

**EXPLANATORY MEMORANDUM TO**  
**THE POLICE AND FIRE REFORM (SCOTLAND) ACT 2012 (CONSEQUENTIAL**  
**PROVISIONS AND MODIFICATIONS) ORDER 2013**

**2013 No. [XXXX]**

**1.** 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

2.1 This Order contains provision which is necessary or expedient in consequence of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). It will amend references in existing UK legislation to refer to the newly created Police Service of Scotland (“Police Service”), Scottish Police Authority (“the Authority”) and Scottish Fire and Rescue Service (“SFRS”). The Order will also make provision for mutual aid and collaboration agreements between Scotland and the other parts of the United Kingdom.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Order is to be made in exercise of the powers conferred by sections 104, 112(1), 113(2), (3), (4) and (5) and 114(1) of the Scotland Act 1998(a) (“the 1998 Act”). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament.

3.2 The Order is necessary or expedient in consequence of the 2012 Act as existing UK legislation needs to be updated with references to the new bodies created by that Act, and provision needs to be made in connection with reserved and cross-border issues. Many of these replace provisions of the Police (Scotland) Act 1967 (“the 1967 Act”), which was largely repealed by the 2012 Act.

3.3 This Order is subject to affirmative resolution procedure in the UK Parliament.

**4. Legislative Context**

4.1 The 2012 Act received Royal Assent on 7 August 2012. It creates a single constabulary called the “Police Service of Scotland”, to be maintained by the Authority, thus replacing the eight police forces, two unitary police authorities, six joint police boards and two national police organisations (the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA)) which

currently operate within Scotland. The 2012 Act largely repeals the 1967 Act and replaces it with a new statutory framework for policing.

4.2 The 2012 Act creates a single fire and rescue service, called the “Scottish Fire and Rescue Service”, by amending the Fire (Scotland) Act 2005 (“the 2005 Act”). This newly created service replaces Scotland’s two unitary fire authorities and six joint fire and rescue boards.

4.2 The 2012 Act also repeals and replaces parts of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (“the 2006 Act”). These repeals include those sections of the 2006 Act which established the SPSA and the SCDEA. The functions of these organisations are absorbed into the Authority and Police Service. The Police Complaints Commissioner for Scotland is renamed as the Police Investigations and Review Commissioner, with expanded powers to carry out investigations in to serious incidents and other matters relating to the police.

## **5. Territorial Extent and Application**

5.1 In general, this instrument extends to the whole of the United Kingdom but some provisions extend to Scotland only. Generally, the modifications specified in Schedule 1 to the Order have the same extent as the provisions being modified, but some extend to Scotland only. (Article 1)

5.2 Article 3 extends provisions made in the 2012 Act beyond Scotland.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

*“In my view the provisions of the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013 are compatible with the Convention rights.”*

## **7. Policy background**

7.1 The 2012 Act reorganises police services and fire and rescue services in Scotland, replacing the current regional structure, run by local government, with two single services run as national public bodies.

7.2 For police, the 2012 Act creates the Police Service of Scotland, headed by a chief constable. The majority of functions and duties are placed on the chief constable, and may be delegated to the constables under his or her direction and control. The Police Service is maintained by the Authority, to whom the chief constable is accountable for the

policing of Scotland. The Authority will also provide forensic services, and appoint police staff to assist in the carrying out of police functions, under the direction and control of the chief constable. The Authority is answerable to Scottish Ministers and to the Scottish Parliament for the performance of its and the Police Service's functions.

7.3 By repealing the 1967 Act, the 2012 Act abolishes the current police authorities and police joint boards, and the police forces they maintain. It also repeals those sections of the 2006 Act which establish the SPSA and the SCDEA, and their functions are absorbed into the Authority and the Police Service. Provisions in the 1967 Act establishing Her Majesty's inspectors of constabulary for Scotland are replaced by the 2012 Act but the new provisions provide for the continuation of the existing inspectors. The Police Complaints Commissioner for Scotland is renamed the Police Investigations and Review Commissioner ("the PIRC"), with expanded powers to carry out investigations into serious incidents and other matters relating to the Police Service. This replaces the current system by which another police force is requested to carry out such investigations. The order sets out others with whom the PIRC can make agreements to investigate and report serious incidents.

7.4 The provisions in the 2005 Act modernised the fire and rescue services in Scotland. It updated their functions and duties and dealt with fire safety responsibilities. The 2005 Act did not change the structure of the fire services, but introduced new terminology for the structure established under the previous legislation (the Fire Services Act 1947). The 2012 Act repeals Part 1 of the 2005 Act, abolishing fire and rescue authorities and joint fire and rescue boards, collectively known as "relevant authorities", and replaces them with the SFRS. All fire fighters, including the chief officer, and support staff are employees of SFRS and do not have separate functions. The SFRS is answerable to the Scottish Ministers and the Scottish Parliament for the performance of its functions. The 2012 Act also replaces Her Majesty's Inspectors of Fire and Rescue Authorities in Scotland (which included the offices of the Chief Inspector, Inspector, and Assistant Inspector) with Her Majesty's Chief Inspector of the Scottish Fire and Rescue Service, Her Majesty's Inspector of the Scottish Fire and Rescue Service and Assistant Inspector of the Scottish Fire and Rescue Service.

7.5 Both the police and fire and rescue services are mentioned in a wide range of legislation which is outwith the legislative competence of the Scottish Parliament to amend. This includes general topics such as pensions and social security benefits, specific issues such as terrorism and national security, or road transport, and provisions which enable co-operative working across the UK and with international organisations.

