



# Police and Fire Reform (Scotland) Act 2012

2012 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 27th June 2012 and received Royal Assent on 7th August 2012**

An Act of the Scottish Parliament to make provision about policing; to make provision about fire and rescue services; and for connected purposes.

## PART 1

### POLICE REFORM

#### CHAPTER 1

##### THE SCOTTISH POLICE AUTHORITY

#### **1 The Scottish Police Authority**

- (1) There is established a body corporate to be known as the Scottish Police Authority or, in Gaelic, Ùghdarras Poilis na h-Alba.
- (2) Schedule 1 makes provision about the Authority's constitution, members and staff and other matters relating to it.

#### **2 Functions of the Authority**

- (1) The Authority's main functions are—
  - (a) to maintain the Police Service,
  - (b) to promote the policing principles set out in section 32,
  - (c) to promote and support continuous improvement in the policing of Scotland,
  - (d) to keep under review the policing of Scotland,
  - (e) to hold the chief constable to account for the policing of Scotland (including, in particular, the chief constable's carrying out of the duties imposed by or mentioned in section 17).

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- (2) The Authority also has the additional functions conferred on it by virtue of this or any other enactment.
- (3) The Authority must try to carry out its functions in a way which is proportionate, accountable and transparent and which is consistent with any principle of good governance which appears to it to constitute best practice.

#### Commencement Information

**II** S. 2 partly in force; s. 2(1)(c)(2)(3) in force at 8.8.2012 see s. 129(1)(a)

VALID FROM 01/01/2013

### 3 Maintenance of the police

- (1) In pursuance of its function under section 2(1)(a)—
  - (a) the Authority must (in accordance with regulations made under section 48) —
    - (i) pay constables pay and allowances, and
    - (ii) reimburse any expenses reasonably incurred by a constable,
  - (b) the Authority may provide and maintain anything necessary or desirable for the carrying out of police functions, including vehicles, equipment, information technology systems, land, buildings and other structures, and
  - (c) the Authority must, before the beginning of each financial year, provide to the chief constable details of how it intends to allocate the financial resources it expects to have available to it in respect of that financial year.
- (2) In this section, “financial year” means each period of a year ending on 31 March.

### 4 General powers of the Authority

- (1) The Authority may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.
- (2) The Authority may in particular—
  - (a) enter into contracts,
  - (b) borrow money,
  - (c) acquire and dispose of land and other property,
  - (d) with the authorisation of the Scottish Ministers, purchase compulsorily land, and
  - (e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).
- (3) The Authority may not exercise the power in subsection (2)(b) or (e) without the consent of the Scottish Ministers.
- (4) Such consent may be given—
  - (a) with respect to a particular case or a particular class of case,
  - (b) subject to such conditions as the Scottish Ministers consider appropriate.

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- (5) The power in subsection (2)(c) includes power to accept, on such terms and conditions as the Authority considers appropriate—
  - (a) gifts of money, and
  - (b) gifts or loans of other property.
- (6) The powers in subsection (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.
- (7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under subsection (2)(d) as if—
  - (a) that provision were contained in an Act in force immediately before the commencement of that Act, and
  - (b) the Authority were a local authority.

VALID FROM 01/10/2012

## 5 Directions

- (1) The Authority must comply with any direction (general or specific) given by the Scottish Ministers.
- (2) A direction may not be given in respect of—
  - (a) a specific operation being or to be carried out by the Police Service, or
  - (b) the way in which the Police Service is carrying out (or is to carry out) a specific operation.
- (3) The Scottish Ministers must—
  - (a) publish a direction given under this section in such manner as they consider appropriate, and
  - (b) lay a copy of it before the Scottish Parliament.
- (4) The Scottish Ministers may vary or revoke a direction (and subsection (3) applies in relation to an instrument varying or revoking a direction as it applies to a direction).

## CHAPTER 2

### THE POLICE SERVICE OF SCOTLAND

VALID FROM 01/04/2013

#### *The Police Service of Scotland*

## 6 The Police Service of Scotland

There is to be a constabulary to be known as the Police Service of Scotland(or, in Gaelic, Seirbheis Phoilis na h-Alba ) comprising—

- (a) a constable holding the office of chief constable,
- (b) one or more constables holding the office of deputy chief constable,

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- (c) one or more constables holding the office of assistant chief constable, and
- (d) other individuals holding the office of constable.

### *Constables: appointment, ranks and terms of office*

## **7 Senior officers**

- (1) The Authority must appoint—
  - (a) the chief constable,
  - (b) one or more deputy chief constables, and
  - (c) one or more assistant chief constables.
- (2) An appointment of a chief constable has effect only if approved by the Scottish Ministers.
- (3) The Authority must consult the chief constable before appointing a deputy or assistant chief constable.

VALID FROM 01/04/2013

## **8 Regular constables**

It is for the chief constable to appoint constables (other than senior officers).

VALID FROM 01/04/2013

## **9 Special constables**

The chief constable may appoint special constables, being constables who are not entitled to be paid but who may, in accordance with regulations made under section 48, be entitled to receive—

- (a) allowances,
- (b) periodic payments which acknowledge the giving of, or a commitment to give, services.

VALID FROM 01/04/2013

## **10 Constable's declaration**

- (1) An appointment of an individual as a constable has effect only where the individual has made a declaration in the following terms before a sheriff or justice of the peace—
 

“I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law.”.

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(2) The Scottish Ministers may by order modify the declaration.

VALID FROM 01/10/2012

## 11 Ranks

- (1) The ranks which a constable may hold are—
  - (a) chief constable,
  - (b) deputy chief constable,
  - (c) assistant chief constable,
  - (d) chief superintendent,
  - (e) superintendent,
  - (f) chief inspector,
  - (g) inspector,
  - (h) sergeant,
  - (i) constable.
- (2) Constables appointed as senior officers under section 7 are to hold the rank corresponding to the office to which they are appointed.
- (3) It is for the chief constable to assign, and to make promotions to, ranks below that of assistant chief constable.
- (4) A constable may be demoted in rank only—
  - (a) if the constable consents, or
  - (b) in accordance with regulations made under section 48.
- (5) The Scottish Ministers may by regulations modify subsection (1) to add or remove any rank below that of chief constable.
- (6) Regulations made under subsection (5) may make such provision in consequence of the addition or removal of a rank as the Scottish Ministers consider appropriate including (in particular) provision—
  - (a) creating or removing an office corresponding to the rank,
  - (b) relating to the functions of senior officers,
  - (c) modifying this or any other enactment.
- (7) Before making regulations, the Scottish Ministers must consult—
  - (a) the chief constable,
  - (b) the Authority,
  - (c) the joint central committee of the Police Federation for Scotland,
  - (d) such persons as appear to them to be representative of senior officers,
  - (e) such persons as appear to them to be representative of superintendents (including chief superintendents), and
  - (f) such other persons as they consider appropriate.

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VALID FROM 01/04/2013

## 12 Constables: terms of office

A constable is to hold and vacate office in accordance with—

- (a) regulations made under section 48, and
- (b) any other enactment (for example, the Police Pensions Act 1976 (c.35) or section 14 of this Act) which makes provision in that regard.

VALID FROM 01/04/2013

## 13 Rewards

The Authority may, on the recommendation of the chief constable, pay such sums by way of reward as it thinks fit to—

- (a) a constable (other than the chief constable) who in its opinion has carried out the constable's functions with exceptional diligence or in a specially meritorious manner, or
- (b) a person who in its opinion has made a substantial contribution to the carrying out of police functions.

VALID FROM 01/04/2013

## 14 Senior officers: resignation or retirement for efficiency or effectiveness

(1) The Authority may call on a senior officer to resign or, where appropriate, retire from office in the interests of efficiency or effectiveness of the Police Service.

(2) Before calling on a senior officer to resign or retire, the Authority must—

- (a) give the senior officer—
  - (i) a written explanation of the reason why the Authority proposes to call on the senior officer to resign or retire, and
  - (ii) an opportunity to make written representations,
- (b) consider any written representations made, and
- (c) where the chief constable is to be called on to resign or retire, consult the Scottish Ministers.

(3) Where—

- (a) a senior officer is called on to resign or retire, and
  - (b) the officer has made written representations under subsection (2)(a)(ii),
- the Authority must provide the officer with written reasons for its decision.

(4) A senior officer called on to resign or retire must do so with effect from—

- (a) the date determined by the Authority when calling on the senior officer to resign or retire, or

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- (b) such earlier date as may be agreed between the senior officer and the Authority.

VALID FROM 01/10/2012

## 15 Temporary service outwith the Police Service of Scotland

- (1) The chief constable may make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service.
- (2) A constable on temporary service outwith the Police Service—
  - (a) is to continue to hold the office of constable, and
  - (b) except where contrary provision is made by regulations under subsection (3) or by or under any other enactment, is to continue to—
    - (i) have all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
    - (ii) have the powers and privileges of a constable throughout Scotland, and
    - (iii) be under the direction and control of the chief constable in relation to the constable's performance of policing functions.
- (3) The Scottish Ministers may by regulations—
  - (a) prescribe types of temporary service in respect of which a constable—
    - (i) may not be engaged in pursuance of subsection (1),
    - (ii) may be so engaged only with the consent of the Authority or the Scottish Ministers (or both),
    - (iii) is not to have any of the functions, powers or privileges of a constable,
    - (iv) is not to be under the direction and control of the chief constable, and
  - (b) make such further provision in respect of constables on temporary service as they consider appropriate.
- (4) Regulations made under subsection (3) may in particular make provision—
  - (a) modifying any provision of this Act or any other enactment relating to constables (including any such provision or other enactment creating offences against or as regards constables) in relation to constables on temporary service,
  - (b) about the liability for unlawful conduct of a constable while on temporary service.
- (5) At the end of a period of temporary service outwith the Police Service, a constable—
  - (a) is entitled to revert to serve as a constable of the Police Service in the rank in which the constable was serving immediately before the period began, and
  - (b) is to be treated as if the constable has served as a constable of the Police Service during the period of temporary service for the purposes of any scale prescribed by virtue of regulations made under section 48 fixing the constable's rate of pay by reference to length of service.

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- (6) Subsection (5) does not apply where a pension, allowance or gratuity becomes payable to the constable during the period of temporary service by virtue of regulations made under the Police Pensions Act 1976 (c.35).
- (7) A constable may, during any period of temporary service, be promoted to a higher rank and in such a case—
  - (a) the reference in subsection (5)(a) to the rank in which the constable was serving immediately before the period began is to be construed as a reference to the rank to which the constable is promoted, and
  - (b) the constable is, for the purposes of subsection (5)(b), to be treated as having served in that rank from the time of promotion.

VALID FROM 01/04/2013

## **16 Temporary service as constable of the Police Service of Scotland**

- (1) The chief constable may make arrangements for any individual falling within subsection (2) to be engaged on temporary service as a constable of the Police Service.
- (2) An individual falls within this subsection if the individual is a member of—
  - (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
  - (b) the metropolitan police force,
  - (c) the City of London police force,
  - (d) the Police Service of Northern Ireland,
  - (e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
  - (f) the British Transport Police Force,
  - (g) the Civil Nuclear Constabulary,
  - (h) the States of Jersey Police Force,
  - (i) the salaried police force of the Island of Guernsey, or
  - (j) the Isle of Man Constabulary.
- (3) An individual may be engaged on temporary service under arrangements made under this section only where the individual has made the declaration specified in section 10 before a sheriff or justice of the peace.
- (4) An individual engaged on temporary service under such arrangements holds the office of constable.



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VALID FROM 01/10/2012

## Chief constable

### 17 Chief constable's responsibility for the policing of Scotland

- (1) The chief constable is responsible, and must account to the Authority, for the policing of Scotland.
- (2) In particular, the chief constable—
  - (a) has direction and control of the Police Service (see section 21),
  - (b) is responsible for the day to day administration of the Police Service, including the allocation and deployment of resources received from the Authority,
  - (c) is to be involved in the preparation of the strategic police plan and the Authority's annual report (see sections 34(4) and 39(4)),
  - (d) is to prepare annual police plans (see section 35),
  - (e) must seek to secure continuous improvement in the policing of Scotland (see section 37(2)),
  - (f) must designate local commanders and ensure that adequate arrangements are in place for the policing of each local authority area (see section 44), and
  - (g) may be required to provide the Authority with information relating to the Police Service, policing or the state of crime (see sections 40(3), 60(4) and 84(3)).
- (3) The chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by—
  - (a) the appropriate prosecutor in relation to the investigation of offences,
  - (b) the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995 (c.46),
  - (c) the Lord Justice General, or
  - (d) the sheriff principal for the place in which the functions are to be carried out.
- (4) The chief constable must seek to ensure that the policing of Scotland is done—
  - (a) with due regard to the policing principles, and
  - (b) in accordance with—
    - (i) the strategic police priorities,
    - (ii) the most recently approved strategic police plan, and
    - (iii) the relevant annual police plan.
- (5) The chief constable must ensure that the policing of Scotland is done with due regard to any recommendations made or guidance issued by the Authority on the policing of Scotland.
- (6) Any recommendation made or guidance issued by the Authority for the purposes of subsection (5) must not be inconsistent with—
  - (a) the strategic police priorities,
  - (b) the most recently approved strategic police plan, or

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- (c) any guidance or instructions issued to the chief constable by the Lord Advocate or a procurator fiscal in relation to the investigation or reporting of offences.

VALID FROM 01/04/2013

## 18 Delegation of chief constable's functions

- (1) The chief constable may direct or authorise any other constable to carry out any of the chief constable's functions.
- (2) A direction or authorisation under subsection (1) does not affect the chief constable's—
  - (a) responsibility for the carrying out of delegated functions, or
  - (b) ability to carry out delegated functions.
- (3) The Authority must designate a deputy chief constable to carry out the chief constable's functions where—
  - (a) the office of chief constable is vacant, or
  - (b) the chief constable is unable to carry out those functions by reason of being absent, incapacitated or suspended from duty.
- (4) Only one deputy chief constable may be so designated to act at any one time.
- (5) This section does not affect any restriction on delegation of the chief constable's functions contained in any enactment which makes provision in that regard.

VALID FROM 01/10/2012

## *Functions of constables*

VALID FROM 01/04/2013

## 19 Constables: functions and jurisdiction

- (1) A constable has—
  - (a) all the functions conferred on a constable by virtue of this or any other enactment or by rule of law,
  - (b) all the powers and privileges of a constable throughout Scotland.
- (2) A constable who is the chief constable, a deputy chief constable, an assistant chief constable or a local commander also has all the additional functions conferred on such a constable by virtue of this or any other enactment or by rule of law.

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VALID FROM 01/04/2013

## 20 Constables: general duties

- (1) It is the duty of a constable—
  - (a) to prevent and detect crime,
  - (b) to maintain order,
  - (c) to protect life and property,
  - (d) to take such lawful measures, and make such reports to the appropriate prosecutor, as may be needed to bring offenders with all due speed to justice,
  - (e) where required, to serve and execute a warrant, citation or deliverance issued, or process duly endorsed, by a Lord Commissioner of Justiciary, sheriff, justice of the peace or stipendiary magistrate in relation to criminal proceedings, and
  - (f) to attend court to give evidence.
- (2) When taking lawful measures in pursuance of subsection (1)(d), a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.
- (3) Subsection (2) does not prejudice the operation of section 135(3) of the Criminal Procedure (Scotland) Act 1995 (c.46).

VALID FROM 01/04/2013

## 21 Direction and control of the Police Service

- (1) Constables are, in the carrying out of their functions (including any functions held by virtue of being a deputy chief constable, an assistant chief constable or a local commander), subject to the direction and control of the chief constable.
- (2) A constable must—
  - (a) carry out lawful orders, and
  - (b) punctually and promptly perform all appointed duties and attend to all matters within the scope of that constable's office.
- (3) Police staff and police cadets are, in the carrying out of their functions, subject to the direction and control of (and may be dismissed by) the chief constable.

VALID FROM 01/04/2013

## 22 Failure to perform duty

- (1) It is an offence for a constable, without reasonable excuse, to be absent from duty.

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- (2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.
- (3) It is an offence for a constable to neglect or violate the constable's duty.
- (4) A person who is guilty of an offence under subsection (3) is liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

VALID FROM 01/04/2013

## 23 Failure to return equipment

- (1) It is an offence for a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, immediately upon being ordered to do so, any relevant item.
- (2) It is an offence for a person who ceases to be a constable, without reasonable excuse or the permission of the Authority, to fail to return to the Authority, when ceasing to be a constable, any relevant item.
- (3) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale.
- (4) Subsection (5) applies where a sheriff or a justice of the peace is satisfied on evidence on oath that—
  - (a) there has been a failure to return a relevant item, and
  - (b) the relevant item is in any place.
- (5) The sheriff or, as the case may be, the justice of the peace, may grant a warrant to any constable named in the warrant to enter and search the place at any reasonable hour, if necessary by force, and to take any relevant item which is found in the place.
- (6) For the purposes of this section, a “relevant item” is anything issued to a constable for the carrying out of the constable's functions.

## 24 Liability for unlawful conduct

- (1) The chief constable is liable in respect of any unlawful conduct on the part of any person falling within subsection (2) in the carrying out (or purported carrying out) of that person's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.
- (2) A person falls within this subsection if the person is—
  - (a) a constable under the direction and control of the chief constable, or
  - (b) a member of an international joint investigation team who is not—
    - (i) a constable,

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- (ii) a member of the Authority's staff, or
- (iii) a member of the police staff.

(3) The Authority must pay—

- (a) any damages or expenses awarded against the chief constable in any proceedings brought by virtue of this section,
- (b) any expenses incurred by the chief constable in relation to such proceedings (in so far as not recovered in the proceedings), and
- (c) any sum required in connection with the settlement of any claim against the chief constable which has or might have given rise to such proceedings (where settlement is approved by the Authority).

(4) Where the office of chief constable is vacant, references in subsections (1) to (3) to the chief constable are to be read as references to the person who is for the time being carrying out the chief constable's functions.

(5) The Authority may, in such cases and to such extent as it thinks fit, pay—

- (a) any damages or expenses awarded against a constable in proceedings arising in respect of any unlawful conduct on the part of that constable,
- (b) any expenses incurred by the constable concerned in relation to such proceedings (in so far as not recovered in the proceedings),
- (c) any sum required in connection with the settlement of any claim which has or might have given rise to such proceedings.

VALID FROM 01/04/2013

*Police cadets*

**25 Police cadets**

- (1) The chief constable may appoint police cadets to undergo training with a view to becoming constables.
- (2) Subject to section 21 and any other contrary enactment, police cadets are to be treated as employees of the Authority.

VALID FROM 01/10/2012

*Police staff*

**26 Police staff**

- (1) The Authority may appoint police staff to assist in the carrying out of police functions.
- (2) Police staff appointed under subsection (1) may be—
  - (a) employed by the Authority, or
  - (b) provided to the Authority under arrangements between the Authority and a third party.

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- (3) The chief constable has power to make appointments under subsection (1) on behalf of the Authority.

## **27 Terms and conditions of police staff**

- (1) Police staff may be employed on terms and conditions determined by the Authority.
- (2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of police staff.
- (3) The arrangements mentioned in subsection (2) may include—
- (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and
  - (b) the establishment and administration of pension schemes.

