-paragraphs (11) and (12), the Scottish Ministers may vary the overall size of the Board by order made by statutory instrument subject to negative resolution procedure, after having consulted the Authority and people who represent the interests of chief constables, unitary police authorities and joint police boards.
229. [Paragraph 4](#) requires the members of the Board of the Authority to elect one of their number to be the deputy convener.
230. [Paragraph 5](#) provides that each member may be appointed for such period as the Scottish Ministers may determine and may be re-appointed for a single further term also for such period as the Scottish Ministers determine. It also makes provision for resignations from the Board and establishes that a police member or local authority member ceases to be a member of the Board if they cease to be a chief constable or a police authority/board convener, respectively.
231. [Paragraph 6](#) empowers the Scottish Ministers to remove a member of the Board in any of a number of specified circumstances.

232. [Paragraph 7](#) imposes a duty on every member of the Board to ensure that the Authority is run efficiently and effectively.
233. Under paragraph 8, the Scottish Ministers may determine rates of remuneration, allowances, expenses, pensions and gratuities which shall be payable by the Authority to present or former lay members of the Board, including the convener. Such payments may include compensation where a person ceases to be the convener or a lay member other than on the completion of his or her term of appointment, but only if the Scottish Ministers consider that there are special circumstances which make it right to do so. Sub-paragraph (7) establishes that no remuneration, allowances or expenses can be made to police or local authority members of the Board.
234. [Paragraph 9](#) requires there to be a Chief Executive who will report to the Board of the Authority. The Scottish Ministers will appoint the first holder of this post, after consulting people who represent the interests of chief constables, unitary police authorities and joint police boards, and also the convener of the Authority (if by then there has been an appointment to that post). Subsequent Chief Executives are to be appointed by the Board of the Authority subject to the approval of the Scottish Ministers. The Scottish Ministers will also determine the remuneration, allowances, expenses, pensions and gratuities which shall be payable by the Authority to the Chief Executive.
235. [Paragraph 10](#) sets out provisions about the staffing of the Authority. The Authority's staff may be employees or may be police constables or other persons on secondment.
236. [Paragraph 10](#) provides that police constables on secondment to the Authority (other than those appointed as members of the Agency – see paragraph 7 of schedule 2) will be on relevant service under section 38A(1)(bd) of the Police (Scotland) 1967 Act. Schedule 6 paragraph 1(4) and (5) makes the relevant consequential amendments to the provisions of the 1967 Act to set up the “relevant service” status of the seconded officers. In particular and in line with equivalent provisions in the 1967 Act for constables who are on “relevant” service with other bodies, the amendments provide that the constables continue to be constables during the period of their secondment and are treated for particular purposes as constables of their home force. The seconded constables are responsible to the Authority and their pay and conditions are to be set by the Authority, subject to the approval of the Scottish Ministers. Seconded persons who fall within sub-paragraph (4) (e.g. other UK police officers) are appointed on terms and conditions determined by the Authority and are under the direction and control of the Authority. Sub-paragraph (9) provides that in making any determination as to terms and conditions of seconded constables or persons the Authority can refer to regulations made under section 26 of the 1967 Act or section 23 of this Act.
237. Sub-paragraph (10) provides an order-making power for the Scottish Ministers to apply and modify provisions of the Police (Scotland) Act 1967 and any regulations made under it to constables seconded to the Authority who are not police members of the Agency. Before making any such order which is in respect of matters mentioned in section 61(1) of the Police Act 1996 the Scottish Ministers must send a draft to the Police Advisory Board for Scotland and consider any representations made by them.
238. [Paragraph 11](#) empowers the Authority to arrange pension schemes for its staff, other than the Chief Executive or the Director General or Deputy Director General of the Agency, for whom specific provision is made elsewhere in schedules 1 and 2.
239. [Paragraph 12](#) empowers the Board of the Authority to set up committees, and the committees to establish sub-committees. Each committee and sub-committee must be chaired by a member of the Board of the Authority, but may include people who are not members of the Board. Such people may be paid remuneration, allowances and expenses unless they are police officers or members of local authorities.

*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*

240. [Paragraph 13](#) empowers the Authority to decide on procedural matters, including the quorum, for the Board, its committees and sub-committees. Determinations of the quorum can only be made at a meeting of the Board attended by the convener and at least 4 other members of the Board.
241. [Paragraph 14](#) entitles the Board of the Authority to delegate functions either to committees or to staff, and the committees to delegate to either sub-committees or staff. The sole exception is the function of issuing criminal record certificates under Part V of the Police Act 1997. This function cannot be delegated to a committee or sub-committee.
242. [Paragraph 15](#) gives the Authority flexibility in the way it carries out its functions, by empowering it to do anything which appears necessary or expedient or conducive to these functions. In particular, it may enter into contracts and may, subject to the consent of the Scottish Ministers, acquire or dispose of property (including accepting gifts or loans), borrow money or form companies (either alone or together with another party).
243. [Paragraph 16](#) requires the Authority to keep accounts both for itself and for the Agency, and to prepare a statement of accounts at the end of each financial year, whose form and content must meet any specification issued by the Scottish Ministers. The Authority must send a copy of the accounts to the Scottish Ministers who must in turn send a copy to be audited by the Auditor General of Scotland.