

# **POLICE AND FIRE REFORM (SCOTLAND) ACT 2012**

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## **EXPLANATORY NOTES**

### **THE ACT – SECTION BY SECTION**

#### **Part 1 – Police Reform**

##### *Chapter 2 – the Police Service of Scotland*

20. This Chapter makes provision in relation to the Police Service of Scotland. **Section 6** establishes the Police Service of Scotland or, in Gaelic, Seirbheis Phoilis na h-Alba as a constabulary comprising a constable holding the office of chief constable, one or more constables holding the office of deputy chief constable, one or more constables holding the office of assistant chief constable, and individuals holding the office of constable. The remaining provisions in Chapter 2 make detailed provision for the appointment and terms of office of constables of the Service, (including the ranks a constable may hold) and for the jurisdiction, powers, duties and other functions of those constables. Provision is also made for offences which may be committed by constables of the Police Service and for liability for their unlawful conduct.

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

21. **Section 7** requires the SPA to appoint the chief constable of the Police Service, one or more deputy chief constables and one or more assistant chief constables. The chief constable appointment is subject to approval by the Scottish Ministers. The SPA is required to consult the chief constable before appointing a deputy or assistant chief constable. All other constables (including special constables) will be appointed by the chief constable (**Sections 8 and 9**). Special constables are not paid, but may be entitled to allowances and other periodic payments, which will be set out in regulations made under **section 48**. The main differences from the 1967 Act are that this Act provides the flexibility to have more than one deputy chief constable and Ministerial agreement is only required before the SPA appoints the chief constable rather than all senior officers.
22. **Section 10** provides that, in order to be appointed as a constable, an individual has to have made a declaration before a sheriff or justice of the peace. **Section 10(1)** sets out the new wording of the declaration. The wording of the oath can be modified by the Scottish Ministers by order, which would be subject to the affirmative procedure in the Scottish Parliament.
23. **Section 11** makes provision for constable ranks. It lists the ranks a constable may hold, and gives the Scottish Ministers a power to make regulations (which would be subject to the affirmative procedure in the Scottish Parliament) to add or remove any rank below that of chief constable. The Scottish Ministers may also make provision in the regulations which is appropriate as a consequence of the addition or removal of a rank. **Section 11(7)** lists the people the Scottish Ministers must consult before making regulations. **Section 11(2)** provides that constables appointed to the offices of chief constable, deputy chief constable or assistant chief constable under **section 7** must hold

the same rank as the office to which they have been appointed. The chief constable is responsible for assigning and promoting individuals to ranks below that of assistant chief constable. A constable can only be demoted if the constable consents or it is done in accordance with the regulations made under [section 48](#). [Section 12](#) provides that a constable holds and vacates office in accordance with those regulations, or any other enactment which makes such provision.

24. [Section 13](#) provides the SPA with a power to pay rewards to any constable below the rank of chief constable who it considers has performed their functions with exceptional diligence, or in an especially meritorious manner, or to any person who it deems to have contributed substantially to Scotland's policing. Such rewards are made on the recommendation of the chief constable.
25. [Section 14](#) provides the SPA with a power to require a chief constable, deputy chief constable or assistant chief constable to resign, or where appropriate, retire in the interests of efficiency or effectiveness of the Police Service. Before calling for this, the SPA must: give the senior officer a written explanation of its reasons, provide the senior officer with an opportunity to make written representations, and consider any such representations made. Where a senior officer has made written representations, the SPA must provide written reasons for the decision calling for the officer to resign or retire. In the case of the chief constable, it must consult the Scottish Ministers. A senior officer called on to resign or retire in this way must do so from the date set by the SPA, or an earlier date agreed between them and the SPA.
26. [Section 15](#) makes provision for constables to be engaged on temporary service outwith the Police Service, with the consent of the chief constable. Constables on temporary service continue to hold the office of constable. Unless stated otherwise in regulations made by the Scottish Ministers under subsection (2) or in another enactment, they retain their functions, powers and privileges, and are under the direction and control of the chief constable in relation to performing policing functions. Under subsection (3) the Scottish Ministers can prescribe types of temporary service and make whatever further provision they consider appropriate in regulations. Following such a period of temporary service, constables are entitled to return to service in the Police Service at the rank they held previously. Their time spent on temporary service is treated as time served as a constable of the Police Service for pay purposes. These are only applicable if the constable does not become eligible for a pension, allowance or gratuity by virtue of regulations made under the Police Pensions Act 1976 during the period of temporary service. Constables can be promoted during their time on temporary service, in which case they would return to the Police Service at the promoted rank and are treated as having served in that rank from the time of promotion for pay purposes. Although this provision largely repeats the current arrangements for temporary service it seeks to make it easier for officers to serve outwith the Police Service.
27. [Section 16](#) allows officers from the rest of the UK and the Crown Dependencies to carry out temporary service as officers in the Police Service, provided they take the oath ([section 10](#)). Such individuals hold the office of constable, which entails that they are under the direction and control of the chief constable and have all the powers, privileges and functions of a constable of the Police Service. This is a new provision to facilitate the inward secondment of officers from outwith Scotland for short term postings.