VALID FROM 01/04/2013

## **28 Police custody and security officers**

- (1) The chief constable may certify a member of the police staff appointed under section 26(1) as having been authorised to carry out functions in relation to custody and security.
- (2) An individual so certified is to be known as a “police custody and security officer”.
- (3) A police custody and security officer has—
- (a) for the purposes of the functions which the officer is authorised to carry out, the powers and duties set out in schedule 2, and
  - (b) all other functions conferred on police custody and security officers by virtue of this or any other enactment or by rule of law.
- (4) A police custody and security officer is to be regarded as acting in accordance with the officer's powers and duties only if the officer is readily identifiable as such an officer when so acting (whether or not by means of a uniform or badge worn).
- (5) Sections 22(3) and (4), 23 and 92 apply in relation to a police custody and security officer as they apply in relation to a constable (and when so applied, a reference to a constable is to be read as a reference to such an officer).

VALID FROM 01/04/2013

## **29 Certification of police custody and security officers**

- (1) The chief constable may issue a certificate under section 28(1) only if satisfied that the member of the police staff concerned—
- (a) is a fit and proper person to carry out a police custody and security officer's functions, and

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(b) has received training to such standard as the chief constable considers appropriate for the carrying out of those functions.

(2) The chief constable may revoke a certificate if the certified person appears to the chief constable not to be a fit and proper person to carry out a police custody and security officer's functions.

(3) The chief constable may (pending consideration of whether to revoke a certificate) suspend the certificate where it appears to the chief constable that the certified person may not be a fit and proper person to carry out a police custody and security officer's functions.

(4) A certificate is otherwise to continue in force until such date or occurrence as it may specify.

VALID FROM 01/04/2013

### **30 False statements in relation to certification**

(1) It is an offence for a person to provide information for the purpose of enabling or assisting the person or any other person to be certified as a police custody and security officer if the person knows that, or is reckless as to whether, the information is false or misleading in a material respect.

(2) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

VALID FROM 01/04/2013

## **CHAPTER 3**

### **FORENSIC SERVICES**

### **31 Forensic services**

The Authority must provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.

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VALID FROM 01/10/2012

## CHAPTER 4

### PRINCIPLES, PRIORITIES, OBJECTIVES AND PLANS

#### **32 Policing principles**

The policing principles are—

- (a) that the main purpose of policing is to improve the safety and well-being of persons, localities and communities in Scotland, and
- (b) that the Police Service, working in collaboration with others where appropriate, should seek to achieve that main purpose by policing in a way which—
  - (i) is accessible to, and engaged with, local communities, and
  - (ii) promotes measures to prevent crime, harm and disorder.

#### **33 Strategic police priorities**

- (1) The Scottish Ministers may determine strategic priorities for the Authority (“strategic police priorities”).
- (2) Strategic police priorities may relate to—
  - (a) the policing of Scotland, or
  - (b) the carrying out of the Authority's functions.
- (3) Before determining strategic police priorities, the Scottish Ministers must consult—
  - (a) the Authority,
  - (b) the chief constable,
  - (c) such persons as appear to them to be representative of local authorities, and
  - (d) such other persons as they consider appropriate.
- (4) When determining strategic police priorities, the Scottish Ministers must have regard to the policing principles.
- (5) The Scottish Ministers must arrange for the strategic police priorities to be published in such manner as they consider appropriate.
- (6) The Scottish Ministers must lay a copy of the strategic police priorities before the Scottish Parliament.

#### **34 Strategic police plan**

- (1) The Authority must prepare a strategic police plan.
- (2) A strategic police plan is a plan which—
  - (a) sets out the main objectives for the Authority and for the policing of Scotland,
  - (b) explains the reasons for selecting each main objective,



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- (c) describes what the Authority considers should be done by it or by the Police Service in order to achieve the main objectives,
  - (d) where reasonably practicable, identifies outcomes by reference to which the achievement of the main objectives may be measured, and
  - (e) includes any other information connected with the Authority's functions, or policing, which the Authority considers appropriate.
- (3) Before preparing a strategic police plan, the Authority must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in policing.
- (4) The Authority must involve the chief constable in the preparation of a strategic police plan and the chief constable must provide the Authority with such assistance as it may reasonably require in that regard.
- (5) When preparing a strategic police plan, the Authority must—
  - (a) send a copy of a draft plan to—
    - (i) each local authority,
    - (ii) the inspectors of constabulary, and
    - (iii) such other persons as the Authority considers likely to have an interest in the plan,
  - (b) invite the recipients to comment on the draft plan within such reasonable period as the Authority may specify, and
  - (c) have regard to any comments received within that period.
- (6) The Authority must—
  - (a) submit its strategic police plan to the Scottish Ministers, and
  - (b) use its best endeavours to secure their approval of the plan (with or without modifications).
- (7) If the Scottish Ministers approve a strategic police plan submitted to them, the Authority must—
  - (a) publish the approved plan in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it), and
  - (b) lay a copy of it before the Scottish Parliament.
- (8) The Authority—
  - (a) must review an approved strategic police plan at least once every 3 years (and must, in particular, do so where the strategic police priorities have been significantly revised), and
  - (b) following such a review, must—
    - (i) prepare a replacement strategic police plan, or
    - (ii) notify the Scottish Ministers that, having undertaken a review, the Authority has concluded that there is no need to replace the existing strategic police plan.
- (9) Subsections (3) to (8), and section 36, apply in relation to a replacement strategic police plan as they applied in relation to the plan being replaced.

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### **35 Annual police plans**

- (1) The chief constable must prepare an annual police plan for each yearly period beginning on 1 April.
- (2) An annual police plan is a plan which—
  - (a) sets out the proposed arrangements for the policing of Scotland during the yearly period,
  - (b) describes how those arrangements are expected to contribute towards the achievement of the main objectives for the policing of Scotland set out in the strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (c) includes any other information connected with policing which the chief constable considers appropriate.
- (3) When preparing an annual police plan, the chief constable must—
  - (a) send a copy of a draft plan to the Authority,
  - (b) invite the Authority to comment on the draft plan within such reasonable period as the chief constable may specify, and
  - (c) have regard to any comments received within that period.
- (4) The chief constable must—
  - (a) publish the annual police plan before the start of the yearly period to which it relates in such manner as the chief constable considers appropriate (having regard to the desirability of it being accessible to those whom the chief constable considers likely to have an interest in it), and
  - (b) lay a copy of it before the Scottish Parliament.

### **36 Planning functions: considerations**

In carrying out their respective functions in relation to the preparation of the strategic police plan and each annual police plan, the Authority and the chief constable must—

- (a) have regard to the policing principles,
- (b) have regard to, and ensure that the strategic police plan and each annual police plan is not inconsistent with, the strategic police priorities, and
- (c) ensure that an annual police plan is not inconsistent with the most recently approved strategic police plan.

## **CHAPTER 5**

### **BEST VALUE**

### **37 Best value**

- (1) It is the duty of the Authority to make arrangements which secure best value for the Authority (that is, a continuous improvement in the carrying out of the Authority's functions).

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- (2) It is the duty of the chief constable to make arrangements which secure best value for the Police Service (that is, a continuous improvement in the carrying out of police functions).
- (3) In securing best value, the Authority and the chief constable must maintain an appropriate balance among—
  - (a) the quality of the carrying out of functions,
  - (b) the cost of carrying out functions,
  - (c) the cost to persons of any service provided for them on a wholly or partly rechargeable basis by the Authority or, as the case may be, under arrangements made by the chief constable.
- (4) In maintaining that balance, the Authority and the chief constable must have regard to—
  - (a) efficiency,
  - (b) effectiveness,
  - (c) economy, and
  - (d) the need to meet the equal opportunity requirements.
- (5) The Authority and the chief constable must carry out their duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the carrying out of functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.
- (7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

### 38 Best value: further provision

- (1) In carrying out their respective duties under section 37(1) and (2), the Authority and the chief constable must have regard to—
  - (a) any relevant guidance issued by the Scottish Ministers, and
  - (b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of subsection (1) or, as the case may be, (2) of section 37 (or purposes which include those purposes).
- (2) In the event of a conflict in any respect between any matters to which the Authority or the chief constable is to have regard under subsection (1), the Authority or the chief constable must in that respect have regard only to those falling within paragraph (a).
- (3) Before issuing relevant guidance, the Scottish Ministers must consult—
  - (a) the Authority,
  - (b) the chief constable, and
  - (c) such other persons as they consider appropriate.
- (4) The Scottish Ministers may vary or revoke relevant guidance.
- (5) In this section “relevant guidance”—
  - (a) means guidance on the carrying out of the duties imposed by subsections (1) or (2) of section 37,

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- (b) includes, in particular, guidance on—
  - (i) how to make, and what is to be included in, the arrangements mentioned in those subsections,
  - (ii) how to implement the duties imposed by those subsections.

## CHAPTER 6

### ANNUAL REPORTS, ACCOUNTS, AUDIT AND EXAMINATION

VALID FROM 01/04/2013

#### 39 The Scottish Police Authority's annual report

- (1) The Authority must prepare an annual report as soon as practicable after the end of each reporting year.
- (2) An annual report is a report setting out—
  - (a) an assessment of the Authority's performance during the reporting year in carrying out its functions,
  - (b) an assessment of the Police Service's performance during the reporting year in the policing of Scotland, and
  - (c) such other information relating to the Authority's functions, or to policing, as the Authority considers appropriate.
- (3) An annual report must, in particular, contain—
  - (a) an assessment of the performance by the Authority and the Police Service during the reporting year in achieving, or in working towards achieving, the main objectives set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (b) an assessment of the performance by the Police Service during the reporting year in implementing the proposed arrangements set out in the annual police plan for the period to which the report relates.
- (4) The chief constable must—
  - (a) within 3 months of the end of a reporting year, provide the Authority with a report setting out the chief constable's assessment of the Police Service's performance during that reporting year in the policing of Scotland, and
  - (b) provide the Authority with such other assistance as it may reasonably require in relation to the preparation of an annual report.
- (5) A report provided by the chief constable under subsection (4)(a) must, in particular, contain the chief constable's assessment of the Police Service's performance during the reporting year concerned—
  - (a) in achieving, or in working towards achieving, the main objectives for the policing of Scotland set out in the most recently approved strategic police plan (by reference, where appropriate, to outcomes identified in that plan), and
  - (b) in implementing the proposed arrangements set out in the annual police plan for the reporting year concerned.

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- (6) The Authority must—
- (a) publish each of its annual reports in such manner as the Authority considers appropriate (having regard to the desirability of it being accessible to those whom the Authority considers likely to have an interest in it),
  - (b) provide a copy of each of its annual reports to the Scottish Ministers, and
  - (c) lay a copy of each of its annual reports before the Scottish Parliament.
- (7) In this section “reporting year” means a yearly period ending on 31 March.

## 40 Accounts

- (1) The Authority must—
- (a) keep proper accounts and proper records in relation to the accounts, and
  - (b) as soon as practicable after the end of each yearly period ending on 31 March, prepare a statement of accounts in respect of that period.
- (2) A statement of accounts so prepared must be in such form and contain such information as the Scottish Ministers may determine.
- (3) Without prejudice to the generality of section 84, the chief constable must—
- (a) provide the Authority with such assistance and information as it may reasonably require for the purposes of subsection (1), and
  - (b) seek to ensure that sufficient information is kept for those purposes.
- (4) In particular, the Authority is entitled to require the chief constable to provide, within such reasonable time as it may specify, accounts of such of the transactions relating to the Police Service as it may specify.

### Commencement Information

**I2** S. 40 partly in force; s. 40(1)(3)(4) in force at 8.8.2012 see s. 129(1)(a)

VALID FROM 01/10/2012

## 41 Audit

The Authority must send a copy of each statement of accounts to the Auditor General for auditing.

VALID FROM 01/10/2012

## 42 Examination of Police Service by Auditor General

- (1) The Auditor General may initiate examinations into—
- (a) the economy, efficiency and effectiveness of the Police Service, and
  - (b) the arrangements made by the chief constable under section 37(2).

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- (2) In determining whether to initiate an examination, the Auditor General must take into account any proposals made by the Scottish Parliament.
- (3) It is for the Auditor General personally to initiate an examination under this section and to decide who is to carry it out.
- (4) In carrying out the examination that person (“the examiner”)—
  - (a) is not entitled to question the merits of the policy objectives of the chief constable or the Police Service, but
  - (b) may consider the appropriateness of any criteria used to assess the use of resources available to the Police Service.
- (5) The examiner (if not the Auditor General) must report the results to the Auditor General, who may report the results to the Scottish Parliament and the Authority.
- (6) The Auditor General may publish the results of an examination.
- (7) Sections 23A and 24 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) apply in relation to an examination under this section as they apply in relation to an examination under section 23 of that Act.

VALID FROM 01/10/2012

#### **43 Examinations of Scottish Police Authority by Auditor General**

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to the Authority, to include a reference to examinations into the arrangements made by the Authority under section 37(1).

VALID FROM 01/04/2013

## **CHAPTER 7**

### **LOCAL POLICING**

#### **44 Local policing**

- (1) The chief constable must ensure that there are adequate arrangements in place for the policing of each local authority area (and any adjacent territorial waters).
- (2) For each local authority area, the chief constable must, after consulting the local authority, designate a constable as local commander.
- (3) A constable may be designated as local commander in relation to more than one local authority area.

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#### **45 Local authority role in policing**

- (1) A local commander must involve the local authority in the setting of priorities and objectives for the policing of its area.
- (2) A local authority may monitor and provide feedback to the local commander on the policing of its area, and (in particular) may provide to the local commander—
  - (a) its views on any matter concerning or connected to the policing of its area, and
  - (b) any recommendations for the improvement of the policing of its area that it thinks fit.
- (3) A local authority may specify policing measures that it wishes the local commander to include in a local policing plan.
- (4) A local authority may provide feedback by reference to any local police plan in force for the area.
- (5) A local commander must provide to the local authority such—
  - (a) reports on the carrying out of police functions in its area (including by reference to any local policing plan in force for the area),
  - (b) statistical information on complaints made about the Police Service in, or the policing of, its area, and
  - (c) other information about the policing of its area,
 as the local authority may reasonably require.
- (6) A local commander may refer a requirement under subsection (5) to the chief constable if the local commander considers that complying with the requirement would or might prejudice—
  - (a) the carrying out of any operation by the Police Service, or
  - (b) the prosecution of offenders.
- (7) A requirement referred under subsection (6) has effect only if it is confirmed by the chief constable.

#### **46 Duty to participate in community planning**

- (1) In section 16(1) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning)—
  - (a) paragraph (c) is repealed, and
  - (b) in paragraph (e), for “a police force” substitute “ the Police Service of Scotland ”.
- (2) The chief constable must delegate the carrying out of the chief constable's functions under section 16(1)(e) of the Local Government in Scotland Act 2003 in each local authority area to the local commander for that area.
- (3) Subsection (2) does not affect—
  - (a) the chief constable's responsibility for the carrying out of the delegated functions,
  - (b) the chief constable's ability to carry out the delegated functions.



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## 47 Local police plans

- (1) As soon as is reasonably practicable after the first strategic police plan is approved under section 34, a local commander must prepare and submit a local police plan to the relevant local authority for approval.
- (2) A local police plan is a plan which—
  - (a) sets out the main priorities and objectives for the policing of the local authority's area,
  - (b) explains the reasons for selecting each of those priorities and objectives,
  - (c) sets out the proposed arrangements for the policing of the local authority's area (and how those arrangements are expected to achieve the main priorities and objectives),
  - (d) where reasonably practicable, identifies outcomes by reference to which the achievement of those priorities and objectives may be measured,
  - (e) describes how those priorities, objectives and arrangements are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning, and
  - (f) includes any other information connected with the policing of the local authority's area which the local commander considers relevant.
- (3) In preparing a local police plan, the local commander must—
  - (a) have regard to the most recently approved strategic police plan, and
  - (b) consult—
    - (i) the joint central committee of the Police Federation for Scotland,
    - (ii) such persons as appear to the local commander to be representative of senior officers,
    - (iii) such persons as appear to the local commander to be representative of superintendents (including chief superintendents),
    - (iv) such persons as appear to the local commander to be representative of police staff, and
    - (v) such other persons as the local commander considers appropriate.
- (4) If the local authority approves a local police plan submitted to it, the local commander must publish it in such form and manner as the Authority may specify.
- (5) The local commander must review the local police plan if—
  - (a) a new strategic police plan is approved under section 34, or
  - (b) the plan is not replaced under subsection (6) or modified under subsection (9) during the period of 3 years beginning with the date of publication of the plan.
- (6) Following a review under subsection (5)(a), the local commander may prepare and submit a replacement plan to the local authority for approval.
- (7) Following a review under subsection (5)(b), the local commander must prepare and submit a replacement plan to the local authority for approval.
- (8) Subsections (3) to (5) apply in relation to a replacement local police plan as they apply in relation to the plan being replaced.
- (9) The local commander and the local authority may agree to modify an approved local police plan at any time.



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- (10) Subsections (3) to (5) apply in relation to a modified local police plan as they apply in relation to the plan being modified.
- (11) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

VALID FROM 01/10/2012

## CHAPTER 8

### GOVERNANCE AND ADMINISTRATION OF POLICE

#### 48 Governance and administration of police

The Scottish Ministers must make regulations as to the governance, administration and conditions of service of constables and police cadets.

#### 49 Appointments, promotions etc.

- (1) Regulations made under section 48 may in particular make provision relating to—
- (a) eligibility for appointment as constable or police cadet or for appointment or promotion to a particular rank,
  - (b) the procedure for appointment of senior officers or for the appointment or promotion of other constables,
  - (c) periods of service on probation,
  - (d) the efficiency or effectiveness of constables or police cadets,
  - (e) restrictions on the private life or business interests of constables or police cadets,
  - (f) resignation or retirement of constables.
- (2) Such regulations—
- (a) may provide for appointments of senior officers to be for fixed terms, but
  - (b) must not provide for fixed term appointment to any rank below that of assistant chief constable.

#### 50 Conditions of service

- (1) Regulations made under section 48 as to conditions of service may in particular make provision about—
- (a) pay, allowances and expenses,
  - (b) public holidays and leave,
  - (c) the issue, use and return of police clothing and equipment.
- (2) In relation to special constables, such regulations must not entitle them to pay but may make provision entitling them to receive periodic payments in acknowledgment of the giving of services (including provision about the minimum aggregate length of service needed within a period in order to give rise to an entitlement to receive a periodic payment in respect of that period).

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(3) Regulations made under section 48—

- (a) may make retrospective provision about pay or allowances, but
- (b) must not retrospectively reduce any pay or allowance payable to or in respect of any person.

## **51 Regulations: duties**

(1) Regulations made under section 48 may make provision relating to duties of constables or police cadets.

(2) Such regulations may in particular make provision about—

- (a) duties which are or are not to be performed,
- (b) hours of duty,
- (c) the treatment as occasions of police duty of attendance at meetings of the Police Federations and any other body recognised for the purposes of section 64 of the Police Act 1996 (c.16) as representing members of police forces.

## **52 Disciplinary procedures: conduct and performance**

(1) Regulations made under section 48 must establish, or provide for the establishment of, procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory.

