

POLICY NOTE

THE POLICE NEGOTIATING BOARD FOR SCOTLAND (CONSTITUTION, ARBITRATION AND QUALIFYING CASES) REGULATIONS 2023

SSI 2023/199

1. The above instrument was made in exercise of the powers conferred by paragraphs 5(7), 7 and 8 of schedule 2A and section 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to affirmative procedure.

Purpose of the instrument. This instrument allows for the preparation and publication of the constitution of the Police Negotiating Board for Scotland (PNBS); the disapplication of mandatory statutory arbitration rules; and sets out those ‘qualifying cases’ that may form representations referred to arbitration.

Policy Objectives

2. Chapter 6 and schedule 3 of the Criminal Justice Act (Scotland) 2016 provides for the establishment of the Police Negotiating Board for Scotland and inserts sections 55A to 55E and schedule 2A into “the 2012 Act”.

3. The aim of these sections and the schedule is to provide for establishment of a mechanism for negotiating the pay and conditions of service of constables of the Police Service of Scotland, the Police Negotiating Board for Scotland (PNBS).

4. The establishment of PNBS will allow police constables to negotiate their terms and conditions, through collective bargaining, directly with those who manage and fund the service.

5. The negotiation of constables terms and conditions is currently undertaken through the Police Negotiating Board (PNB) as set out under section 61 of the Police Act 1996. The PNB used to negotiate the terms and conditions for all police officers in the UK but the body was abolished in England, Wales and Northern Ireland when section 131 of the Anti-social Behaviour, Crime and Policing Act 2014 was commenced on 7 August 2014.

6. The PNB remains a UK body, that only extends to Scotland, and the aim of these regulations is to put in place a Scottish negotiating body that continues the collective bargaining for the terms and conditions of Police constables in Scotland. England, Wales and Northern Ireland have moved away from collective bargaining and now use the Police Remuneration and Review Body, reporting to the Home Secretary.

Provisions

7. The provisions in these regulations allow for the preparation and publication of the Constitution of PNBS; the disapplication of mandatory statutory arbitration rules; and sets out those ‘qualifying cases’ that may form representations referred to arbitration and where Scottish Ministers must, in accordance with section 55D of the 2012 Act, take all reasonable steps appearing to them necessary for giving effect to those representations.

8. Regulation 2 sets out that the constitution of the PNBS will be published on the Scottish Government web site and in line with section 5 of schedule 2A of the 2012 Act. The constitution will include the following areas in relation to the PNBS:

- PNBS functions and issues it will consider
- membership
- how the constitution will be determined
- provision of the Chairperson and Secretariat
- procedures for negotiation, conciliation and arbitration
- costs
- requirement for and content of Annual Reports

9. Regulation 3 allows for the mandatory rules in schedule 1 of the Arbitration (Scotland) Act 2010 (Scottish Arbitration Rules), listed in the schedule to these Regulations, to be disappplied to disputes submitted to arbitration in accordance with the PNBS's constitution. The aim is for the PNBS to carry out conciliation and arbitration as set out in the constitution and under procedural guidance agreed with Acas Scotland. These procedures will take into account the Scottish Arbitration Rules as they apply to arbitration of pay and conditions disputes.

10. Regulation 4 sets out the Qualifying cases for the purposes of section 55D of the Act. The aim is to allow the members of the PNBS to take disagreements to arbitration in specific 'Qualifying cases' and for these cases to form representations where Scottish Ministers must, in accordance with section 55D of the 2012 Act, take all reasonable steps appearing to them necessary for giving effect to those representations.

11. It has been agreed that there may be two qualifying cases in any one reporting year. One of these cases will involve the 'annual pay award', unless the PNBS agrees there is no requirement for an 'annual pay award' in that reporting year (for instance in the event that a multi-year pay settlement has previously been agreed by PNBS and continues to apply). This provision provides additional security to PNBS members, that the annual pay award takes precedence over other qualifying cases, therefore that Scottish Ministers will not set aside representations in relation to the annual pay award which are made following arbitration. The PNBS members may take other disputes to arbitration, outwith the qualifying cases, but these representations will not specifically require Scottish Ministers to take all reasonable steps appearing to them necessary for giving effect to those representations.

Consultation

12. In light of the proposal by the UK Government to abolish the PNB, the views of the members of the PNB 'Scotland Standing Committee' were sought on whether they wished to join an independent pay review body or retain a collective bargaining mechanism. All the members indicated that they preferred a collective bargaining approach. The members of PNB have been consulted on the detailed arrangements set out in these regulations and Acas Scotland has been consulted on the arrangements for conciliation and arbitration. The views of these stakeholders have been taken into account.

Impact Assessments

13. An Equality Impact Assessment (EQIA) was undertaken by the Scottish Government during development of policy and provisions in the Criminal Justice (Scotland) Bill. It found that there would be no negative impacts for persons within the protected groups.

14. A Financial Memorandum was published for the Criminal Justice (Scotland) Bill and no additional costs were identified for other bodies, individuals or businesses. No BRIA is therefore required for these regulations.

Scottish Government
Safer Communities Directorate
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