### **Chief Constable**

28. [Section 17](#) makes it clear that the chief constable is responsible, and must account to the SPA, for the policing of Scotland. The chief constable has the following responsibilities:
  - Direction and control of the Police Service;
  - The day to day administration of the Police Service and the allocation and deployment of resources received from the SPA;

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- Involvement in the preparation of the strategic police plan, and SPA's annual report;
  - Preparing annual police plans;
  - Seeking to secure continuous improvement in the policing of Scotland;
  - Designation of local commanders and ensuring that adequate arrangements are in place for the policing of each local authority area; and
  - To provide the SPA with information about the Police Service, policing and the state of crime.
29. When directing constables, police cadets and police staff, the chief constable must comply with any lawful instruction given by the appropriate prosecutor in relation to the investigation of offences, the Lord Advocate under section 12 of the Criminal Procedure (Scotland) Act 1995, the Lord Justice General and the sheriff principal for the area in which functions are to be carried out. He or she must also seek to ensure that Scotland's policing is carried out with due regard to the policing principles set out at **section 32** and the recommendations made or guidance issued by the SPA on Scotland's policing, and in accordance with the strategic police priorities, any strategic police plan approved under **section 34**, and the most recent annual police plan published under **section 35**. Any recommendations or guidance made by the SPA must not be inconsistent with the strategic police priorities, the latest approved strategic police plan and 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. This section largely brings together the current responsibilities of chief constables, updated to reflect the establishment of the Police Service and the new planning and reporting regime established in the Act. It also makes clear that the chief constable is accountable to the SPA for the policing of Scotland.
30. **Section 18** provides that the chief constable can delegate any of his or her functions to any other constable. He or she is however still responsible for the performance of those functions and remains able to perform them. The SPA is required to designate a deputy chief constable to perform the chief constable's functions if that office is vacant or if he or she is unable to perform their duties due to absence, illness or suspension. Only one deputy chief constable can be designated to take on the functions of the chief constable at any particular time. This provision does not affect any restriction on delegation of the chief constable's functions contained in any other enactment.

### **Functions of Constables**

31. **Sections 19 to 23** set out the functions, jurisdiction and duties of constables, and make provision about command and control. **Section 19** sets out that constables will have all of the functions conferred on them by this or any other enactment or by rule of law, and all the powers and privileges of a constable throughout Scotland. It also provides that senior officers and local commanders also have all of the additional functions conferred on them by this or any other enactment or by rule of law. **Section 20** sets out constables' general duties. These are largely a restatement of the duties placed on constables under the 1967 Act, restated and reframed to better reflect the role of modern policing. When taking lawful measures to bring offenders to justice, a constable must take every precaution to ensure that a person charged with an offence is not unreasonably or unnecessarily detained in custody.
32. **Section 21** makes clear that constables are subject to the direction and control of the chief constable in relation to the performance of their duties, as are police staff and police cadets (who may also be dismissed by the chief constable). A constable must carry out lawful orders and punctually and promptly perform all of the duties which fall to him or her.