(2) Such regulations may make provision—

- (a) setting out—
  - (i) standards of behaviour which, if breached, may be treated as misconduct,
  - (ii) standards of performance which, if breached, may be treated as being unsatisfactory performance,
  - (iii) other circumstances in which a constable's behaviour may be treated as misconduct or in which a constable's performance may be treated as unsatisfactory (for example, where performance is inefficient or where there has been a failure to perform functions),
- (b) for circumstances in which a constable may be suspended from duty pending investigation into whether the constable has been engaged in misconduct,
- (c) subject to subsection (3), for a constable who is found to have been engaged in misconduct or whose performance is found to have been unsatisfactory to be dealt with by being—
  - (i) dismissed (with or without notice),
  - (ii) demoted in rank,
  - (iii) warned that future misconduct or unsatisfactory performance may lead to further disciplinary action,
  - (iv) admonished, or
  - (v) dealt with in any other way,
- (d) conferring functions on the Police Investigations and Review Commissioner in relation to investigations of whether a constable has been engaged in misconduct,

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- (e) applying the procedures (with or without modifications) in relation to a constable engaged on temporary service outwith the Police Service (see section 15).
- (3) Such regulations must provide for the Authority to determine any case which relates to the standard of behaviour or performance of a senior officer.
- (4) A constable suspended by virtue of regulations made under section 48 is not entitled to carry out any functions as a constable unless the regulations otherwise specify.

### 53 Personal records

Regulations made under section 48 may make provision relating to—

- (a) the keeping of personal records about constables and police cadets,
- (b) the taking of fingerprints and samples from constables and police cadets and the retention, use and destruction of such fingerprints and samples or of information derived from such samples.

### 54 Consultation on regulations

- (1) Before making regulations under section 48 about any matter mentioned in section 61(1) of the Police Act 1996 (c.16) (other than pensions), the Scottish Ministers must—
  - (a) share a draft of the regulations with the Police Negotiating Board for the United Kingdom, and
  - (b) consider any representations made.
- (2) Before making any other regulations under section 48, the Scottish Ministers must—
  - (a) consult and share a draft of the regulations with—
    - (i) the chief constable,
    - (ii) the Authority,
    - (iii) the joint central committee of the Police Federation for Scotland,
    - (iv) such persons as appear to them to be representative of senior officers,
    - (v) such persons as appear to them to be representative of superintendents (including chief superintendents), and
    - (vi) such other persons as they consider appropriate, and
  - (b) consider any representations made.

#### Commencement Information

I3 S. 54 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

### 55 Regulations: supplementary

- (1) Regulations made under section 48 may—
  - (a) make provision for the delegation of functions to—
    - (i) the Scottish Ministers,
    - (ii) the Authority,
    - (iii) the chief constable,

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- (iv) a local commander,
  - (v) the Police Investigations and Review Commissioner, or
  - (vi) any other person,
  - (b) authorise or require the delegation of functions by any person.
- (2) In the absence of express contrary intention, nothing in this Part affects the generality of the power conferred by section 48.

VALID FROM 01/10/2012

## CHAPTER 9

### POLICE APPEALS TRIBUNALS

#### 56 Right to appeal to police appeals tribunal

- (1) A constable may appeal to a police appeals tribunal against any decision to dismiss the constable, or to demote the constable in rank, taken in pursuance of regulations made under section 48.
- (2) An appeal is competent only if the constable has exhausted any available process of review or appeal provided for in such regulations.
- (3) Schedule 3 makes provision about police appeals tribunals, the rules relating to appeals, and other relevant matters.

VALID FROM 01/04/2013

#### 57 Representation

- (1) Before determining an appeal, a police appeals tribunal must—
  - (a) give both the appellant and the respondent a chance to make representations (whether by way of written submissions or oral hearing), and
  - (b) consider such representations.
- (2) Either party may require that the representations are to be made by way of oral hearing.
- (3) Where an oral hearing is to be held, the parties may elect to be represented (including by a legally qualified person).

VALID FROM 01/04/2013

#### 58 Determinations by tribunal

- (1) A police appeals tribunal may determine an appeal by—
  - (a) confirming the decision being appealed, or

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- (b) replacing that decision with any less severe decision which could have been made by the person who made it.
- (2) Where the determination replaces the decision appealed against, it takes effect from the date of the decision which resulted in the dismissal or demotion in rank of the appellant.
- (3) Subsection (4) applies where a determination made by a police appeals tribunal reinstates the appellant—
  - (a) as a constable,
  - (b) in—
    - (i) the rank previously held by the appellant, or
    - (ii) a different rank.
- (4) The appellant is to be deemed, for the purposes of reckoning service for pension and to such extent (if any) as may be determined by the tribunal for the purposes of pay, to have served as a constable, or in the reinstated or different rank, continuously from the date of the decision which resulted in the dismissal or demotion in rank of the appellant to the date of the tribunal's determination.
- (5) In determining an appeal, the tribunal may deal with such other matters relating to the appellant's reinstatement or period of service as the tribunal thinks fit including, in particular, any periods where the appellant was suspended in consequence of the proceedings which led to the appellant's dismissal.

VALID FROM 01/04/2013

## 59 Powers to obtain information

- (1) The person appointed to chair a police appeals tribunal (the chairing member) may require the appellant, respondent or any other person—
  - (a) to attend a hearing of the tribunal, at such time and such place as the chairing member may specify, for the purposes of giving evidence,
  - (b) to give to the tribunal, by such day as the chairing member may specify, such documents or information as the tribunal may reasonably require.
- (2) Subsection (1) does not authorise the chairing member or the tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose in civil proceedings in the Court of Session.
- (3) It is an offence for any person on whom a requirement under subsection (1) is served to—
  - (a) fail to attend a hearing of the tribunal as required by the citation,
  - (b) refuse or fail, while attending such a hearing as so required, to answer any question,
  - (c) refuse or fail to give the tribunal any document or information so required,
  - (d) knowingly or recklessly make any statement in respect of any information so required which is false or misleading in a material respect, or
  - (e) deliberately alter, suppress, conceal or destroy any document so required.

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- (4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) It is a defence for a person charged with an offence under subsection (3)(a), (b) or (c) to show that the person had a reasonable excuse for the refusal or failure.

VALID FROM 01/10/2012

## CHAPTER 10

### COMPLAINTS AND INVESTIGATIONS

VALID FROM 01/04/2013

#### 60 Complaints handling

- (1) The Authority and the chief constable must maintain suitable arrangements for the handling of relevant complaints.
- (2) The Authority and the chief constable must seek the views of others as to what those arrangements should be.
- (3) The Authority must keep itself informed as to the manner in which relevant complaints are dealt with by the chief constable with a view to satisfying itself that the arrangements maintained by the chief constable under subsection (1) are suitable.
- (4) Without prejudice to the generality of section 84 the chief constable must provide the Authority with such information about relevant complaints made to the chief constable, or about how they have been dealt with, as the Authority may reasonably require for the purposes of subsection (3).
- (5) The chief constable must seek to ensure that sufficient information about relevant complaints is kept to enable compliance with any requirement made under subsection (4).
- (6) In this section “relevant complaint” has the same meaning as in Chapter 2 of Part 1 of the 2006 Act.

VALID FROM 01/04/2013

#### 61 The Police Investigations and Review Commissioner

- (1) The Police Complaints Commissioner for Scotland (established by section 33 of the 2006 Act) is renamed the Police Investigations and Review Commissioner.
- (2) Accordingly—

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- (a) for the italic cross heading immediately preceding section 33 of the 2006 Act, substitute— “ The Police Investigations and Review Commissioner ”,
  - (b) for the title of that section substitute “ **The Police Investigations and Review Commissioner** ”,
  - (c) in subsection (1) of that section, for “Police Complaints Commissioner for Scotland” substitute “ Police Investigations and Review Commissioner ”.
- (3) Any reference in any enactment or instrument to the Police Complaints Commissioner for Scotland is to be read as a reference to the Police Investigations and Review Commissioner.

VALID FROM 01/04/2013

## 62 General functions of the Police Investigations and Review Commissioner

After section 33 of the 2006 Act, insert—

### “33A General functions of the Commissioner

The Commissioner's general functions are—

- (a) to maintain, and to secure the maintenance by the Authority and the chief constable of, suitable arrangements for—
  - (i) the handling of relevant complaints; and
  - (ii) the examination of the handling of relevant complaints and the reconsideration of such complaints in accordance with sections 34 to 41;
- (b) where directed to do so by the appropriate prosecutor—
  - (i) to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence;
  - (ii) to investigate, on behalf of the relevant procurator fiscal, the circumstances of any death involving a person serving with the police which that procurator fiscal is required to investigate under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14);
- (c) where requested to do so by the Authority or the chief constable, to investigate and report on certain serious incidents involving the police (see section 41B); and
- (d) to investigate other matters relating to the Authority or the Police Service where the Commissioner considers that it would be in the public interest to do so (see section 41C).”.

VALID FROM 01/04/2013

## 63 Investigations under supervision of Lord Advocate or procurator fiscal

After section 41 of the 2006 Act, insert—



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### *“Investigations*

#### **41A Investigations under supervision of Lord Advocate or procurator fiscal**

The Commissioner, when carrying out an investigation in pursuance of a direction issued under paragraph (b) of section 33A, must comply with—

- (a) any lawful instruction given by the appropriate prosecutor who issued the direction; and
- (b) in the case of an investigation carried out in pursuance of a direction issued under sub-paragraph (i) of that paragraph, any instruction issued by the Lord Advocate in relation to the reporting, for consideration of the question of prosecution, of alleged offences.”.

#### **64 Serious incidents involving the police**

After section 41A of the 2006 Act (inserted by section 63), insert—

##### **“41B Serious incidents involving the police**

- (1) A “serious incident involving the police” which the Commissioner may investigate in pursuance of paragraph (c) of section 33A is—
  - (a) a circumstance in or in consequence of which a person has died or has sustained serious injury where—
    - (i) the person, at or before the time of death or serious injury, had contact (directly or indirectly) with a person serving with the police acting in the execution of that person's duties; and
    - (ii) there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
  - (b) any other circumstance in or in consequence of which—
    - (i) a person has otherwise sustained a serious injury at a time when the person was being detained or kept in custody by a person serving with the police; or
    - (ii) a person serving with the police has used a firearm or any other weapon of such description as the Scottish Ministers may by regulations specify; or
  - (c) any other circumstance involving the Authority, the Police Service or a person serving with the police as may be specified in regulations made by the Scottish Ministers.
- (2) But a matter is not a “serious incident involving the police” if it is—
  - (a) a matter—
    - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
    - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner; or



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- (b) a matter which is being, or has been, investigated—
  - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
  - (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14).”.

VALID FROM 01/04/2013

## 65 Investigations of other matters in the public interest

After section 41B of the 2006 Act (inserted by section 64), insert—

### “41C Investigation of matters in the public interest

- (1) The Commissioner may investigate any relevant police matter where the Commissioner considers that it would be in the public interest to do so.
- (2) A relevant police matter is any incident in relation to which there is an indication that the Authority, the Police Service or a person serving with the police has been involved other than—
  - (a) a matter—
    - (i) which the Commissioner is investigating in pursuance of paragraph (b)(i) of section 33A; or
    - (ii) in respect of which criminal proceedings have been brought following such an investigation by the Commissioner;
  - (b) a matter which is being, or has been, investigated—
    - (i) by the Commissioner in pursuance of paragraph (b)(ii) of section 33A; or
    - (ii) by any other person under section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14); or
  - (c) a matter which is being, or has been, investigated by the Commissioner by virtue of paragraph (c) of section 33A.”.

## 66 Investigations: procedure etc.

After section 41C of the 2006 Act (inserted by section 65), insert—

### “41D Investigations: procedure etc.

- (1) The Scottish Ministers may by regulations make such provision about investigations by the Commissioner in pursuance of paragraph (c) or (d) of section 33A as they consider appropriate.
- (2) Regulations may, in particular, make provision—
  - (a) requiring the chief constable or the Authority to refer matters to the Commissioner;
  - (b) about circumstances in which the Commissioner—

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- (i) must, must not or need not carry out an investigation; or
    - (ii) may discontinue an investigation;
  - (c) about the form and procedure of an investigation;
  - (d) imposing restrictions on the extent of any investigation;
  - (e) setting time limits within which matters must be investigated;
  - (f) requiring the chief constable, the Authority or other persons to assist and co-operate with the Commissioner when carrying out an investigation (by providing evidence, attending hearings or otherwise);
  - (g) for the delegation of functions to the Commissioner.
- (3) Before making regulations under this section, the Scottish Ministers must consult—
- (a) the Commissioner;
  - (b) the Authority;
  - (c) the chief constable;
  - (d) such persons as appear to them to be representatives of senior officers;
  - (e) such persons as appear to them to be representatives of superintendents (including chief superintendents);
  - (f) the joint central committee of the Police Federation for Scotland; and
  - (g) such other persons as they think appropriate.”.

VALID FROM 01/04/2013

## 67 Reports on investigations

After section 41D of the 2006 Act (inserted by section 66), insert—

### “41E Reports on investigations

- (1) The Commissioner must prepare a report of each investigation carried out in pursuance of paragraph (c) or (d) of section 33A.
- (2) The Commissioner must—
  - (a) provide a copy of a report prepared under subsection (1) to—
    - (i) the person (if any) who requested the investigation;
    - (ii) the Authority; and
    - (iii) any other person whom the Commissioner considers appropriate; and
  - (b) if the Commissioner considers it appropriate to do so, publish the report in such manner as the Commissioner considers appropriate.
- (3) Apart from identifying the Authority or the Police Service, a report must not—
  - (a) mention the name of any person; or

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- (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report, unless the Commissioner determines that it is necessary to do so (having taken into account the public interest).”.

VALID FROM 01/04/2013

## 68 Investigations: obstruction and contempt

After section 41E of the 2006 Act (inserted by section 67), insert—

### “41F Investigations: obstruction and contempt

- (1) The Court of Session may, on a petition by the Commissioner, inquire into whether a person—
  - (a) without lawful excuse, is obstructing or has obstructed the Commissioner in the carrying out of a complaint handling review or in the carrying out of an investigation in pursuance of paragraph (c) or (d) of section 33A; or
  - (b) is doing or has done any act, or is failing or has failed to take any action, in relation to such a review or investigation which, if it were a proceeding in the Court of Session, would constitute contempt of court.
- (2) After so inquiring (and, in particular, after hearing any witness who may be produced against or on behalf of the person and any statement which may be offered in defence), the Court of Session may deal with the person as if the person had committed a contempt of court in relation to the Court of Session.”.

VALID FROM 01/04/2013

## 69 Complaints against the Commissioner

Before section 43 of the 2006 Act insert—

### “42A Complaints against the Commissioner

- (1) The Commissioner must maintain suitable arrangements for the handling of any complaint made to the Commissioner expressing dissatisfaction about an act or omission by the Commissioner or by any member of the Commissioner's staff.
- (2) Before making such arrangements, the Commissioner must seek the views of others as to what those arrangements should be.”.

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VALID FROM 01/04/2013

## 70 Protection from actions for defamation

After section 46 of the 2006 Act, insert—

### “46A Protection from actions for defamation

(1) For the purposes of the law of defamation—

(a) any statement made by the Commissioner or any of the Commissioner's staff—

(i) in carrying out a complaint handling review or in carrying out an investigation in pursuance of paragraph (b), (c) or (d) of section 33A;

(ii) in communicating with any person for the purposes of such a review or investigation;

(iii) in a report on such a review or investigation; or

(iv) in a report made under section 43,

has absolute privilege;

(b) any statement made to the Commissioner or any of the Commissioner's staff in relation to an investigation carried out in pursuance of paragraph (b), (c) or (d) of section 33A has absolute privilege; and

(c) any statement made to the Commissioner or any of the Commissioner's staff in relation to a relevant complaint or a complaint handling review is privileged unless the statement is shown to have been made with malice.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”.

VALID FROM 01/01/2013

## CHAPTER 11

### HER MAJESTY'S INSPECTORS OF CONSTABULARY IN SCOTLAND

VALID FROM 01/04/2013

## 71 Her Majesty's inspectors of constabulary in Scotland

(1) There are to continue to be inspectors of constabulary in Scotland.

(2) Her Majesty may by Order in Council appoint such number of inspectors of constabulary as the Scottish Ministers may determine.

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- (3) The Scottish Ministers may designate one of those inspectors as the chief inspector of constabulary.
- (4) An inspector of constabulary is to hold and vacate office at Her Majesty's pleasure.
- (5) An inspector of constabulary is otherwise—
  - (a) to be paid such remuneration or allowances as the Scottish Ministers may determine, and
  - (b) to hold office in accordance with such other terms and conditions as may be so determined.

VALID FROM 01/04/2013

## 72 Assistant inspectors of constabulary

- (1) The Scottish Ministers may—
  - (a) appoint assistant inspectors of constabulary on such terms and conditions as they may determine, or
  - (b) make arrangements for constables to serve as assistant inspectors of constabulary.
- (2) A constable engaged on service as an assistant inspector of constabulary is under the direction and control of the inspectors of constabulary.
- (3) The Scottish Ministers are liable in respect of any unlawful conduct on the part of any constable engaged on service as an assistant inspector of constabulary in the carrying out (or purported carrying out) of that constable's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

VALID FROM 01/04/2013

## 73 Staff officers

- (1) The inspectors of constabulary may—
  - (a) appoint staff officers, on such terms and conditions as they may determine, for the purpose of assisting them in the carrying out of their functions, or
  - (b) make arrangements for constables to serve as staff officers for that purpose.
- (2) A constable engaged on service as a staff officer is under the direction and control of the inspectors of constabulary.
- (3) The inspectors of constabulary are liable in respect of any unlawful conduct on the part of any constable engaged on service as a staff officer in the carrying out (or purported carrying out) of that constable's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

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## **74 Functions of inspectors**

- (1) The Scottish Ministers may direct the inspectors of constabulary to make inquiries about any matter relating to the Authority or the Police Service as they consider appropriate.
- (2) The inspectors of constabulary may make such other inquiries as they think fit about—
  - (a) the state, efficiency and effectiveness of the Authority and the Police Service, and
  - (b) the arrangements made by the Authority and the chief constable under section 37(1) and (2).

## **75 HMICS plan**

- (1) The inspectors of constabulary must prepare a plan setting out—
  - (a) priorities for inquiries to be carried out by them, and
  - (b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.
- (2) The inspectors of constabulary—
  - (a) must keep the plan under review, and
  - (b) may from time to time revise the plan.
- (3) The inspectors of constabulary must, in preparing a plan (and any revised plan), consult such persons as they consider appropriate.
- (4) The inspectors of constabulary must publish the plan (and any revised plan) in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).

## **76 HMICS powers**

- (1) The inspectors of constabulary have power to do anything which they consider necessary or expedient for the purposes of, or in connection with, the carrying out of their functions.
- (2) The inspectors of constabulary may authorise any assistant inspector of constabulary, or any of their staff officers, to carry out on behalf of the inspectors of constabulary such of their functions as they may determine to the extent so authorised.
- (3) Subsection (2) does not affect the inspectors of constabulary's—
  - (a) responsibility for carrying out delegated functions, or
  - (b) ability to carry out delegated functions.

## **77 Duty to assist and co-operate with HMICS**

The Authority and the chief constable must provide the inspectors of constabulary with such assistance and co-operation as they may require for the purposes of, or in connection with, the carrying out of their functions (and must, in particular, comply with any reasonable request made by the inspectors of constabulary in that regard).

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VALID FROM 01/04/2013

## **78 HMICS reports: inquiries directed by Scottish Ministers**

- (1) The inspectors of constabulary must give the Scottish Ministers—
  - (a) a report of any inquiry carried out in pursuance of section 74(1) and any other information in relation to the report that the inspectors of constabulary think fit, and
  - (b) any other information relating to the inquiry that the Scottish Ministers may request.
- (2) As soon as is reasonably practicable after giving the report to the Scottish Ministers, the inspectors of constabulary must—
  - (a) give a copy of the report to the Authority and, where the report relates to the Police Service, to the chief constable, and
  - (b) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of a report given to them under this section.

