

Changes to legislation: Police and Fire Reform (Scotland) Act 2012, SCHEDULE 5 is up to date with all changes known to be in force on or before 11 January 2021. 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) View outstanding changes

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

Commencement Information

I1 Sch. 5 para. 1 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

Commencement Information

I2 Sch. 5 para. 2 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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).

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- (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.

Commencement Information

I3 Sch. 5 para. 3 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

Commencement Information

I4 Sch. 5 para. 4 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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

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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.

Commencement Information

I5 Sch. 5 para. 5 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

Commencement Information

I6 Sch. 5 para. 6 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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).
- (3) Sub-paragraph (4) applies where, immediately before the appointed day, an individual—

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- (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.

Commencement Information

I7 [Sch. 5 para. 7](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), art. 2, [Sch.](#)

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.

Commencement Information

18 Sch. 5 para. 8 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

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Commencement Information

I9 Sch. 5 para. 9 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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 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).

Commencement Information

I10 Sch. 5 para. 10 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

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- (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.
- (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.

Commencement Information

III Sch. 5 para. 11 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

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Commencement Information

I12 [Sch. 5 para. 12](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

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.

Commencement Information

I13 [Sch. 5 para. 13](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

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.

Commencement Information

I14 [Sch. 5 para. 14](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

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).

Commencement Information

I15 [Sch. 5 para. 15](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

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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.

Commencement Information

I16 Sch. 5 para. 16 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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—
- (a) any property or rights to which a police property transfer scheme applies transfers to and vests in the Scottish Police Authority or, 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 or, 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.

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Commencement Information

I17 Sch. 5 para. 17 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

Commencement Information

I18 Sch. 5 para. 18 in force at 1.10.2012 by S.S.I. 2012/253, art. 2, Sch.

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.

Commencement Information

I19 [Sch. 5 para. 19](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

Transfer of liabilities of chief constables etc.

- 20 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.

Commencement Information

I20 [Sch. 5 para. 20](#) in force at 1.10.2012 by [S.S.I. 2012/253](#), [art. 2](#), [Sch.](#)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 1 Ch. 8A inserted by [2016 asp 1 s. 113\(1\)](#)
- Ch. 12A inserted by [2017 asp 4 s. 1\(1\)](#)
- s. 17(2)(h) inserted by [2017 asp 4 s. 2\(a\)\(ii\)](#)
- s. 17(4)(b)(iv) inserted by [2017 asp 4 s. 2\(b\)\(ii\)](#)
- s. 20A inserted by [2017 asp 4 s. 3](#)
- s. 125(3A) inserted by [2016 asp 1 s. 113\(3\)](#)
- sch. 2A inserted by [2016 asp 1 sch. 3](#)