

POLICE AND FIRE REFORM (SCOTLAND) ACT 2012

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Police Reform

Chapter 16 – Independent Custody Visiting

91. This Chapter places the arrangements for independent custody visiting in Scotland on a statutory footing for the first time, ensuring that it is compliant with the United Nations Optional Protocol to the Convention Against Torture (OPCAT). **Section 93** sets out the purpose of the provisions in Chapter 16, namely pursuance of the objective of OPCAT. **Section 94** places a duty on the SPA to make arrangements to ensure that independent custody visitors can visit detainees and access information relevant to and monitor their treatment and conditions of detention. **Subsection (2)** provides that it must do that by providing for the appointment of independent custody visitors (ICVs), who are independent of both the SPA and chief constable, by authorising ICVs to do anything they require to enable them to visit detainees and monitor their treatment and conditions of detention, and by providing for the reporting of visits. **Subsection (3)** sets out specific action which ICVs may be authorised to take, including accessing any place of detention without notice, examining records relating to the detention of people there, meeting them and such other persons as they consider relevant to discuss the treatment and conditions of detainees, and inspecting those conditions. Access to a detainee can only be refused if an officer of inspector rank or above considers grounds for refusal of access contained in a Ministerial determination have been satisfied and any other procedural requirements set by the SPA have been met (**subsection (4)**). The SPA is required to keep these arrangements under review and to prepare and publish any reports required by the Scottish Ministers.
92. Ministers may issue guidance about independent custody visiting, to which the SPA, independent custody visitors and police must have regard. Before issuing such guidance, or making a determination about when access to detainees should be denied, the Scottish Ministers must consult with the SPA, the chief constable, ICVs or a representative body, and any others they consider appropriate. Such guidance or determinations must be laid before the Scottish Parliament.
93. Under **section 95** the SPA must also make arrangements to allow members of the Subcommittee on the Prevention of Torture and other Cruel, Inhumane or Degrading Treatment or punishment (SPT) established under OPCAT to visit detainees, to access information relevant to their detention and to monitor their treatment and the conditions they are held in. It also describes the arrangements that may be made (**subsection (3)**) and provides that access may only be refused where the Scottish Ministers have notified the SPA that there are urgent and compelling grounds of public safety, natural disaster or serious disorder that temporarily prevent the carrying out of a visit (**subsection (4)**). The SPA must keep the arrangements under review and it and its staff and the Police Service

*These notes relate to the Police and Fire Reform (Scotland) Act
2012 (asp 8) which received Royal Assent on 7 August 2012*

and police staff must have regard to any guidance issued by the Scottish Ministers about SPT visits (**subsections 5 and 6**).

94. **Section 96** sets out the definitions of the terms used in Chapter 16.