## **79 HMICS reports: other inquiries**

- (1) The inspectors of constabulary must, on completing an inquiry under section 74(2), give a report of the inquiry to the Authority and, where the report relates to the Police Service, to the chief constable.
- (2) The inspectors of constabulary must—
  - (a) as soon as is reasonably practicable after giving the report under subsection (1)—
    - (i) give to the Scottish Ministers a copy of the report and any other information in relation to the report that the inspectors of constabulary think fit, and
    - (ii) publish the report in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it), and
  - (b) give the Scottish Ministers any other information relating to the inquiry that the Scottish Ministers may request.
- (3) The inspectors of constabulary must lay before the Scottish Parliament a copy of a report given by them under this section.

## **80 Inquiry reports: consideration and action**

In carrying out their respective functions, the Authority and the chief constable must have regard to a report given by the inspectors of constabulary under section 78 or 79 and, having done so, must take such measures (if any) as they think fit in relation to the report.



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## **81 Power to give directions after adverse HMICS report**

- (1) This subsection applies where a report given by the inspectors of constabulary under section 78 or 79 states that the inspectors of constabulary are of the opinion—
  - (a) that the Authority or Police Service—
    - (i) is not efficient or effective, or
    - (ii) will, unless remedial measures are taken, cease to be efficient or effective, or
  - (b) that best value for the Authority or the Police Service—
    - (i) has not been secured in pursuance of subsection (1) or, as the case may be, (2) of section 37, or
    - (ii) will not, unless remedial measures are taken, be so secured.
- (2) Where subsection (1) applies, the Scottish Ministers may direct the Authority to take such measures as may be specified in the direction.
- (3) The Authority must comply with any direction given under this section.

VALID FROM 01/04/2013

## **82 HMICS annual report**

- (1) As soon as is practicable after the end of each yearly period ending on 31 March, the inspectors of constabulary must prepare an annual report on the carrying out of their functions during that period.
- (2) The inspectors of constabulary must—
  - (a) give a copy of each of their annual reports to the Scottish Ministers, the Authority and the chief constable, and
  - (b) publish each of their annual reports in such manner as they consider appropriate (having regard to the desirability of it being accessible to those whom the inspectors of constabulary consider likely to have an interest in it).
- (3) The Scottish Ministers must lay before the Scottish Parliament a copy of each annual report given to them under this section.

# **CHAPTER 12**

## **CO-OPERATION, EXCHANGE OF INFORMATION ETC.**

VALID FROM 01/04/2013

## **83 Co-operation between Scottish Police Authority and Police Service**

- (1) The Authority and the chief constable may make arrangements under which—
  - (a) the Authority is to provide assistance to the Police Service, or
  - (b) the Police Service is to provide assistance to the Authority.



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**Changes to legislation:** Police and Fire Reform (Scotland) Act 2012 is up to date with all changes known to be in force on or before 24 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (2) Such assistance may involve—
- (a) members of the Authority's staff providing services for the Police Service, or
  - (b) constables or police staff providing services for the Authority.

## 84 Police information

- (1) The Authority must provide the Scottish Ministers with such reports, statistics or other information relating to the Authority or the Police Service as they may reasonably require.
- (2) Such information may, in particular, relate to—
- (a) the Authority or its functions,
  - (b) the Police Service or police functions,
  - (c) the state of crime.
- (3) The chief constable must provide the Authority with such reports, statistics or other information relating to the Police Service, police functions or the state of crime as it may reasonably require.
- (4) The chief constable may refer a requirement made under subsection (3) to the Scottish Ministers if the chief constable considers that complying with the requirement would or might prejudice—
- (a) the carrying out of any operation by the Police Service, or
  - (b) the prosecution of offenders.
- (5) A requirement referred under subsection (4) has effect only if it is confirmed by the Scottish Ministers.
- (6) The chief constable must provide the Lord Justice General or a sheriff principal with such reports relating to policing as may be reasonably required.
- (7) A requirement by the sheriff principal may relate only to the policing of places in which the sheriff principal has jurisdiction.
- (8) The chief constable must seek to ensure that sufficient information about the state of crime is kept to enable the compliance with any requirement made under this section for the provision of information in that regard.
- (9) The clerk of any court having criminal jurisdiction must comply with any requirement made by the chief constable to provide any information available to the clerk which the chief constable may require for the purposes of subsection (8).
- (10) Nothing in this section requires anyone to provide any report, statistic or other information before the earliest time at which it is reasonable for that person to do so.

### Commencement Information

**I4** S. 84 partly in force; s. 84(1)(2)(a)(10) in force at 8.8.2012 see s. 129(1)(a)

**Status:** Point in time view as at 08/08/2012. This version of this Act contains provisions that are not valid for this point in time.

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VALID FROM 01/01/2013

## 85 Scrutiny and investigations: co-operation and information sharing

- (1) The inspectors of constabulary, the Auditor General and the Police Investigations and Review Commissioner must—
  - (a) co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to the Authority and the Police Service, and
  - (b) in particular, must together make arrangements with a view to—
    - (i) securing the exchange of information between them about the Authority and the Police Service, and
    - (ii) preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to the Authority or the Police Service.
- (2) The duty in subsection (1) does not apply in so far as compliance with it would prevent or delay any of the persons to whom it applies in taking any action which the person considers to be necessary as a matter of urgency.
- (3) In complying with the duty in subsection (1), the inspectors of constabulary and the Police Investigations and Review Commissioner must—
  - (a) comply with any direction (general or specific) given by the Scottish Ministers, and
  - (b) have regard to any guidance given by the Scottish Ministers.
- (4) A direction or guidance may relate to all the functions of the inspectors of constabulary and the Police Investigations and Review Commissioner or to such of those functions (or to such functions of any or all of them) as are specified in the direction or guidance.
- (5) The Scottish Ministers may vary or revoke any direction or guidance.

VALID FROM 01/10/2012

## CHAPTER 13

### PROVISION OF GOODS AND SERVICES

VALID FROM 01/04/2013

## 86 Provision of police services

- (1) The Authority may authorise the chief constable to make arrangements, at the request of any person, to provide and charge for police services.

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- (2) An authorisation under subsection (1) may be of a general or specific nature and may, in particular, set out a scale by reference to which charges for police services are to be made.
- (3) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the police services concerned.
- (4) The Authority, when making such an authorisation, must comply with any code about charging for police services issued by the Scottish Ministers.
- (5) Any such code—
  - (a) may be of a general or specific nature,
  - (b) may be varied or revoked at any time.
- (6) The chief constable must ensure that all sums received by way of charges for police services are paid to the Authority.
- (7) Nothing in this section permits the making of any charge for police services which exceeds the cost of providing those services.
- (8) Except in so far as authorised or required by any other enactment or rule of law, the chief constable may not make charges in respect of the carrying out of police functions otherwise than in accordance with an authorisation under subsection (1).
- (9) In this Part, “police services” means services in connection with the maintenance of order, or the protection of persons or property from harm, which are provided on or in relation to land owned or occupied by the person who requests those services.

## 87 Provision of other goods and services

- (1) The Authority may—
  - (a) provide goods and services to any other public body or office-holder,
  - (b) provide goods and services of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.
- (2) Goods and services may be provided in pursuance of subsection (1) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of its functions.
- (3) The Authority may, with the consent of the chief constable, make arrangements for the Police Service—
  - (a) to provide goods and services (other than police services) to any other public body or office-holder,
  - (b) to provide goods and services (other than police services) of such type as the Scottish Ministers may by order specify to such other persons, or types of person, as may be so specified.
- (4) Goods and services may be provided in pursuance of subsection (3) for such purposes as the Authority considers to be appropriate and consistent with the proper carrying out of police functions.

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- (5) The Authority may make charges in respect of any goods or services provided by it, or by the Police Service, in pursuance of subsection (1) or (3).
- (6) Any such charges may include amounts calculated by reference to expenditure which is incurred, or expected to be incurred, otherwise than directly in connection with the provision of the goods or services concerned.
- (7) Nothing in this section permits the Authority to make any charge for forensic services it is required to provide in pursuance of section 31.
- (8) Goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) include—
  - (a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),
  - (b) services involving the inspection, testing, maintenance or repair of vehicles,
  - (c) any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority's functions or, as the case may be, police functions.

## CHAPTER 14

### GRANTS

#### 88 Police grants

- (1) The Scottish Ministers may make grants to the Authority of such amounts as they determine.
- (2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

#### 89 Grants to other persons

- (1) The Scottish Ministers may make grants of such amounts as they determine, or provide such other financial assistance as they think appropriate, to such persons as they think fit for the purposes of providing services to, or otherwise assisting or supporting, the Authority or the Police Service in the carrying out of the Authority's functions or, as the case may be, police functions.
- (2) Grants may be made or financial assistance provided under this section only where the Scottish Ministers consider it is necessary or expedient to do so for promoting the efficiency or effectiveness of, or securing best value for, the Authority or the Police Service.
- (3) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).
- (4) Any financial assistance provided is subject to any conditions specified by the Scottish Ministers.

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VALID FROM 01/04/2013

## CHAPTER 15

### OFFENCES

#### 90 Assaulting or impeding police

- (1) It is an offence for a person to assault—
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
- (2) It is an offence for a person to resist, obstruct or hinder—
  - (a) a person (“A”) acting in a capacity mentioned in subsection (3), or
  - (b) a person assisting A while A is acting in such capacity.
- (3) The capacities are—
  - (a) that of a constable,
  - (b) that of a member of police staff,
  - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
  - (d) that of a person who—
    - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
    - (ii) is carrying out functions as a member of that team.
- (4) A person who is guilty of an offence under subsection (1) or (2) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.
- (5) A complaint may include a charge that is framed so as to comprise (in a combined form) the specification of both an offence under subsection (1) and an offence under subsection (2).
- (6) Where a charge in a complaint is so framed the charge is to be regarded as being a single yet cumulative charge.
- (7) In this section and section 91, a reference to a member of a relevant police force is a reference to a member of—
  - (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
  - (b) the metropolitan police force,
  - (c) the City of London police force, or
  - (d) the Police Service of Northern Ireland.

#### Modifications etc. (not altering text)

- C1** S. 90 applied (1.4.2013) by [The Police and Fire Reform \(Scotland\) Act 2012 \(Consequential Provisions and Modifications\) Order 2013 \(S.I. 2013/602\)](#), arts. 1(2), **10(1)**

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## Commencement Information

**I5** S. 90 in force at 1.4.2013 by [S.S.I. 2013/51](#), [art. 2](#)

## 91 Escape from custody

- (1) It is an offence for a person—
  - (a) to remove a person from custody, or
  - (b) to assist the escape of a person in custody.
- (2) The reference in subsection (1) to a person in custody is to be construed as a reference to a person—
  - (a) who is in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (3) or a person assisting A while A is acting in such capacity, or
  - (b) who is in the act of eluding or escaping from such custody, whether or not the person has actually been arrested.
- (3) The capacities are—
  - (a) that of a constable,
  - (b) that of a police custody and security officer,
  - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
  - (d) that of a person who—
    - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
    - (ii) is carrying out functions as a member of that team.
- (4) A person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a period not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both.

## 92 Impersonation etc.

- (1) It is an offence for a person (not being a constable)—
  - (a) to impersonate a constable with an intent to deceive, or
  - (b) to do anything calculated to suggest that the person is a constable.
- (2) It is an offence for a person (other than a constable) to possess any article of police uniform without the permission of the Authority.
- (3) It is a defence for a person charged under subsection(2) to prove that the article—
  - (a) was obtained lawfully, and
  - (b) is in the person's possession for a lawful purpose.
- (4) It is an offence for a person (other than a constable) to wear, without the prior permission of the Authority, any article of police uniform in circumstances where it gives an appearance so nearly resembling that of a constable as to be calculated to deceive.

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- (5) A person who is guilty of an offence under this section is liable on summary conviction to imprisonment for a period not exceeding 3 months or a fine not exceeding level 4 on the standard scale.
- (6) In this section an “article of police uniform” means—
- (a) any article of uniform or any distinctive badge or mark usually issued to constables, or
  - (b) any article having the appearance of such article, badge or mark.

VALID FROM 01/04/2013

## CHAPTER 16

### INDEPENDENT CUSTODY VISITING

#### 93 Purpose of custody visiting

The provisions in this Chapter are in pursuance of the objective of OPCAT, that is, the objective of establishing a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### 94 Independent custody visiting

- (1) The Authority must make arrangements to ensure that independent custody visitors may—
- (a) visit detainees,
  - (b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
  - (c) monitor the treatment of detainees and the conditions in which they are detained.
- (2) The arrangements must—
- (a) provide for the appointment as independent custody visitors of suitable persons who are independent of both the Authority and the Police Service,
  - (b) authorise independent custody visitors to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained, and
  - (c) provide for reporting on each visit.
- (3) The arrangements may, in particular, authorise independent custody visitors to—
- (a) access, without prior notice, any place in which a detainee is held,
  - (b) examine records relating to the detention of persons there,
  - (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,



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- (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
  - (e) meet such other persons that the visitors think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (4) The arrangements may allow access to a detainee to be refused only where—
  - (a) the Scottish Ministers have determined grounds on which access to detainees (or to a category of detainee) can be so refused,
  - (b) it appears to a constable of the rank of inspector (or above) that such a ground is satisfied in relation to the detainee, and
  - (c) any other procedural requirements the Authority considers necessary have been met.
- (5) The Authority must—
  - (a) keep the arrangements under review and revise them as it thinks fit,
  - (b) prepare and publish such reports on independent custody visiting as the Scottish Ministers may reasonably require.
- (6) The Authority and members of its staff, the Police Service and police staff and independent custody visitors must have regard to any guidance issued by the Scottish Ministers about independent custody visiting.
- (7) Before issuing guidance, or making a determination for the purposes of subsection (4) (a), the Scottish Ministers must consult—
  - (a) the Authority,
  - (b) the chief constable,
  - (c) independent custody visitors or such persons as appear to them to be representative of independent custody visitors, and
  - (d) such other persons as they consider appropriate.
- (8) The Scottish Ministers must lay a copy of guidance issued or any determination made before the Scottish Parliament.

## 95 SPT visits

- (1) The Authority must make arrangements to ensure that members of the SPT may—
  - (a) visit detainees,
  - (b) access information relevant to the treatment of detainees and the conditions in which they are detained, and
  - (c) monitor the treatment of detainees and the conditions in which they are detained.
- (2) The arrangements must authorise members of the SPT to do anything which the Authority considers necessary to enable them to visit detainees and monitor the treatment of detainees and the conditions in which they are detained.
- (3) The arrangements may, in particular, authorise members of the SPT to—
  - (a) access, without prior notice, any place in which a detainee is held (accompanied by such experts as the SPT members think fit),
  - (b) examine records relating to the detention of persons there,



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- (c) meet any detainees there (in private) to discuss their treatment while detained and the conditions in which they are detained,
  - (d) inspect the conditions in which persons are detained there (including cell accommodation, washing and toilet facilities and facilities for the provision of food), and
  - (e) meet such other persons as the SPT members think may have information relevant to the treatment of detainees and the conditions in which they are detained.
- (4) The arrangements may allow access to a detainee to be refused only—
- (a) where there are urgent and compelling grounds of public safety, natural disaster or serious disorder 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.
- (5) The Authority must keep the arrangements under review and revise them as it thinks fit.
- (6) The Authority and members of its staff and the Police Service and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits.

## 96 Interpretation of Chapter 16

- (1) For the purposes of this Chapter, a reference to a detainee is a reference to a person in the lawful custody of a person (“A”) acting in a capacity mentioned in subsection (2) or a person assisting A while A is acting in such a capacity.
- (2) The capacities are—
- (a) that of a constable,
  - (b) that of a police custody and security officer,
  - (c) that of a member of a relevant police force when such member is executing a warrant or is otherwise acting in Scotland by virtue of any enactment conferring powers on the member in Scotland,
  - (d) that of a person who—
    - (i) is a member of an international joint investigation team that is led by a person acting in a capacity mentioned in paragraph (a) or (c), and
    - (ii) is carrying out functions as a member of that team.
- (3) For the purpose of subsection (2) a reference to a member of a relevant police force is a reference to a member of—
- (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
  - (b) the metropolitan police force,
  - (c) the City of London police force, or
  - (d) the Police Service of Northern Ireland.
- (4) In this Chapter—
- “SPT” means the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment established under Article 2 of OPCAT, and
- “OPCAT” means the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18

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December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

## CHAPTER 17

### MISCELLANEOUS AND GENERAL

VALID FROM 01/04/2013

#### 97 Dissolution of the Police Advisory Board for Scotland

- (1) The Police Advisory Board for Scotland is dissolved.
- (2) In section 63 of the Police Act 1996 (c.16) (Police Advisory Boards for England and Wales and for Scotland)—
  - (a) in subsection (1)—
    - (i) repeal “and a Police Advisory Board for Scotland”, and
    - (ii) repeal “in those countries respectively”,
  - (b) repeal subsection (1ZA), and
  - (c) in subsection (2), for “each of the Police Advisory Boards” substitute “ the Police Advisory Board for England and Wales ”.

#### 98 Transitional and transitory provision

- (1) A person mentioned in subsection (3) must provide the Authority with such information and assistance as the Authority may reasonably require.
- (2) A person mentioned in subsection (3) must provide the chief constable with such information and assistance as the chief constable may reasonably require.
- (3) Those persons are—
  - (a) a police authority within the meaning of the Police (Scotland) Act 1967 (c.77) (“the 1967 Act”),
  - (b) a joint police board constituted by an amalgamation scheme made under the 1967 Act,
  - (c) a chief constable of a police force maintained under the 1967 Act,
  - (d) the Scottish Police Services Authority.
- (4) Schedule 4 makes provision about the period before the Police Service is established.
- (5) Schedule 5 contains provision about the transfer of constables, inspectors of constabulary, police cadets, staff, property, rights, liabilities and obligations.

#### Commencement Information

**I6** [S. 98](#) partly in force; [s. 98\(4\)](#) in force at 8.8.2012 see [s. 129\(1\)\(a\)](#)

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## 99 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10),

“annual police plan” has the meaning given by section 35,

“appropriate prosecutor” means the Lord Advocate or procurator fiscal,

“assistant chief constable” means a constable appointed to the office of assistant chief constable under section 7(1)(c),

“Auditor General” means the Auditor General for Scotland,

“Authority” means the Scottish Police Authority,

“chief constable” means the constable appointed to the office of chief constable under section 7(1)(a),

“constable” means an individual holding the office of constable who is serving as a constable of the Police Service and includes—

- (a) the chief constable,
- (b) other senior officers,
- (c) any special constable,
- (d) any constable on temporary service outwith the Police Service, and
- (e) any individual engaged on temporary service as a constable of the Police Service under arrangements made under section 16,

“deputy chief constable” means a constable appointed to the office of deputy chief constable under section 7(1)(b),

“inspectors of constabulary” means Her Majesty's inspectors of constabulary appointed under section 71,

“international joint investigation team” means any investigation team formed in accordance with—

- (a) any framework decision on joint investigation teams adopted under Article 34 of the Treaty on European Union (as it had effect before 1 December 2009) or any measure adopted under Article 87 of the Treaty on the Functioning of the European Union,
- (b) the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol to that Convention, established in accordance with Article 34 of the Treaty on European Union,
- (c) the Convention implementing the Schengen Agreement of 14 June 1985,
- (d) the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters, or
- (e) any international agreement to which the United Kingdom is a party and which is specified for the purposes of (as the case may be) section 24, 90, 91 or 96 in an order made by the Scottish Ministers,

“joint central committee of the Police Federation for Scotland” means the 3 central committees of the Police Federation for Scotland sitting together as a joint committee,

“local commander” means a constable designated under section 44(2),

“local police plan” has the meaning given by section 47,

“member of the Authority's staff” means an individual appointed under paragraph 6(1) of schedule 1,

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“police appeals tribunal” means a tribunal constituted in accordance with schedule 3,

“police cadet” means an individual appointed under section 25,

“police custody and security officer” means an individual certified under section 28(1),

“police functions” means the functions of constables (including the chief constable's functions and any functions of a deputy chief constable, an assistant chief constable or a local commander),

“policing” means the carrying out of police functions (and references to the policing of Scotland are references to the carrying out of police functions in or as regards Scotland),

“the Police Investigations and Review Commissioner” means the Commissioner established by section 33 of the 2006 Act and renamed by section 61,

“Police Service” means the Police Service of Scotland,

“police services” has the meaning given by section 86(9),

“police staff” means staff appointed under section 26(1) (and “member of the police staff” is to be construed accordingly),

“senior officer” means a constable who holds the office of chief constable, deputy chief constable or assistant chief constable,

“strategic police plan” has the meaning given by section 34,

“strategic police priorities” has the meaning given by section 33,

“terms and conditions” includes terms and conditions about payment of remuneration or allowances or about reimbursement of expenses.