33. **Section 22** creates two offences which may be committed by constables: absence from duty without reasonable excuse or neglect or violation of duty (this also applies to police custody and security officers by virtue of section 28). **Section 23** provides for the offence of failing to return any relevant item to the SPA when ordered to do so, without reasonable excuse or the SPA's permission. An offence of failing to return any item on ceasing to be a constable, without reasonable excuse or the SPA's permission, is also provided. **Section 23** also creates a power for a sheriff or justice of the peace to grant a warrant for the search and removal of any relevant items. A relevant item is anything issued to a constable for the carrying out of the constable's functions, e.g. police uniform. The penalty for the offences of being absent from duty and failure to return equipment is imprisonment for a period not exceeding 60 days or a fine not exceeding level 3 on the standard scale. The offence of neglect or violation of duty is subject to a maximum sentence of 2 years imprisonment or to a fine or to both if tried on indictment, or on summary conviction to imprisonment for a maximum term of 12 months or to a fine not exceeding the statutory maximum or both. This offence was triable summarily only under the 1967 Act.

### **Liability for Unlawful Conduct**

34. **Section 24** provides for liability for unlawful conduct by constables in line with the provisions currently included in the 1967 Act. This is needed because police officers are office holders, not employees, and the usual liability arrangements whereby employers are liable for unlawful acts on the part of their employees do not apply. Specifically it provides that the chief constable will be liable for any unlawful conduct in the carrying out of their functions by (a) a constable under his or her direction and control or (b) a member of an international joint investigation team who is not a constable or member of SPA staff or police staff. The SPA must pay any damages or expenses awarded against the chief constable (or the person carrying out his or her functions if the office of chief constable is vacant) in any proceedings under this section, any expenses incurred by the chief constable and any sum required in relation to the settlement of any claim against the chief constable which has or might have given rise to such proceedings. The SPA can, if and to the extent that it thinks fit, pay any damages or expenses awarded against a constable in relation to unlawful conduct by them, any expenses incurred by them, and any sum required in connection with the settlement of any claim which has or may have given rise to such proceedings.

### **Police Cadets**

35. **Section 25** allows the chief constable to appoint police cadets to undergo training with a view to becoming constables. Such cadets are to be treated as employees of the SPA as they are not attested officers under **section 10** of the Act and do not have the powers of a constable. They are however under the direction and control of the chief constable and are subject to regulations made under **section 48** in relation to their terms and conditions of service in line with the provisions in the 1967 Act.

### **Police Staff**

36. **Sections 26** and **27** make provision for police staff. **Section 26** provides the SPA with a power to appoint police staff to assist in the carrying out of police functions. The chief constable has power to make such appointments on behalf of the SPA. Police staff can be employed by the SPA or provided to the SPA under contract with a third party. Under **section 27** police staff may be employed on terms and conditions determined by the SPA and the SPA may pay or make arrangements for contributing to and paying pensions of police staff.

### **Police Custody and Security Officers**

37. **Sections 28-30** and **schedule 2** set out the arrangements for police custody and security officers and for their certification, and put in place penalties for any person who

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knowingly provides false or misleading information in relation to certification. These provisions replicate those in the 1967 Act relating to police custody and security officers.

38. Under **section 28** the chief constable can certify a member of police staff to be authorised as a police custody and security officer. By virtue of **section 29(1)**, the chief constable can only do so if he or she is satisfied that the member of police staff is a fit and proper person to perform those functions and they have received suitable training to do so. The chief constable can suspend or revoke a certificate if it appears to him or her that the officer is not fit and proper, otherwise the certificate continues until the specified date. The powers and duties of police custody and security officers are as set out in **schedule 2**, as introduced by **section 28(3)**, and any other enactment or rule of law. They must be readily identifiable as such officers. **Section 30** makes it an offence for anyone to provide information enabling themselves or any other individual to be certified as a police custody and security officer if they know that or are reckless as to whether the information is false or misleading. The maximum sentence for anyone guilty of such an offence is a fine not exceeding level 4 on the standard scale.