
STATUTORY INSTRUMENTS

2013 No. 602

**The Police and Fire Reform (Scotland) Act 2012
(Consequential Provisions and Modifications) Order 2013**

PART 2

POLICE

Independent custody visiting

12.—(1) The Scottish Police Authority must ensure that a copy of any report submitted in pursuance of section 94(2)(c) of the 2012 Act in relation to a visit of a person detained under section 41 of the Terrorism Act 2000⁽¹⁾ is given to the person appointed under section 36(1) of the Terrorism Act 2006⁽²⁾.

(2) Arrangements made by the Scottish Police Authority under section 94(1) of the 2012 Act may—

- (a) authorise independent custody visitors to listen to the audio recordings and view the video recordings (with or without sound) of any interview with a person detained under section 41 of the Terrorism Act 2000 which has been conducted by a constable while the person has been detained;
- (b) provide that access to the whole or part of an audio or video recording of such an interview is to be denied to independent custody visitors if—
 - (i) it appears to a constable of the rank of inspector (or above) that there are grounds for denying access at the time it is requested;
 - (ii) those grounds are grounds which are specified for the purposes of head (i) in the arrangements; and
 - (iii) any other procedural requirements imposed by the arrangements in relation to denial of access to such recordings are met.

(3) Grounds are not to be specified for the purposes of paragraph (2)(b)(i) unless they are grounds for the time being set out for the purposes of this article in the guidance issued by the Secretary of State under paragraph (4).

(4) The Secretary of State may issue guidance about independent custody visiting in relation to persons detained under section 41 of the Terrorism Act 2000, and the Scottish Police Authority and members of its staff, the Police Service of Scotland and police staff and independent custody visitors must have regard to any such guidance.

(5) Before issuing guidance, the Secretary of State must consult—

- (a) the Scottish Police Authority;
- (b) the chief constable of the Police Service of Scotland;

(1) 2000 c.11.

(2) 2006 c.11. Section 36 was amended by the Coroners and Justice Act 2009 (c.25), section 117.

- (c) independent custody visitors or such persons as appear to the Secretary of State to be representative of independent custody visitors;
 - (d) the Scottish Ministers; and
 - (e) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must lay a copy of the guidance issued before Parliament.
- (7) Arrangements made by the Scottish Police Authority under section 95(1) of the 2012 Act may allow access to a detainee to be refused where—
- (a) there are urgent and compelling grounds of national defence 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.
- (8) For the purposes of paragraph (7) above and section 95(4)(b) of the 2012 Act, the Scottish Ministers must not invoke a declared state of emergency as the sole reason to notify the Authority that access is to be refused.