- (2) In this Part, references to securing best value are to be construed in accordance with section 37.

VALID FROM 01/01/2013

## 100 Crown application

- (1) No contravention by the Crown of any provision made by or under this Part makes the Crown criminally liable.
- (2) But the Court of Session may, on the application of the Scottish Ministers or any public body or office-holder having responsibility for enforcing that provision, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Despite subsection (1), any provision made by or under this Part applies to persons in the public service of the Crown as it applies to other persons.
- (4) The power conferred by section 4(2)(d) does not apply in relation to Crown land.
- (5) In this section, “Crown land” means land held or used by or on behalf of the Crown (and includes an interest belonging to Her Majesty in right of Her private estates).

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## PART 2

### FIRE REFORM

#### *The Scottish Fire and Rescue Service*

#### **101 The Scottish Fire and Rescue Service**

(1) After section 1 of the 2005 Act, insert—

##### **“1A The Scottish Fire and Rescue Service**

- (1) There is established a body corporate to be known as the Scottish Fire and Rescue Service, in Gaelic, Seirbheis Smàlaidh agus Teasairginn na h-Alba (referred to in this Act as “SFRS”).
- (2) SFRS has the functions conferred on it by or under this Act or any other enactment.
- (3) Schedule 1A makes further provision about SFRS.”.

(2) After schedule 1 to the 2005 Act, insert—

##### **“SCHEDULE 1A**

*(introduced by section 1A(3))*

#### **THE SCOTTISH FIRE AND RESCUE SERVICE**

##### *Status*

- 1 (1) SFRS—
  - (a) is not a servant or agent of the Crown, and
  - (b) has no status, immunity or privilege of the Crown.
- (2) SFRS's property is not property of, or property held on behalf of, the Crown.

##### *Membership*

- 2 (1) SFRS is to consist of—
  - (a) a member appointed by the Scottish Ministers to chair SFRS (“the chairing member”), and
  - (b) not fewer than 10 nor more than 14 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers may appoint as members only persons who they consider to have skills and expertise relevant to the functions of SFRS.
- (3) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified such other number as they think fit.

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- (4) Members of SFRS may elect from their number a member to act as deputy to the chairing member.

#### *Disqualification*

- 3 (1) A person is disqualified from appointment, and from holding office, as a member of SFRS if that person is or becomes—
- (a) a member of staff of SFRS,
  - (b) a member of
    - (i) the Scottish Parliament,
    - (ii) the House of Lords,
    - (iii) the House of Commons, or
    - (iv) the European Parliament,
  - (c) disqualified from standing for election as a member of
    - (i) the Scottish Parliament,
    - (ii) the House of Commons, or
    - (iii) a local authority.
- (2) The Scottish Ministers may by order modify sub-paragraph (1).

#### *Tenure*

- 4 (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.
- (2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
- (3) On ceasing to be a member, a person is eligible for reappointment.
- (4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

#### *Removal from office*

- 5 (1) The Scottish Ministers may remove a member from office if—
- (a) the member is an undischarged bankrupt,
  - (b) the member has, without reasonable excuse, been absent from meetings of SFRS for a period longer than 4 consecutive months,
  - (c) the member has, without reasonable excuse, been absent from 3 consecutive meetings of SFRS,
  - (d) the member has been convicted (whether before or after the member's appointment) of a criminal offence,
  - (e) the member has failed to comply with the terms or conditions of the member's appointment,
  - (f) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member's functions.
- (2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—

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- (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),
- (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
- (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),
- (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
- (e) who has been adjudged bankrupt (and has not been discharged), or
- (f) who is subject to any other kind of order, arrangement or undertaking analogous to those mentioned in paragraphs (a) to (d), anywhere in the world.

*Remuneration, allowances and expenses of members*

- 6 SFRS may pay to its members such remuneration, allowances and expenses as the Scottish Ministers may determine.

*The Chief Officer*

- 7 (1) SFRS must employ a Chief Officer.
- (2) The Chief Officer may not be a member of SFRS.
- (3) The first Chief Officer is to be appointed by the Scottish Ministers on such terms and conditions as they may determine.
- (4) Each subsequent appointment of a person as the Chief Officer is to be made by SFRS.
- (5) The appointment of a person under sub-paragraph (4) is subject to the approval of the Scottish Ministers.
- (6) The terms and conditions of a person appointed under sub-paragraph (4) are to be determined by SFRS.

*SFRS's employees*

- 8 (1) SFRS may employ staff.
- (2) Staff are to be employed on terms and conditions determined by SFRS.
- (3) SFRS may pay or make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who is, or has ceased to be, a member of staff (including the Chief Officer).
- (4) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of employment.
- (5) The arrangements mentioned in sub-paragraph (3) may include—

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- (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and
- (b) the establishment and administration of pension schemes.

#### *Committees and sub-committees*

- 9 (1) SFRS may establish committees for any purpose.
- (2) Any committee so established may establish sub-committees.
- (3) The members of any committee or sub-committee may include persons who are not members of SFRS but such persons are not entitled to vote at meetings.
- (4) A committee or sub-committee must not consist entirely of persons who are not members of SFRS.
- (5) SFRS may pay such remuneration, allowances and expenses as are determined by SFRS to a member of a committee or sub-committee who is not—
  - (a) a member of SFRS, or
  - (b) a member of staff of SFRS.

#### *Procedure*

- 10 (1) SFRS may regulate—
  - (a) its own procedure (including quorum), and
  - (b) the procedure (including quorum) of its committees and sub-committees.
- (2) The validity of any proceedings or acts of SFRS is not affected by any—
  - (a) vacancy in its membership,
  - (b) defect in the appointment of a member,
  - (c) disqualification of a person as a member after appointment.

#### *Public access*

- 11 (1) SFRS must ensure that its proceedings and those of its committees and sub-committees are held in public.
- (2) Despite sub-paragraph (1), SFRS or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.
- (3) SFRS must publish—
  - (a) agendas for its proceedings and those of its committees and sub-committees,
  - (b) the papers relating to those proceedings,
  - (c) such reports of those proceedings as it thinks fit.
- (4) Despite sub-paragraph (3), SFRS may decide that all or part of any agenda, paper or report need not be published.
- (5) SFRS must publish a statement setting out—
  - (a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and



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- (b) the circumstances in which agendas, papers and reports need not be published.

#### *Governance and accountability*

- 12 SFRS must try to ensure that each of its members, when acting in the capacity of member—
  - (a) acts consistently with any principle of good governance which appears to SFRS to constitute best practice, and
  - (b) acts in a way which is as accountable and transparent as is reasonably practicable.

#### *SFRS's general powers*

- 13 (1) SFRS may do anything that it considers appropriate for the purposes of, or in connection with, the carrying out of its functions.
- (2) SFRS may in particular—
  - (a) enter into contracts,
  - (b) borrow money,
  - (c) acquire and dispose of land and other property,
  - (d) with the authorisation of the Scottish Ministers, purchase compulsorily land,
  - (e) form or promote (whether alone or with another) companies under the Companies Act 2006 (c.46).
- (3) SFRS may not exercise the power in sub-paragraph (2)(b) or (e) without the consent of the Scottish Ministers.
- (4) For the purposes of sub-paragraph (3) consent may be given—
  - (a) with respect to a particular case or class of case,
  - (b) subject to such conditions as the Scottish Ministers consider appropriate.
- (5) The power in sub-paragraph (2)(c) includes the power to accept, on such conditions as SFRS considers appropriate—
  - (a) gifts of money, and
  - (b) gifts or loans of other property.
- (6) The powers in sub-paragraph (2)(c) and (d) to acquire and purchase land include power to acquire a servitude or other right in or over land by the creation of a new right.
- (7) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c.42) applies in relation to the compulsory purchase of land under sub-paragraph (2)(d) as if—
  - (a) that sub-paragraph were contained in an Act in force immediately before the commencement of that Act, and
  - (b) SFRS were a local authority.

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### *Delegation of functions*

- 14 (1) SFRS may delegate any of its functions to a person mentioned in sub-paragraph (2).
- (2) Those persons are—
- (a) the Chief Officer,
  - (b) any other member of staff of SFRS,
  - (c) any of its committees.
- (3) Sub-paragraph (1) does not affect—
- (a) SFRS's responsibility for the carrying out of the delegated functions, or
  - (b) SFRS's ability to carry out the delegated functions.

### *Location of principal office premises*

- 15 Any determination by SFRS as to the location of the principal office premises of its members or its Chief Officer is subject to the approval of the Scottish Ministers.

### *Grants*

- 16 (1) The Scottish Ministers may make grants to SFRS of such amounts as they may determine.
- (2) A grant is made subject to any conditions specified by the Scottish Ministers (including conditions about repayment).

### *Accounts*

- 17 (1) SFRS must—
- (a) keep proper accounts and accounting records, and
  - (b) prepare for each financial year a statement of accounts.
- (2) Each statement of accounts must comply with any directions given by the Scottish Ministers as to—
- (a) the information to be contained in it,
  - (b) the manner in which the information is to be presented,
  - (c) the methods and principles according to which the statement is to be prepared.
- (3) SFRS must send each statement of accounts to the Auditor General for Scotland for auditing.
- (4) In this paragraph, “financial year” means—
- (a) the period beginning on the day on which SFRS is established and ending on 31 March next occurring, and
  - (b) each subsequent period of a year ending on 31 March.”.

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### Commencement Information

- I7** [S. 101](#) partly in force; [s. 101\(1\)](#) in force for specified purposes and [s. 101\(2\)](#) wholly in force at 8.8.2012 see [s. 129\(1\)\(b\)](#)

VALID FROM 01/04/2013

### Functions

#### 102 Promotion of fire safety

In section 8 of the 2005 Act (fire safety)—

- (a) in subsection (1), for “Each relevant authority shall” substitute “ SFRS must ”, and
- (b) in subsection (2)
  - (i) for “a relevant authority shall” substitute “ SFRS must ”, and
  - (ii) for “the authority” substitute “ it ”.

#### 103 Fire safety: enforcement

- (1) In section 61 of the 2005 Act (enforcing authorities)—

- (a) in each of subsections (7) and (8)
  - (i) for “A relevant authority” substitute “ SFRS ”, and
  - (ii) for “the authority” substitute “ SFRS ”, and
- (b) in subsection (9), for paragraphs (b) and (c) substitute—  
“ (b) in relation to any other relevant premises, SFRS. ”.

- (2) In section 67 of the 2005 Act (enforcement of Chapter 1 of Part 3 of the 2005 Act: determination of disputes)—

- (a) for subsection (1), substitute—  
“ (1) Subsections (1A) and (1B) apply where—
  - (a) an enforcing authority considers that a person has failed to comply with any of the Chapter 1 duties, and
  - (b) in relation to the duty in question, the person and the authority cannot agree on the action that requires to be taken to comply with the duty.

(1A) The person and the authority may refer the matter to the person appointed under section 43A(1)(a) for determination.

(1B) If the enforcing authority is SFRS, it or the person may refer the matter to the person appointed under section 43A(1)(a) for determination.”, and

- (b) in subsection (4), for “(1) or (2)” substitute “ (1A) or (1B) ”.

#### 104 Fire-fighting

In section 9 of the 2005 Act (fire-fighting)—

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- (a) in subsection (1), for “Each relevant authority shall” substitute “ SFRS must ”, and
- (b) in subsection (2), for “a relevant authority shall” substitute “ SFRS must ”.

#### **105 Road traffic accidents**

In section 10 of the 2005 Act (road traffic accidents)—

- (a) in subsection (1), for “Each relevant authority shall” substitute “ SFRS must ”, and
- (b) in subsection (2), for “a relevant authority shall” substitute “ SFRS must ”.

#### **106 Conferral of functions in relation to other emergencies**

In section 11 of the 2005 Act (conferral of functions in relation to other emergencies)—

- (a) in subsection (1), for “a relevant authority (the “specified authority”)” substitute “ SFRS ”, and
- (b) in each of subsections (2) and (3), for “the specified authority”, in each place where it occurs, substitute “ SFRS ”.

#### **107 Power to respond to other eventualities**

In section 13 of the 2005 Act (power to respond to other eventualities)—

- (a) in subsection (1), for “A relevant authority” substitute “ SFRS ”, and
- (b) in subsection (2)(b), for “an authority” substitute “ SFRS ”.

#### **108 Provision of other services**

In section 14 of the 2005 Act (provision of other services)—

- (a) in subsection (1)
  - (i) for “A relevant authority” substitute “ SFRS ”, and
  - (ii) for “the authority” substitute “ SFRS ”, and
- (b) in subsection (2), for “An authority” substitute “ SFRS ”.

#### **109 Provision of centres for education and training**

In section 15 of the 2005 Act (provision of centres for education and training)—

- (a) for “A relevant authority” substitute “ SFRS ”, and
- (b) for “relevant authorities have” substitute “ it has ”.

#### **110 Charging**

In section 16 of the 2005 Act (charging)—

- (a) in subsection (1)
  - (i) for “a relevant authority” substitute “ SFRS ”, and
  - (ii) for “the authority” substitute “ SFRS ”,
- (b) in subsection (2), for “the authority” substitute “ SFRS ”,
- (c) in subsection (3), for the words from “the”, where it secondly occurs, to the end substitute “ SFRS at sea beyond the low water mark ”, and

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- (d) in subsection (4)
  - (i) for “a relevant authority” substitute “ SFRS is ”,
  - (ii) after “description” insert “ and it ”, and
  - (iii) for “the authority”, in both places where it occurs, substitute “ SFRS ”.

### *Further amendments of 2005 Act*

VALID FROM 01/04/2013

#### **111 Assistance**

In section 35 of the 2005 Act (the title of which becomes “ Assistance ”)—

- (a) for subsections (1) and (2), substitute—
  - “(1) SFRS may enter into arrangements with a person for securing the provision by that person of assistance for SFRS in the carrying out by SFRS of a relevant function.
  - (2) A person may provide assistance under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to provide assistance for SFRS in the carrying out by SFRS of the relevant function.”, and
- (b) after subsection (3), add—
  - “(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

VALID FROM 01/04/2013

#### **112 Delegation**

In section 36 of the 2005 Act (power to make arrangements for delegating functions)—

- (a) for subsections (1) and (2), substitute—
  - “(1) SFRS may enter into arrangements with a person for the carrying out by that person of a relevant function.
  - (2) A person may carry out a relevant function under arrangements made under subsection (1) only if the Chief Officer is satisfied that the person has sufficient knowledge, skills and experience to enable the person to carry out the relevant function.
  - (2A) SFRS may enter into arrangements under this section in relation to its function of extinguishing fires only if the person employs fire-fighters.”, and
- (b) after subsection (3), add—

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“(4) In this section, “relevant function” means a function conferred by or under any of sections 8 to 11, 13 and 61.”.

## 113 Best value

Before section 40 of the 2005 Act (and the italic cross-heading immediately preceding it), insert—

### *“Best value*

#### 39A Best value

- (1) It is the duty of SFRS to make arrangements which secure best value.
- (2) Best value is continuous improvement in the carrying out of SFRS's functions.
- (3) In securing best value, SFRS must maintain an appropriate balance among—
  - (a) the quality of its carrying out of its functions,
  - (b) the cost to SFRS of that carrying out of its functions,
  - (c) the cost to persons of any service provided by SFRS for them on a wholly or partly rechargeable basis.
- (4) In maintaining that balance, SFRS must have regard to—
  - (a) efficiency,
  - (b) effectiveness,
  - (c) economy, and
  - (d) the need to meet the equal opportunity requirements.
- (5) SFRS must carry out its duties under this section in a way which contributes to the achievement of sustainable development.
- (6) In measuring the improvement of the carrying out of SFRS's functions for the purposes of this section, regard is to be had to the extent to which the outcomes of the carrying out of the functions have improved.
- (7) In this section, “equal opportunity requirements” has the same meaning as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998 (c.46).

#### 39B Best value: further provision

- (1) In carrying out its duties under section 39A, SFRS must have regard to the matters mentioned in subsection (2).
- (2) The matters are—
  - (a) any relevant guidance issued by the Scottish Ministers,
  - (b) what are, whether by reference to any generally recognised published code or otherwise, regarded as proper arrangements for the purposes of section 39A(1) (or purposes which include those purposes).
- (3) Before issuing relevant guidance, the Scottish Ministers must consult—
  - (a) SFRS, and

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- (b) such other persons as they think appropriate.
- (4) In the event of a conflict in any respect between the matter to which SFRS is to have regard under paragraph (a) of subsection (2) and the matter to which it is to have regard under paragraph (b) of that subsection, SFRS must in that respect have regard only to matters within paragraph (a).
- (5) In this section “relevant guidance”—
  - (a) means guidance on the carrying out of the duties imposed by section 39A,
  - (b) includes in particular guidance on
    - (i) how to make and what is to be included in the arrangements mentioned in section 39A(1),
    - (ii) how to implement the duty imposed by that section.

### 39C Examinations of SFRS by Auditor General

The reference in section 23 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) to examinations into the economy, efficiency and effectiveness with which resources have been used is, in relation to SFRS, to include a reference to examinations into the arrangements made by SFRS under section 39A.”.

VALID FROM 01/10/2012

## 114 Strategic plan

After section 41 of the 2005 Act, insert—

### “CHAPTER 8A

#### PLANNING, REPORTS AND INFORMATION

##### *Strategic plan*

#### 41A SFRS's first strategic plan

- (1) SFRS must prepare a strategic plan.
- (2) A strategic plan is a plan—
  - (a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the day appointed by order under subsection (7),
  - (b) setting out outcomes by reference to which the carrying out of its functions may be measured, and
  - (c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.

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- (3) Before preparing the strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.
- (4) When preparing the strategic plan, SFRS must—
  - (a) have regard to the framework document,
  - (b) send a copy of a draft plan to the persons mentioned in subsection (5),
  - (c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and
  - (d) have regard to any comments received within that period.
- (5) Those persons are—
  - (a) each local authority,
  - (b) such persons as SFRS considers represent local authorities,
  - (c) such persons as SFRS considers represent employees of SFRS,
  - (d) such other persons as SFRS considers appropriate.
- (6) SFRS must submit the strategic plan prepared under subsection (1) to the Scottish Ministers for approval.
- (7) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to the strategic plan (with or without modifications) before such day as the Scottish Ministers may by order appoint.
- (8) If the Scottish Ministers approve the strategic plan, SFRS must—
  - (a) publish the plan, and
  - (b) lay before the Scottish Parliament a copy of the plan.

#### **41B Review of plan**

- (1) This section applies where—
  - (a) a strategic plan is approved under section 41A, or
  - (b) a new strategic plan is approved under subsection (4) or (6).
- (2) SFRS may at any time review the plan.
- (3) SFRS must review the plan—
  - (a) if the Scottish Ministers make an order under section 40(4), and
  - (b) before the end of the period of 3 years to which the plan relates.
- (4) Following a review under subsection (2) or (3)(a), SFRS may prepare and submit to the Scottish Ministers for approval a new strategic plan.
- (5) If, following a review under subsection (3)(a), SFRS decides not to prepare a new strategic plan, it must notify the Scottish Ministers of that fact.
- (6) Following a review under subsection (3)(b), SFRS must, before the end of the period of 3 years mentioned in that subsection, prepare and submit to the Scottish Ministers for approval a new strategic plan.
- (7) A new strategic plan is a plan—



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- (a) setting out how SFRS proposes to carry out its functions during the period of 3 years beginning with the plan commencement day,
  - (b) setting out outcomes by reference to which the carrying out of its functions may be measured, and
  - (c) including such other material relating to its functions or to a period other than the period mentioned in paragraph (a) as SFRS thinks fit.
- (8) Before preparing a new strategic plan, SFRS must make arrangements for obtaining views on what the plan should contain from persons whom it considers likely to have an interest in how SFRS carries out its functions.
- (9) When preparing a new strategic plan, SFRS must—
- (a) have regard to the framework document,
  - (b) send a copy of a draft plan to the persons mentioned in section 41A(5),
  - (c) invite the recipients to comment on the draft plan within such reasonable period as SFRS may specify, and
  - (d) have regard to any comments received within that period.
- (10) SFRS must use its best endeavours to secure the approval of the Scottish Ministers to a new strategic plan (with or without modifications) before the plan commencement day for that plan.
- (11) If the Scottish Ministers approve a new strategic plan, SFRS must—
- (a) publish the plan, and
  - (b) lay before the Scottish Parliament a copy of the plan.
- (12) In this section, “plan commencement day” means—
- (a) in the case of a strategic plan prepared under subsection (4), the day 8 weeks after the day on which SFRS submits a new strategic plan to the Scottish Ministers (or such earlier day as SFRS and the Scottish Ministers may agree),
  - (b) in the case of a strategic plan prepared under subsection (6), the day after the end of the period of 3 years to which the previous strategic plan relates.

#### **41C SFRS's duty to have regard to approved plan**

- (1) This section applies where a strategic plan or a new strategic plan has been approved by the Scottish Ministers under section 41A or, as the case may be, section 41B.
- (2) In carrying out its functions, SFRS must have regard to the strategic plan in so far as that plan is not inconsistent with the framework document.”.

VALID FROM 01/04/2013

#### **115 Local fire and rescue plans**

After section 41C of the 2005 Act (inserted by section 114), insert—

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### *“Local fire and rescue plans*

#### **41D Provision of local services**

- (1) SFRS must ensure that there are adequate arrangements in place for the carrying out of its functions in each local authority area.
- (2) SFRS must involve each local authority in determining priorities and objectives for SFRS in connection with the carrying out in the local authority's area of SFRS's functions.

#### **41E Local fire and rescue plans**

- (1) As soon as is reasonably practicable after a strategic plan is approved under section 41A, SFRS must prepare a local fire and rescue plan for each local authority area.
- (2) A local fire and rescue plan is a plan setting out—
  - (a) priorities and objectives for SFRS in connection with the carrying out in the local authority's area of SFRS's functions,
  - (b) the reasons for selecting each of those priorities and objectives,
  - (c) how SFRS proposes to deliver those priorities and objectives,
  - (d) in so far as is reasonably practicable, outcomes by reference to which delivery of those priorities and objectives can be measured,
  - (e) how those priorities and objectives are expected to contribute to the delivery of any other relevant local outcomes which are identified by community planning,
  - (f) such other matters relating to the carrying out of SFRS's functions in the local authority's area as SFRS thinks fit.
- (3) In preparing the local fire and rescue plan, SFRS must—
  - (a) have regard to the framework document and the strategic plan approved under section 41A,
  - (b) consult
    - (i) such persons as SFRS considers represent employees of SFRS, and
    - (ii) such other persons as SFRS considers appropriate.
- (4) SFRS must submit a plan prepared under subsection (1) for approval to the local authority for the area to which the plan relates.
- (5) If the plan is approved under subsection (4), SFRS must publish it.
- (6) In this section “community planning” means the community planning processes described in Part 2 of the Local Government in Scotland Act 2003 (asp 1).

#### **41F Power to review plan**

- (1) This section applies where a local fire and rescue plan is published under section 41E(5), subsection (4) or section 41G(5).

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- (2) SFRS may at any time review the plan.
- (3) Following a review, SFRS may revise the plan.
- (4) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) as they apply in relation to a plan prepared under subsection (1) of that section but subject to the modification in subsection (5).
- (5) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

#### **41G Mandatory review**

- (1) This section applies where a local fire and rescue plan is published under section 41E(5), section 41F(4) or subsection (5).
- (2) SFRS must review the local fire and rescue plan if—
  - (a) the Scottish Ministers make an order under section 40(4),
  - (b) a new strategic plan is approved under section 41B, or
  - (c) the plan is not revised under section 41F(3) or subsection (3) during the period of 3 years beginning with the publication of the plan.
- (3) Following a review under subsection (2)(a) or (b), SFRS may revise the plan.
- (4) Following a review under subsection (2)(c), SFRS must revise the plan.
- (5) Subsections (3) to (5) of section 41E apply in relation to a plan revised under subsection (3) or (4) as they apply in relation to a plan prepared under subsection (1) of that section but subject to the modification in subsection (6).
- (6) The modification is that the reference in section 41E(3)(a) to a plan approved under section 41A is to be read as if it were a reference to a plan approved under section 41A or, as the case may be, a new plan approved under section 41B.

#### **41H Provision of information to local authority**

SFRS must give to a local authority such information or reports relating to the carrying out of SFRS's functions in the authority's area (including reports given by reference to any local fire and rescue plan in force for the area) as the authority may reasonably request.

#### **41J Local Senior Officers**

- (1) After consulting the local authority, SFRS must designate an employee of SFRS as Local Senior Officer for each local authority area for the purpose of carrying out on behalf of SFRS the delegated functions.
- (2) The delegated functions are—
  - (a) SFRS's functions under sections 41E to 41H,

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- (b) SFRS's function in relation to the provision of feedback to it under section 41K(1),
  - (c) SFRS's functions under section 16(1)(d) of the Local Government in Scotland Act 2003 (asp 1) (duty to participate in community planning),
  - (d) any other functions of SFRS which SFRS delegates to the Local Senior Officer.
- (3) The duty imposed on SFRS by subsection (1) must be carried out by the Chief Officer.
- (4) A person may be designated under subsection (1) in relation to more than one local authority area.
- (5) Subsection (1) does not affect—
- (a) SFRS's responsibility for the carrying out of the delegated functions,
  - (b) SFRS's ability to carry out the delegated functions.

#### **41K Monitoring by local authority**

- (1) A local authority may monitor and provide feedback to SFRS on the manner in which SFRS carries out its functions in the authority's area and (in particular) may provide to SFRS—
- (a) its views on any matter concerning or connected to the manner in which SFRS carries out those functions in the authority's area,
  - (b) any recommendations for improvements in the manner in which SFRS carries out those functions in the authority's area that it thinks fit.
- (2) A local authority may provide feedback by reference to any local fire and rescue plan in force for its area.”.

VALID FROM 01/04/2013

## **116 Annual report**

After section 41K of the 2005 Act (inserted by section 115), insert—

### **“41L Annual report**

- (1) As soon as is reasonably practicable after the end of each reporting year, SFRS must—
- (a) prepare and publish an annual report,
  - (b) give a copy of the report to the Scottish Ministers, and
  - (c) lay a copy of the report before the Scottish Parliament.
- (2) An annual report is a report setting out—
- (a) an assessment of SFRS's performance during the reporting year in acting in accordance with the framework document,

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- (b) an assessment of SFRS's performance during the reporting year in achieving the outcomes set out in the strategic plan approved under section 41A or, as the case may be, 41B, and
  - (c) such other information as SFRS thinks fit.
- (3) In this section, “reporting year” means—
  - (a) the period beginning on the day on which SFRS is established and ending
    - (i) on 31 March next occurring, or
    - (ii) if that period is of less than 6 months' duration, on 31 March next occurring after that, and
  - (b) each subsequent period of a year ending on 31 March.”.

## 117 Provision of information

After section 41L of the 2005 Act (inserted by section 116), insert—

### “41M Provision of information

- (1) SFRS must provide the Scottish Ministers with such reports, statistics and other information relating to SFRS or its functions as the Scottish Ministers may require.
- (2) Information provided under this section may in particular relate to the outcomes of fires, events and other situations in relation to which SFRS makes provision or takes action.
- (3) Information to be provided under this section must be provided at the times, and in the form, specified by the Scottish Ministers.”.

VALID FROM 01/10/2012

## 118 Directions by Scottish Ministers

After section 42 of the 2005 Act, insert—

### “Directions

#### 42A Directions

- (1) The Scottish Ministers may give SFRS general or specific directions.
- (2) SFRS must comply with a direction under this section.
- (3) Directions under this section may vary or revoke earlier directions under this section.
- (4) Directions under this section must be in writing.
- (5) The Scottish Ministers must—
  - (a) publish a direction given under this section, and

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(b) lay a copy of it before the Scottish Parliament.

(6) Nothing in this section enables the Scottish Ministers to give a direction in circumstances to which subsection (3) or (4) of section 41 applies.”.

VALID FROM 01/01/2013

## 119 Inspectors of SFRS

After section 43 of the 2005 Act, insert—

### “CHAPTER 8B

#### INSPECTION

##### *Inspectors of SFRS*

### 43A Inspectors of SFRS

- (1) Her Majesty may by Order in Council appoint—
  - (a) a Chief Inspector of the Scottish Fire and Rescue Service, and
  - (b) such number of Inspectors of the Scottish Fire and Rescue Service as the Scottish Ministers may determine.
- (2) The Scottish Ministers may appoint Assistant Inspectors of the Scottish Fire and Rescue Service.
- (3) The Scottish Ministers must pay to persons appointed under this section such remuneration as the Scottish Ministers may determine.
- (4) The Scottish Ministers may authorise an Inspector to carry out any of the functions conferred on the Chief Inspector by or under this Act or any other enactment if—
  - (a) there is a temporary vacancy in the office of Chief Inspector, or
  - (b) the Scottish Ministers consider that the Chief Inspector is temporarily unable to carry out the Chief Inspector's functions.
- (5) A person who, immediately before the coming into force of section 119 of the Police and Fire Reform (Scotland) Act 2012 (asp 8), is by virtue of section 43—
  - (a) the Chief Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(a),
  - (b) an Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (1)(b), and
  - (c) an Assistant Inspector of Fire and Rescue Authorities is taken to have been appointed under subsection (2).
- (6) In this Act—
 

“Chief Inspector” means a person appointed under subsection (1)(a), and

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“Inspector” means a person appointed under subsection (1) or (2).

### 43B Inquiries by Inspectors

- (1) An Inspector may inquire into a matter mentioned in subsection (3).
- (2) If directed to do so by the Scottish Ministers, an Inspector must inquire into a matter mentioned in subsection (3).
- (3) The matters are—
  - (a) the state and efficiency of SFRS,
  - (b) whether in carrying out its functions SFRS is complying with its duty under section 39A to make arrangements which secure best value,
  - (c) the manner in which SFRS is carrying out any of its functions.
- (4) In carrying out an inquiry under this section an Inspector may—
  - (a) require SFRS to provide any information or documents relating to the functions of SFRS that the Inspector may require,
  - (b) enter and inspect any premises which are used by SFRS,
  - (c) inspect any equipment which is used by SFRS.
- (5) If an Inspector exercises a power of entry by virtue of subsection (4)(b), the Inspector may—
  - (a) take onto the premises
    - (i) such other persons, and
    - (ii) such equipment,as the Inspector considers necessary,
  - (b) require any person present on the premises to provide the Inspector with any information or documents that the Inspector may reasonably request.
- (6) An Inspector may not under subsection (4)(b)—
  - (a) enter or inspect premises occupied as a private dwelling,
  - (b) enter premises by force.
- (7) SFRS must provide such facilities, assistance and co-operation as an Inspector may reasonably request for the purposes of, or in connection with, an inquiry under this section.

### 43C Inquiries under section 43B(1): reports

- (1) This section applies where an inquiry under section 43B(1) has been completed.
- (2) The Chief Inspector must give SFRS a report of the inquiry.
- (3) If a report given to SFRS under subsection (2) relates to a matter mentioned in section 43B(3)(a) or (b), the Chief Inspector must—
  - (a) as soon as is reasonably practicable after giving the report to SFRS, give the Scottish Ministers a copy of the report, and



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- (b) give the Scottish Ministers any other information relating to the inquiry that they may request.
- (4) If a report given to SFRS under subsection (2) does not relate to a matter mentioned in section 43B(3)(a) or (b), the Chief Inspector—
  - (a) may give the Scottish Ministers a copy of the report if the Chief Inspector thinks fit,
  - (b) may give the Scottish Ministers any other information in relation to the report that the Chief Inspector thinks fit,
  - (c) must give the Scottish Ministers any information relating to the inquiry that the Scottish Ministers may request.
- (5) The Chief Inspector must lay before the Scottish Parliament a copy of a report given to the Scottish Ministers under subsection (3)(a).

#### **43D Inquiries under section 43B(2): reports**

- (1) This section applies where an inquiry under section 43B(2) has been completed.
- (2) The Chief Inspector must give the Scottish Ministers—
  - (a) a report of the inquiry, and
  - (b) any other information relating to the inquiry that the Scottish Ministers may request.
- (3) As soon as is reasonably practicable after giving the report to the Scottish Ministers under subsection (2)(a), the Chief Inspector must give a copy of the report to SFRS.
- (4) The Scottish Ministers must lay before the Scottish Parliament a copy of the report given to them under subsection (2)(a).

#### **43E Inquiry reports: duties of SFRS**

In carrying out its functions, SFRS must have regard to a report given to it under section 43C(2) or 43D(3) and, having done so, must take such measures (if any) as it thinks fit in relation to the report.

#### **43F Chief Inspector's plan**

- (1) The Chief Inspector must prepare a plan setting out—
  - (a) priorities for inquiries to be carried out by Inspectors, and
  - (b) information on how inquiries will be carried out in a way which is proportionate, accountable and transparent.
- (2) The Chief Inspector—
  - (a) must keep the plan under review, and
  - (b) may from time to time revise the plan.
- (3) The Chief Inspector must, in preparing a plan (and any revised plan), consult such persons as the Chief Inspector considers appropriate.

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- (4) The Chief Inspector must publish the plan (and any revised plan) in such manner as the Chief Inspector thinks fit.

### *Co-operation and information-sharing*

#### **43G Co-operation and information-sharing: Auditor General**

- (1) The Inspectors and the Auditor General must co-operate and co-ordinate activity with each other with a view to improving the carrying out of their respective functions in relation to SFRS.
- (2) In particular, the Inspectors and the Auditor General must together make arrangements with a view to—
- securing the exchange of information between them about SFRS,
  - preventing any unnecessary duplication in relation to any inspections, investigations, inquiries or examinations carried out, or to be carried out, by them in relation to SFRS.
- (3) The duties imposed by subsections (1) and (2) do not apply in so far as compliance with them would prevent or delay any of the persons on whom they are imposed in taking any action which the person considers to be necessary as a matter of urgency.”.

VALID FROM 01/04/2013

#### **120 Prohibition on employment of police**

In section 51 of the 2005 Act (prohibition on employment of police), after “constable” insert “ (other than a special constable appointed under section 9 of the Police and Fire Reform (Scotland) Act 2012 (asp 8)) ”.

### *General*

VALID FROM 01/10/2012

#### **121 Transfer of staff, property etc.**

Schedule 6 makes provision about the transfer of staff, property, rights, liabilities and obligations.

#### **122 SFRS: transitory provision**

- (1) A person mentioned in subsection (2) must provide SFRS with such information or assistance as SFRS may reasonably require.
- (2) Those persons are—
- a fire and rescue authority within the meaning of section 1 of the 2005 Act,

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- (b) a joint fire and rescue board constituted by a scheme made under section 2(1) of the 2005 Act.
- (3) Subsection (4) applies until the coming into force of section 101(1) for the purpose of inserting section 1A(2) into the 2005 Act.
- (4) Despite paragraph 2(1) of schedule 1A to the 2005 Act, SFRS may consist of—
  - (a) the chairing member, or
  - (b) the chairing member and fewer than 10 other members.

#### Commencement Information

**I8** [S. 122](#) partly in force; [s. 122\(3\)\(4\)](#) in force at 8.8.2012 see [s. 129\(1\)\(b\)](#)

### 123 Meaning of “the 2005 Act”

In this Part, “the 2005 Act” means the Fire (Scotland) Act 2005 (asp 5).

## PART 3

### GENERAL

### 124 Parliamentary scrutiny of operation of Act

- (1) The Scottish Parliament must make arrangements for keeping under review the operation of this Act.
- (2) The Scottish Parliament must publish reports in pursuance of subsection (1).

### 125 Subordinate legislation

- (1) Any power of the Scottish Ministers to make an order, regulations or rules under this Act includes power to make—
  - (a) different provision for different purposes (for example, for different types or ranks of constable),
  - (b) such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate.
- (2) An order made under section 10(2) or 11(5) is subject to the affirmative procedure.
- (3) An order made under section 126 or 127 containing provisions which add to, replace or omit any part of the text of an Act is subject to the affirmative procedure.
- (4) All other orders, and any regulations or rules, made under this Act are subject to the negative procedure.
- (5) This section does not apply to an order made under section 129(2), paragraph 2(1)(b) of schedule 5 or paragraph 1 of schedule 6.

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## 126 Ancillary provision

- (1) The Scottish Ministers may by order make such supplementary, incidental or consequential provision as they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by or under this Act.
- (2) An order under this section may modify this or any other enactment.

## 127 Transitional provision etc.

- (1) The Scottish Ministers may by order make such transitional, transitory or saving provision as they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.
- (2) An order under this section may modify this or any other enactment.

VALID FROM 01/10/2012

## 128 Minor and consequential amendments and repeals

- (1) Schedule 7 contains minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in the first column in schedule 8 (which include enactments that are spent) are repealed to the extent set out in the second column.

## 129 Commencement

- (1) The following provisions of this Act come into force on the day after Royal Assent—
  - (a) in Part 1, sections 1 (and schedule 1), 2(1)(c), (2) and (3), 4, 7, 37, 38, 40(1), (3) and (4), 84(1), (2)(a) and (10), 88, 89, 98(4) (and schedule 4) and 99,
  - (b) in Part 2, sections 101(1) (but only for the purpose of inserting section 1A(1) and (3) into the 2005 Act) and (2), 113, 117, 122(3) and (4) and 123, and
  - (c) this Part (other than section 128).
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by order appoint.
- (3) An order under this section may include transitional, transitory or saving provision.

## 130 Short title

The short title of this Act is the Police and Fire Reform (Scotland) Act 2012.

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## SCHEDULE 1

(introduced by section 1(2))

### THE SCOTTISH POLICE AUTHORITY

#### PART 1

#### STATUS, STRUCTURE AND GOVERNANCE

##### *Status*

- 1 (1) The Authority—
  - (a) is not a servant or agent of the Crown, and
  - (b) has no status, immunity or privilege of the Crown.
- (2) The Authority's property is not property of, or property held on behalf of, the Crown.

##### *Membership*

- 2 (1) The Authority is to consist of—
  - (a) a member appointed by the Scottish Ministers to chair the Authority (“the chairing member”), and
  - (b) not fewer than 10 nor more than 14 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers must appoint as members only persons who they consider to have the skills and expertise relevant to the functions of the Authority.
- (3) The Scottish Ministers may by order modify sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- (4) Members of the Authority may elect from their number a member to act as deputy to the chairing member.

##### *Disqualification*

- 3 A person is disqualified from appointment, and from holding office, as a member of the Authority if that person is or becomes—
  - (a) a member of—
    - (i) the Scottish Parliament,
    - (ii) the House of Lords,
    - (iii) the House of Commons, or
    - (iv) the European Parliament,
  - (b) disqualified from standing for election as a member of—
    - (i) the Scottish Parliament,
    - (ii) the House of Commons, or
    - (iii) a local authority,
  - (c) a constable,
  - (d) a member of—

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- (i) a police force maintained under section 2 of the Police Act 1996 (c.16),
- (ii) the metropolitan police force,
- (iii) the City of London police force,
- (iv) the Police Service of Northern Ireland,
- (v) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
- (vi) the British Transport Police Force,
- (vii) the Civil Nuclear Constabulary,
- (viii) the States of Jersey Police Force,
- (ix) the salaried police force of the Island of Guernsey, or
- (x) the Isle of Man Constabulary,
- (e) a member of police staff,
- (f) a member of the Authority's staff,
- (g) the Police Investigations and Review Commissioner or any member of the Commissioner's staff, and
- (h) a person of such other description as may be prescribed by order made by the Scottish Ministers.

#### *Tenure*

- 4
- (1) A member is to be appointed for a period not exceeding 4 years specified in the appointment.
  - (2) A member holds and vacates office on such terms and conditions as the Scottish Ministers may determine.
  - (3) On ceasing to be a member, a person is eligible for reappointment.
  - (4) A member may, by notice in writing to the Scottish Ministers, resign office as a member.

#### *Removal from office*

- 5
- (1) The Scottish Ministers may remove a member from office if—
    - (a) the member is an undischarged bankrupt,
    - (b) the member has, without reasonable excuse, been absent from meetings of the Authority for a period longer than 4 consecutive months,
    - (c) the member has, without reasonable excuse, been absent from 3 consecutive meetings of the Authority,
    - (d) the member has been convicted (whether before or after the member's appointment) of a criminal offence,
    - (e) the member has failed to comply with the terms or conditions of the member's appointment, or
    - (f) the Scottish Ministers consider that the member is otherwise unfit to be a member or is unable for any reason to carry out the member's functions.
  - (2) For the purposes of sub-paragraph (1)(a), “undischarged bankrupt” means a person—
    - (a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

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- (b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it),
- (c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 (c.66) or the Insolvency Act 1986 (c.45),
- (d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,
- (e) who has been adjudged bankrupt (and has not been discharged), or
- (f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

#### *Staff of the Authority*

- 6 (1) The Authority may appoint individuals to assist the Authority in the carrying out of its functions.
- (2) Individuals appointed under sub-paragraph (1) may be—
- (a) employed by the Authority,
  - (b) provided to the Authority under arrangements between the Authority and a third party, or
  - (c) engaged on temporary service with the Authority in accordance with arrangements made under paragraph 7(1).

#### *Constables: temporary service with the Scottish Police Authority*

- 7 (1) The Authority may make arrangements for a constable, or any person falling within sub-paragraph (2), to serve as a member of the Authority's staff in order to assist it in the carrying out of its functions.
- (2) A person falls within this sub-paragraph if the person is a member of—
- (a) a police force maintained under section 2 of the Police Act 1996 (c.16),
  - (b) the metropolitan police force,
  - (c) the City of London police force,
  - (d) the Police Service of Northern Ireland,
  - (e) the Ministry of Defence Police appointed on the nomination of the Secretary of State under section 1 of the Ministry of Defence Police Act 1987 (c.4),
  - (f) the British Transport Police Force,
  - (g) the Civil Nuclear Constabulary,
  - (h) the States of Jersey Police Force,
  - (i) the salaried police force of the Island of Guernsey, or
  - (j) the Isle of Man Constabulary.
- (3) An individual engaged on service with the Authority under arrangements made under this paragraph is under the direction and control of the Authority.
- (4) The Authority is liable in respect of any unlawful conduct on the part of any individual to whom sub-paragraph (3) applies in the carrying out (or purported carrying out) of that individual's functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

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### *Terms and conditions of the Authority's staff*

- 8 (1) A member of the Authority's staff may be employed on terms and conditions determined by the Authority.
- (2) The Authority may pay or make arrangements for the payment of pensions, allowances or gratuities (including by way of compensation for loss of employment) to, or in respect of, any person who has ceased to be employed as a member of the Authority's staff.
- (3) The arrangements mentioned in sub-paragraph (2) may include—
- (a) the making of contributions or payments towards provision for pensions, allowances or gratuities mentioned there, and
  - (b) the establishment and administration of pension schemes.

### *Committees and sub-committees*

- 9 (1) The Authority may establish committees for any purpose.
- (2) Any committee so established may establish sub-committees.
- (3) The members of any committee or subcommittee may include persons who are not members of the Authority but such persons are not entitled to vote at meetings.
- (4) A committee or sub-committee must not consist entirely of persons who are not members of the Authority.
- (5) The Authority may pay such remuneration, allowances and expenses as are determined by the Authority to a member of a committee or sub-committee who is not—
- (a) a constable,
  - (b) a member of the Authority,
  - (c) a member of police staff, or
  - (d) a member of the Authority's staff.

### *Procedure*

- 10 (1) The Authority may regulate—
- (a) its own procedure (including quorum), and
  - (b) the procedure (including quorum) of its committees and sub-committees.
- (2) The validity of any proceedings or acts of the Authority is not affected by any—
- (a) vacancy in its membership,
  - (b) defect in the appointment of a member, or
  - (c) disqualification of a person as a member after appointment.

### *Public access*

- 11 (1) The Authority must ensure that its proceedings and those of its committees and sub-committees are held in public.
- (2) Despite sub-paragraph (1), the Authority or, as the case may be, any of its committees or sub-committees may decide to hold all or part of any proceedings in private.



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- (3) The Authority must publish—
  - (a) agendas for its proceedings and those of its committees and sub-committees,
  - (b) the papers relating to those proceedings,
  - (c) such reports of those proceedings as it thinks fit.
- (4) Despite sub-paragraph (3), the Authority may decide that all or part of any agenda, paper or report need not be published.
- (5) The Authority must publish a statement setting out—
  - (a) the circumstances in which its proceedings and those of its committees and sub-committees may be held in private, and
  - (b) the circumstances in which agendas, papers and reports need not be published.

#### *Delegation of functions*

- 12 (1) The Authority may authorise—
  - (a) any of its committees, or
  - (b) any member of the Authority's staff,
 to perform on behalf of the Authority such of its functions as it may determine to the extent so authorised.
- (2) A committee of the Authority may authorise—
  - (a) any of its sub-committees, or
  - (b) any member of the Authority's staff,
 to perform on behalf of the committee such of its functions as it may determine to the extent so authorised.
- (3) Sub-paragraphs (1) and (2) do not affect the Authority's—
  - (a) responsibility for performance of delegated functions, or
  - (b) ability to perform delegated functions.

#### *Location of principal offices*

- 13 Any determination by the Authority as to the location of the principal office premises of its members or of the chief constable is subject to the approval of the Scottish Ministers.

## PART 2

### CONSEQUENTIAL MODIFICATIONS

#### *Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)*

- 14 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), after the entry for “Scottish Natural Heritage” insert—  
“ Scottish Police Authority ”.

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*Freedom of Information (Scotland) Act 2002 (asp 13)*

- 15 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities) after paragraph 50 insert—  
“50A The Scottish Police Authority.”.

*Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)*

- 16 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (specified authorities), after the entry for “Scottish Natural Heritage” insert—  
“ Scottish Police Authority ”.

*Public Services Reform (Scotland) Act 2010 (asp 8)*

- 17 (1) The Public Services Reform (Scotland) Act 2010 is amended as follows.  
(2) In schedule 5 (improvement of public functions: listed bodies), after the entry for “Scottish Natural Heritage” insert— “ Scottish Police Authority ”.  
(3) In schedule 8 (information on exercise of public functions: listed public bodies), after the entry for “Scottish Natural Heritage” insert— “ Scottish Police Authority ”.

*Public Records (Scotland) Act 2011 (asp 12)*

- 18 In the schedule to the Public Records (Scotland) Act 2011 (authorities to which Part 1 of that Act applies) after the entry for “Scottish Natural Heritage” insert—  
“ Scottish Police Authority ”.

VALID FROM 01/04/2013

SCHEDULE 2

(introduced by section 28(3))

POLICE CUSTODY AND SECURITY OFFICERS: POWERS AND DUTIES

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VALID FROM 01/10/2012

SCHEDULE 3

(introduced by section 56(3))

POLICE APPEALS TRIBUNALS

*Constitution and membership*

- 1 (1) A police appeals tribunal is to consist of 3 members, one of whom is to be appointed to chair the tribunal.

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	<p>(2) The Lord President of the Court of Session must—</p> <ul style="list-style-type: none"> <li>(a) establish and maintain a panel of persons who may be appointed as members of a police appeals tribunal, and</li> <li>(b) from that panel, appoint the members (including the chairing member) of the tribunal.</li> </ul> <p>(3) Every member of the panel must be, and have been for the period of 5 years immediately prior to the member's appointment, either—</p> <ul style="list-style-type: none"> <li>(a) a solicitor holding a practising certificate in accordance with Part 2 of the Solicitors (Scotland) Act 1980 (c.46), or</li> <li>(b) a member of the Faculty of Advocates practising as an advocate in Scotland.</li> </ul> <p style="text-align: center;"><i>Member remuneration, allowances and expenses</i></p>
2	<p>The Authority is to pay to the members of a police appeals tribunal such remuneration, allowances and expenses as the Scottish Ministers may determine.</p> <p style="text-align: center;"><i>Expenses of proceedings</i></p>
3	<p>(1) The appellant is liable for the expenses incurred by the appellant in making an appeal.</p> <p>(2) But the police appeals tribunal may direct that some or all of the appellant's expenses must be paid by the Authority.</p> <p>(3) The other expenses of the appeal (including the expenses of the respondent) must be paid by the Authority.</p> <p style="text-align: center;"><i>Police appeals tribunal rules</i></p>
4	<p>The Scottish Ministers may make rules about the procedure on appeals to a police appeals tribunal including, in particular, provision about—</p> <ul style="list-style-type: none"> <li>(a) the notices required to start an appeal,</li> <li>(b) the identity of the respondent, and</li> <li>(c) holding hearings in private.</li> </ul>

## SCHEDULE 4

*(introduced by section 98(4))*

### PERIOD BEFORE ESTABLISHMENT OF POLICE SERVICE

- 1 This schedule applies during the period before the day on which the Police Service is established (being the day appointed under section 129(2) for the coming into force of section 6).
- 2 An appointment under section 7 has effect only where the individual has made the declaration set out in section 10 before a sheriff or justice of the peace.
- 3 An individual appointed under section 7—
  - (a) holds the office of constable,

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- (b) is to hold and vacate office on such terms and conditions as the Scottish Ministers may determine,
  - (c) has power to do anything that the individual considers appropriate in anticipation of—
    - (i) the establishment of the Police Service, or
    - (ii) the coming into force of any provision of this Act, and
  - (d) in the case of the chief constable, is accountable to the Authority.
- 4 Sections 18, 19, 21(1) and (2), 22 and 23 apply in relation to an individual who is so appointed as if those sections were in force.
- 5 Despite paragraph 2(1) of schedule 1, the Authority may consist of—
- (a) the chairing member, or
  - (b) the chairing member and fewer than 10 other members.
- 6 It is for the Authority to hold the chief constable to account for the performance of senior officers' functions.
- 7 The Authority may—
- (a) pay remuneration and allowances to, and reimburse expenses reasonably incurred by, senior officers, and
  - (b) provide and maintain anything necessary or desirable in connection with the functions of senior officers.
- 8 The reference in section 4(1) to the Authority's functions includes a reference to any functions which the Authority anticipates having by virtue of the coming into force of any provision of this Act.

VALID FROM 01/10/2012

## SCHEDULE 5

(introduced by section 98(5))

### TRANSFER OF CONSTABLES, STAFF AND PROPERTY ETC.

#### *Interpretation*

- 1 In this schedule—
- “appointed day” has the meaning given by paragraph 2,
  - “joint police board” means a joint police board constituted by an amalgamation scheme made under the 1967 Act,
  - “member of the Authority's staff” means a member of police staff appointed to assist the Authority in the carrying out of its functions,
  - “police authority” has the same meaning as in the 1967 Act,
  - “police force” means a police force maintained under the 1967 Act,
  - “police member of the SCDEA” means an individual appointed in accordance with paragraph 7 of schedule 2 to the 2006 Act,
  - “SCDEA” means the Scottish Crime and Drug Enforcement Agency,
  - “SPSA” means the Scottish Police Services Authority,
  - “the 1967 Act” means the Police (Scotland) Act 1967 (c.77),

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“the 2006 Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10).

*Appointed day*

- 2 (1) The “appointed day”, for the purposes of this schedule, means—
- (a) the day on which the Police Service is established (being the day appointed under section 129(2) for the coming into force of section 6), or
  - (b) such other day as the Scottish Ministers may by order appoint.
- (2) An order under sub-paragraph (1)(b) may appoint different days for different purposes.

*Constables to continue to hold office and rank*

- 3 (1) Sub-paragraphs (2) to (6) apply to an individual who, immediately before the appointed day, holds the office of constable by virtue of being appointed in accordance with the 1967 Act (including any individual who, immediately before that day, is engaged in service which is “relevant service” for the purposes of section 38A of the 1967 Act).
- (2) An individual to whom this sub-paragraph applies is, on and after the appointed day—
- (a) to hold the office of constable,
  - (b) to be treated as having made the declaration required by section 10, and
  - (c) to otherwise be treated as having been appointed in accordance with this Act as a constable of the Police Service.
- (3) Paragraphs 6 to 8 make provision for the transfer of an individual to whom this sub-paragraph applies on the appointed day.
- (4) Subject to paragraphs 5(2) and (4) and 8(6), an individual to whom this sub-paragraph applies is, on the appointed day, to be transferred in accordance with this schedule at the same rank as the individual holds immediately before the appointed day.
- (5) Sub-paragraph (4) does not affect any temporary promotion arrangements which are in place immediately before the appointed day.
- (6) Any contractual terms on which an individual to whom this sub-paragraph applies is appointed to serve as a constable to a police force (for example, in relation to fixed periods of tenure of constables holding the rank of superintendent or above) are, on and after the appointed day, to have effect as if the appointment were originally an appointment to serve as a constable of the Police Service.

*Senior officers appointed under section 7*

- 4 An individual who, immediately before the appointed day, holds the office of chief constable, deputy chief constable or assistant chief constable by virtue of appointment in accordance with section 7 is, on and after the appointed day, to serve as a constable of the Police Service.

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### *Senior officers*

- 5 (1) Sub-paragraph (2) applies to an individual who—
- (a) holds the rank of chief constable immediately before the appointed day,
  - (b) is not appointed to the office of chief constable of the Police Service in accordance with section 7, and
  - (c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.
- (2) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of deputy chief constable in accordance with section 7 (and accordingly to hold the rank of deputy chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the chief constable of the police force which has ceased to exist.
- (3) Sub-paragraph (4) applies to an individual who—
- (a) holds the rank of deputy chief constable immediately before the appointed day,
  - (b) is not appointed to the office of chief constable, or to the office of deputy chief constable, of the Police Service in accordance with section 7, and
  - (c) is, in accordance with this schedule, transferred to serve as a constable of the Police Service.
- (4) An individual to whom this sub-paragraph applies is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be the deputy chief constable of the police force which has ceased to exist or, as the case may be, the Director General of the SCDEA.
- (5) An individual who is, in accordance with this schedule, transferred to serve as a constable of the Police Service at the rank of assistant chief constable is, on and after the appointed day, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.

### *Constables serving in police forces*

- 6 Any individual serving as a constable of a police force immediately before the appointed day (including anyone on temporary service from another police force) is, on the appointed day, to transfer to serve as a constable of the Police Service.

### *Constables serving in SPSA or SCDEA*

- 7 (1) An individual who, immediately before the appointed day, is the Director General or Deputy Director General of, or is a police member of, the SCDEA is, on the appointed day, to transfer to serve as a constable of the Police Service.
- (2) Sub-paragraph (1) does not apply to a police member of the SCDEA serving as a member of the SPSA's staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act (see sub-paragraphs (5) and (6)(a) below).

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- (3) Sub-paragraph (4) applies where, immediately before the appointed day, an individual—
      - (a) is serving as a member of the SPSA's staff in accordance with an arrangement made by virtue of paragraph 10(2) of schedule 1 to the 2006 Act, and
      - (b) is not a police member of the SCDEA.
    - (4) Where this sub-paragraph applies, it is for the Scottish Police Authority to determine whether the individual concerned is, on the appointed day, to transfer—
      - (a) to serve as a constable of the Police Service, or
      - (b) to be engaged on temporary service as a member of the Authority's staff.
    - (5) Sub-paragraph (6) applies where, immediately before the appointed day, an individual is serving as a member of the SPSA's staff in accordance with an arrangement made by virtue of paragraph 10(3) of schedule 1 to the 2006 Act.
    - (6) Where this sub-paragraph applies, the arrangement is, on and after the appointed day, to have effect as if made by the Scottish Police Authority under section 16 and—
      - (a) where the individual concerned is a police member of the SCDEA, the individual is, on the appointed day, to transfer to be engaged on temporary service as a constable of the Police Service, or
      - (b) where the individual concerned is not a police member of the SCDEA, it is for the Scottish Police Authority to determine whether the individual is, on the appointed day, to transfer—
        - (i) to be engaged on temporary service as a constable of the Police Service, or
        - (ii) to be engaged on temporary service as a member of the Authority's staff.
- Constables – temporary service arrangements*
- 8 (1) Sub-paragraph (2) applies where, by virtue of any arrangement made or consent given, an individual is, immediately before the appointed day, engaged in service as a constable of a police force.
  - (2) Where this sub-paragraph applies—
    - (a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service as a constable of the Police Service, and
    - (b) the individual concerned is, on the appointed day, accordingly to transfer to be engaged in such service.
  - (3) Sub-paragraph (4) applies where, by virtue of any arrangement made or consent given, a constable of a police force is, immediately before the appointed day, engaged in service outwith that force which is “relevant service” for the purposes of section 38A of the 1967 Act.
  - (4) Where this sub-paragraph applies—
    - (a) the arrangement or consent is, on and after the appointed day, to have effect as if it were an arrangement or consent for the individual to be engaged in service outwith the Police Service,



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- (b) the individual concerned is, on the appointed day, accordingly to continue to be engaged in such service, and
  - (c) the individual's rights under section 38A(3)(a) of the 1967 Act are, on and after the appointed day, to be treated as having arisen under section 15 of this Act.
- (5) Sub-paragraph (6) applies to an individual who—
  - (a) is to revert to the Police Service by virtue of sub-paragraph (4)(c),
  - (b) would have (but for this paragraph) reverted to the individual's police force at the rank of deputy chief constable, and
  - (c) is not appointed to the office of deputy chief constable of the Police Service in accordance with section 7.
- (6) An individual to whom this sub-paragraph applies is, on and after the date that the individual reverts to the Police Service by virtue of sub-paragraph (4)(c), to be treated as having been appointed to the office of assistant chief constable in accordance with section 7 (and accordingly is to hold the rank of assistant chief constable) but is otherwise to continue to have the same conditions of service, including rates of pay, as if the individual had continued to be a deputy chief constable of the police force which has ceased to exist.
- (7) An individual who reverts to the Police Service by virtue of sub-paragraph (4)(c) at the rank of assistant chief constable is, on and after the day of reversion, to be treated as having been appointed to the office of assistant chief constable of the Police Service in accordance with section 7.
- (8) This paragraph does not apply in relation to an individual transferred under paragraph 6 or 7.

*Acts done before transfer*

- 9
- (1) Anything done before the appointed day by or in relation to a police authority, a joint police board, the SPSA or the SCDEA in respect of an individual transferred under any of paragraphs 6 to 8 is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.
  - (2) Anything done before the appointed day by or in relation to a chief constable of a police force or the Director General of the SCDEA in respect of an individual transferred under any of paragraphs 6 to 8 is to be treated on and after that day as having been done by or in relation to the chief constable of the Police Service.
  - (3) Anything done before the appointed day by or in relation to a constable of a police force or a police member of the SCDEA in respect of an individual transferred under any of paragraphs 6 to 8 is to be treated on and after that day as having been done by or in relation to a constable of the Police Service.

*Limitation on mobility of transferred constables*

- 10
- (1) Sub-paragraph (2) applies to a constable of the Police Service who, immediately before the appointed day, is a constable of a police force (including any such constable who is, at that time, engaged in service outwith that force).
  - (2) A constable to whom this sub-paragraph applies must not be assigned duties which, in the opinion of the Scottish Ministers, would necessitate that constable moving



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home to a place outwith what was the area of the police force which has ceased to exist.

- (3) Sub-paragraph (2) does not apply to a constable who, immediately before the appointed day, is engaged in service outwith that constable's force until—
  - (a) in the case of a constable who is not, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the constable reverts to so serve, and
  - (b) in the case of a constable who is, on the appointed day, transferred in accordance with this schedule to serve as a constable of the Police Service, such time as the chief constable may determine.
- (4) Sub-paragraph (2) ceases to apply to a constable if, on or after the appointed day, the constable—
  - (a) is or becomes a senior officer of the Police Service,
  - (b) is promoted to a higher rank,
  - (c) gives the chief constable written consent to the lifting of the limitation imposed by sub-paragraph (2).

#### *Transfer of police staff*

- 11 (1) An individual is a “police employee” for the purposes of this paragraph if the individual—
  - (a) is employed, immediately before the appointed day—
    - (i) by a joint police board under section 9 of the 1967 Act (or is otherwise employed by a joint police board),
    - (ii) by the SPSA under paragraph 9(1) or 10(1) of schedule 1 to the 2006 Act, or
  - (b) being an employee of a local authority, is identified by a staff transfer scheme made under paragraph 12 as an individual, or type of individual, who is to be treated as a police employee.
- (2) A police employee's contract of employment has effect on and after the appointed day as if originally made between the employee and the Scottish Police Authority.
- (3) It is for the Scottish Police Authority to determine whether a police employee is, on and after the appointed day, to be treated as having been appointed as a member of the police staff under section 26 or as a member of the Authority's staff under paragraph 6 of schedule 1.
- (4) The rights, powers, duties and liabilities of the relevant authority under or in connection with the contract of employment are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.
- (5) Anything done before the appointed day by or in relation to the relevant authority in respect of the contract of employment or the police employee is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.
- (6) If, before the appointed day, a police employee informs the relevant authority that the person does not wish to become an employee of the Scottish Police Authority—
  - (a) sub-paragraphs (2), (4) and (5) do not apply in relation to the police employee, and
  - (b) the employee's contract of employment is terminated on the appointed day.

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- (7) A police employee is not to be treated for any purpose as being dismissed by reason of the operation of any provision of this paragraph in relation to the employee.
- (8) Nothing in this paragraph affects any right of a police employee to terminate the police employee's contract of employment if a substantial detrimental change in the police employee's working conditions is made.
- (9) No such right arises by reason only that, by virtue of this paragraph, the identity of the police employee's employer changes.
- (10) In this paragraph “relevant authority” means the joint police board or authority which employs the individual concerned immediately before the appointed day.

#### *Staff transfer scheme*

- 12
- (1) The Scottish Ministers may make a staff transfer scheme.
  - (2) A staff transfer scheme is a scheme which—
    - (a) identifies or prescribes methods for identifying individuals, or types of individuals, employed by local authorities who are to be treated as police employees for the purposes of paragraph 11,
    - (b) makes such further provision (including any incidental, consequential, supplementary, transitional, transitory or saving provision) for or in connection with the transfer of individuals identified by or under the scheme to the Scottish Police Authority as the Scottish Ministers think fit.
  - (3) Before making a staff transfer scheme, the Scottish Ministers must consult any local authority or other person whose rights, liabilities and obligations (or any of them) are to be transferred by virtue of the scheme.

#### *Police staff appointed under contract for services*

- 13
- (1) A contract for services entered into by a police authority or a joint police board for the purposes of section 9(1)(b) of the 1967 Act has effect on and after the appointed day as if originally entered into by the Scottish Police Authority.
  - (2) Accordingly, any individual who, immediately before the appointed day, is appointed by a police authority or a joint police board under section 9(1)(b) of the 1967 Act is, on and after the appointed day, to be treated as having been provided to the Scottish Police Authority in accordance with arrangements made by virtue of section 26(2)(b).
  - (3) The rights, powers, duties and liabilities of the police authority or the joint police board under or in connection with the contract for services are by virtue of this paragraph transferred to the Scottish Police Authority on the appointed day.
  - (4) Anything done before the appointed day by or in relation to the police authority or the joint police board in respect of the contract for services or an individual falling with sub-paragraph (2) is to be treated on and after that day as having been done by or in relation to the Scottish Police Authority.

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#### *Police cadets*

- 14 An individual who, immediately before the appointed day, is a police cadet by virtue of appointment under section 8 of the 1967 Act is, on and after the appointed day, to be treated as having been appointed in accordance with section 25 of this Act.

#### *Police custody and security officers*

- 15 An individual who is, immediately before the appointed day, certified as a police custody and security officer under section 9(1A) of the 1967 Act is, on and after the appointed day, to be treated as having been certified as such an officer under section 28(1).

#### *Her Majesty's inspectorate of constabulary in Scotland*

- 16 (1) An individual who, immediately before the day on which section 71 comes into force, holds office as an inspector of constabulary by virtue of appointment under section 33 of the 1967 Act is, on and after that day, to be treated as having been appointed under section 71.
- (2) An individual who, immediately before the day on which section 72 comes into force, is an assistant inspector of constabulary by virtue of appointment under section 34(1) of the 1967 Act is, on and after that day, to be treated as having been appointed under section 72.
- (3) An individual who, immediately before the day on which section 73 comes into force, is a staff officer to the inspectors of constabulary by virtue of appointment under section 34 of the 1967 Act is, on and after that day, to be treated as having been appointed under section 73.

#### *Police property transfer scheme: transfers to Scottish Police Authority*

- 17 (1) The Scottish Ministers may make a police property transfer scheme.
- (2) A police property transfer scheme is a scheme making provision for or in connection with the transfer to the Scottish Police Authority or the chief constable appointed in accordance with section 7 of property, rights, liabilities and obligations of—
- (a) the Scottish Ministers,
  - (b) a local authority,
  - (c) a joint police board,
  - (d) the SPSA, or
  - (e) a chief constable of a police force.
- (3) A police property transfer scheme may make provision by virtue of sub-paragraph (2) only in so far as the property, rights, liabilities and obligations relate to the Authority's functions or police functions.
- (4) A person mentioned in sub-paragraph (2)(b), (c) or (e) must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a police property transfer scheme.
- (5) On the transfer date—

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- (a) any property or rights to which a police property transfer scheme applies transfers to and vests in the Scottish Police Authority, as the case may be, the chief constable,
- (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the Scottish Police Authority, as the case may be, the chief constable.

- (6) A police property transfer scheme may make provision for the payment by the Scottish Police Authority of compensation in respect of property and rights transferred by virtue of the scheme.

*Property transfer scheme: transfers to local authorities*

- 18 (1) The Scottish Ministers may make a local authority property transfer scheme.
- (2) A local authority property transfer scheme is a scheme making provision for or in connection with the transfer to a specified local authority of property, rights, liabilities and obligations of a joint police board.
- (3) A joint police board must provide the Scottish Ministers with such information or assistance as they may reasonably require for the purposes of or in connection with the making of a local authority property transfer scheme.
- (4) On the transfer date—
- (a) any property or rights to which a local authority property transfer scheme applies transfers to and vests in the specified local authority,
  - (b) any liabilities or obligations to which such a scheme applies become liabilities or obligations of the specified local authority.
- (5) A local authority property transfer scheme may make provision for the payment by a local authority of compensation in respect of property and rights transferred by virtue of the scheme.
- (6) In this paragraph, “specified” means specified in the local authority property transfer scheme.

*Property transfer schemes: general*

- 19 (1) This paragraph applies in relation to a scheme under paragraph 17 or 18.
- (2) The scheme must specify a date (the “transfer date”) on which the transfer is to take effect.
- (3) The scheme may—
- (a) specify different dates in relation to different property, rights, liabilities and obligations,
  - (b) make different provision in relation to different cases or classes of case.
- (4) The scheme may make provision for the creation of rights, or the imposition of liabilities or obligations, in relation to the property, rights, liabilities or obligations transferred by virtue of the scheme.
- (5) The scheme may make provision requiring the person to whom property is transferred by the scheme to comply with requirements or conditions specified by the Scottish Ministers in relation to the property.

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- (6) A requirement or condition specified under sub-paragraph (5) may include in particular—

(a) a requirement that the property may not be disposed of unless the Scottish Ministers consent,

(b) a condition in relation to use of the property.

(7) A certificate issued by the Scottish Ministers that any property, right, liability or obligation has, or has not, been transferred by virtue of a police property transfer scheme is conclusive evidence of the transfer or the fact that there has not been a transfer.

(8) The scheme may make provision about the continuation of legal proceedings.

(9) The scheme may include such incidental, consequential, supplementary, transitional, transitory or saving provision as the Scottish Ministers consider appropriate.

20

Transfer of liabilities of chief constables etc.

By virtue of this paragraph, any liabilities of a chief constable of a police force under section 39 of the 1967 Act and of the Director General of the SCDEA under section 22 of the 2006 Act are, on and after the appointed day, to be treated as liabilities of the chief constable of the Police Service under section 24 of this Act.
- VALID FROM 01/10/2012

SCHEDULE 6

(introduced by section 121)

TRANSFER OF STAFF, PROPERTY ETC.

.....
- VALID FROM 01/10/2012

SCHEDULE 7

(introduced by section 128(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

.....

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VALID FROM 01/04/2013

## SCHEDULE 8

(introduced by section 128(2))

## REPEALS

## PART 1

## REPEALS RELATING TO PART 1

<i>Enactment</i>	<i>Extent of repeal</i>
Children and Young Persons (Scotland) Act 1937 (c.37)	Section 101(3).
Police (Scotland) Act 1967 (c.77)	The whole Act except for sections 32A and 42.
Social Work (Scotland) Act 1968 (c.49)	In section 94, the definition of “constable”.
Local Government (Scotland) Act 1973 (c.65)	Section 56(9)(b). Section 63. Section 64(7). Section 236(2)(g).
Criminal Justice (Scotland) Act 1980 (c.62)	In section 81(1), the definition of “constable”.
Civic Government (Scotland) Act 1982 (c.45)	Section 77(2). Section 85(2). Section 86F(4).
Prisons (Scotland) Act 1989 (c.45)	In section 14(4), the words “in their area”. Section 14(7).
Criminal Justice and Public Order Act 1994 (c.33)	In section 163(4), the definition of “chief officer of police”.
Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40)	In Schedule 2, Part 3, the entries relating to the Police (Scotland) Act 1967 (c.77).
Criminal Procedure (Scotland) Act 1995 (c.46)	In section 194I(4), the definition of “police force”. Section 280(5)(b)(i) and (iii).
Police Act 1996 (c.16)	Section 60A. Section 61(1)(ca), (cb), (cc), (cd) and (6). Section 62(1A)(b), (1AA), (1AB) and (1AC).

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	In section 62(2), the words “, or for the purposes of subsection (1AA) or (1AC) above,”.
	In section 62(3), the words “, section 27 of the Police (Scotland) Act 1967”.
	Section 64(4E) and (4F).
Crime and Punishment (Scotland) Act 1997 (c.48)	Section 45 and 46.
	Section 63(1)(a)(iii).
Police Act 1997 (c.50)	Section 93(3)(f), (3B) to (3E), (5)(j) and (6)(cc).
	In section 94(2)(a), the words “or (d)”.
	Section 94(2)(h), (4)(aa) and (5) to (7).
	Section 107(4)(ba).
Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)	In schedule 3, the entry for “The Scottish Police Services Authority”.
Regulation of Investigatory Powers (Scotland) Act 2000 (asp 11)	Section 9.
	Section 10(1A)(b) and (c).
	Section 10A.
	Section 11(3).
	Section 11(4)(b)(ii).
	Section 11(5).
	Sections 12 and 12A.
	Section 14(5)(b).
	Section 15(7)(aa).
	Section 16(2) and (7).
	Section 18(b).
	Section 20(3), (6) and (7).
	In section 31(1), the entries for “joint surveillance operation” and “police member”.
Transport (Scotland) Act 2001 (asp 2)	In section 48(1), the entry for “police area”.
Police and Fire Services (Finance) (Scotland) Act 2001 (asp 15)	The whole Act.
Scottish Public Services Ombudsman Act 2002 (asp 11)	In schedule 2, paragraph 14.
	In schedule 4, paragraphs 1(b) and 16.
Freedom of Information (Scotland) Act 2002 (asp 13)	In schedule 1, paragraphs 51, 52 and 52A.



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Local Government in Scotland Act 2003 (asp 1)	<p>In section 46(1), the words “or a joint police board”.</p> <p>In section 46(3)(a), the words “or, as the case may be, board”.</p> <p>In section 46(3)(b), the words “or board” and “or, as the case may be, board”.</p> <p>Section 61(b).</p> <p>In section 61(c)(iii) the words “and a joint police board”.</p>
Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)	In schedule 2, the entry “Scottish Police Services Authority”.
Criminal Justice (Scotland) Act 2003 (asp 7)	<p>Section 75.</p> <p>In section 76, subsections (1) to (9).</p>
Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8)	<p>In section 1, the word “relevant” at each place it occurs in subsections (3)(f)(i), (ii) and (iii), (4), (8) and (10).</p> <p>In section 2, the word “relevant” at each place it occurs in subsections (1)(a) and (2)(a).</p> <p>In section 20(3)(b), the words “whose police area includes the relevant locality and”.</p>
Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9)	In section 4(2), paragraphs (b), (c) and (d).
Edinburgh Tram (Line Two) Act 2006 (asp 6)	In section 62(5), the entry beginning “chief officer of police”.
Edinburgh Tram (Line One) Act 2006 (asp 7)	In section 62(5), the entry beginning “chief officer of police”.
Police, Public Order and Criminal Justice (Scotland) Act 2006 (asp 10)	<p>Sections 1 to 32.</p> <p>Section 34(7).</p> <p>Section 41(2) to (5).</p> <p>Section 42.</p> <p>Sections 48 to 50.</p> <p>In section 99, the entry for “the 1967 Act”.</p> <p>Schedules 1 to 3.</p> <p>In schedule 4, paragraph 2(1)(f).</p> <p>In schedule 6, paragraphs 1, 7, 11 and 12.</p>
Public Services Reform (Scotland) Act 2010 (asp 8)	In schedule 5, the entry for “Scottish Police Services Authority”.



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Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)	In schedule 8, the entry for “Scottish Police Services Authority”.
Criminal Justice and Licensing (Scotland) Act 2010 (asp 13)	In schedule 1, the entries for “constable”, “police area”, “police authority” and “police force”.
Alcohol etc. (Scotland) Act 2010 (asp 18)	Section 31(7).
Public Records (Scotland) Act 2011 (asp 12)	Section 56.
	Section 15(3)(b)(ii).
	In the schedule, the entries for “Joint police boards”, “Police Advisory Board for Scotland” and “Scottish Police Services Authority”.
<b>PART 2</b>	
REPEALS RELATING TO PART 2	
<b>Enactment</b>	<b>Extent of repeal</b>
Gas Act 1965 (c.36)	In section 28(1), the definition of “fire and rescue authority”.
Local Government (Scotland) Act 1973 (c.65)	Section 63A.
Water (Scotland) Act 1980 (c.45)	In section 109(1), the definition of “fire authority”.
	In section 1(1) of Schedule 4, the definition of “fire authority”.
Local Government, Planning and Land Act 1980 (c.65)	Section 2(1)(h).
Civic Government (Scotland) Act 1982 (c.45)	In section 8, the definition of “appropriate relevant authority”.
	Section 89(4A)(b) and the word “and” immediately preceding it.
	Section 89(4B).
	Section 93(9).
	In section 98(2), the definition of “appropriate relevant authority”.
	In paragraph 3 of schedule 2, the definition of

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	“appropriate relevant authority”.	
Housing (Scotland) Act 1987 (c.26)	In section 82, the definition of “fire authority”.	
Housing (Scotland) Act 1988 (c.43)		Section 43(3)(a)(vii) and the word “or” immediately preceding it. Section 45(4)(g).
Housing (Scotland) Act 2001 (asp 10)	In paragraph 2 of schedule 1, the words from “A tenancy”, where they first occur, to “such an authority”.	
Local Government in Scotland Act 2003 (asp 1)	In section 22(9), the words “Subject to section 16(3) of the Fire (Scotland) Act (asp 5),” and paragraph (c).  In section 61, paragraph (a) and, in paragraph (c), the words “, a joint fire board”, in each place where they occur.	
Fire (Scotland) Act 2005 (asp 5)	Section 1. Sections 2 to 7. Section 12. Section 16(5) and (6). Sections 33 and 34. Section 37. Section 41(7). Sections 42 and 43. Sections 44 to 46. Sections 48 to 50. Section 61(4) and (5). Section 67(2). In section 79(1), the definition of “local authority”. Section 88(4)(a). Schedule 1.	
Housing (Scotland) Act 2006 (asp 1)	In section 194(1), the definition of “chief officer	

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Public Services Reform (Scotland) Act 2010 (asp 8)	of the fire and rescue authority”.  In schedule 20, the entry “Her Majesty's Chief Inspector of Fire and Rescue Authorities, Her Majesty's Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)”.
<b>PART 3</b>	
REPEALS RELATING TO BOTH PARTS	
<b>Enactment</b>	<b>Extent of repeal</b>
Pipe-lines Act 1962 (c.58)	Section 37(4)(a).
Local Government etc. (Scotland) Act 1994 (c.39)	Section 8(5).  In section 8(7), the definitions of “fire personnel” and “police personnel”.  Section 55(7).  In section 55(12), the words from “any” to “1967”.
Local Government in Scotland Act 2003 (asp 1)	Section 25.

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