### Provisions

7.6 Article 3 provides that certain amendments made in the 2012 Act, with effect in Scotland, are extended also to either England and Wales or to the United Kingdom.

7.7 Article 4 enables the PIRC to enter into agreements with specified police authorities and other persons to investigate certain serious incidents involving specified police forces or persons.

The PIRC may enter into agreements with the following:

- British Transport Police Authority for serious incidents involving the British Transport Police Force (“BTP”);
- Civil Nuclear Police Authority for serious incidents involving the Civil Nuclear Constabulary (“CNC”);
- The Secretary of State in respect of any serious incidents involving the Ministry of Defence Police (“MDP”);
- Serious Organised Crime Agency (“SOCA”) for any serious incidents involving SOCA;
- The Commissioners for Her Majesty’s Revenue and Customs for any serious incidents involving Her Majesty’s Revenue and Customs;
- The Secretary of State in respect of any serious incidents involving a general customs official or any other person exercising general customs functions under the authority of the Secretary of State or the Director of Border Revenue;
- The Secretary of State in respect of any serious incidents involving immigration officers or an official of the Secretary of State carrying out functions in relation to asylum and nationality;
- The Director of Border Revenue in respect of any serious incidents involving a customs revenue official or any other person exercising customs revenue functions under the authority of the Director of Border Revenue.

7.8 Article 5 enables the appropriate prosecutor to direct the PIRC to investigate crimes and deaths which may be connected to a person serving with the BTP, CNC, MDP, members of the staff of SOCA, officer of Revenue and Customs, a general customs official (and persons exercising general customs function), a customs revenue official (and person exercising customs revenue functions) or an immigration officer.

7.9 Articles 6 to 9 provide for various forms of assistance and collaboration between the Police Service and the BTP, MDP and CNC. These articles are accompanied by amendments in Schedule 1 to the Ministry of Defence Police Act 1987 (paragraph 20), the Railways and Transport Safety Act 2003 (paragraph 41) and the Energy Act 2004 (paragraph 44). Reciprocal arrangements with police forces in England and Wales and the Police Service of Northern Ireland are provided for by amendments to the Police Act 1996, which are detailed in paragraph 25 of Schedule 1 to this Order.

7.10 Articles 10 to 12 and 15 replace provisions that were included in the 1967 Act.

- Article 10 creates the offence of causing disaffection or incitement to strike in the Police Service, BTP or CNC.
- Article 11 extends the offences of assaulting or impeding constables, and of removing a person, or assisting a person to escape, from the custody of a

constable, to provide the same protection to officers of CNC or MDP, and extends the offence of impersonating a constable to CNC.

- Article 12 enables the Secretary of State or Scottish Ministers to make grants to the Authority in connection with safeguarding national security.
- Article 15 extends the power of the Scottish Ministers in section 48 of the 2012 Act to make regulations as to the governance, administration and conditions of service of constables and police cadets to cover payment of pensions and other benefits (such benefits include those relating to injury and compensation) for special constables or police cadets.

7.11 Article 14 enables the Authority to provide goods and services to organisations outside Scotland. Section 87(1), (3) and (5) of the 2012 Act specify that the Authority may make arrangements for itself or the Police Service (with the chief constable's consent) to provide goods and services to other public bodies or office-holders, and to charge for them. Goods and services may also be provided to other persons as specified by Scottish Ministers.

7.12 Chapter 16 of the 2012 Act introduces a statutory basis for independent custody visiting, in pursuance of the objectives of OPCAT<sup>1</sup>. Article 13 introduces further provisions in relation to visiting of persons detained under section 41 of the Terrorism Act 2000, following the commencement of section 117 of the Coroners and Justice Act 2009. Article 13 also includes provision (in paragraphs (7) and (8)) to enable refusal of access on the grounds of national defence.

7.13 Articles 16 to 25 make provision in relation to cross-border assistance between SFRS and fire and rescue authorities in England and Wales and the Northern Ireland Fire and Rescue Service Board, including extending offences of assaulting or impeding emergency workers to employees of other fire and rescue services providing assistance in Scotland.

7.14 Schedule 1 amends primary and secondary legislation in consequence of the 2012 Act, primarily to update references to police and fire and rescue bodies in relation to Scotland. Paragraph 15 of the Schedule amends definitions of expressions relating to the police in the Interpretation Act 1978 and inserts new construction of expressions in relation to Scotland, which will have a general glossing effect to update references to the police in legislation. For example, references to a police force will include references to the Police Service of Scotland and "police authority" will include the Scottish Police Authority.

7.15 Schedule 2 makes transitional and saving provisions to enable a smooth and effective transfer to the new services.

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<sup>1</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

- Consolidation

7.16 This Order stands alone.

## **8. Consultation outcome**

8.1 Although there has been no public consultation specific to the amendments of this Order, the UK Government, Northern Ireland Executive and Welsh Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant departments.

8.2 With regard to wider consultation, the Scottish Government conducted parallel formal consultations on police and on fire and rescue service reform from 10 February to 5 May 2011. Over fifty consultation events and meetings were held during the consultation period.

8.3 There were 219 responses to the police consultation and 171 to the fire and rescue consultation. Responses were published on the Scottish Government website. The majority of respondents recognised that the status quo was untenable but said that more detail was required to allow them to reach an informed decision, that reform should not endanger the provision of local services, partnership working or accountability, and that there was a need for robust arrangements for national governance including clearly defined roles that ensured separation between the Scottish Ministers and the services.

8.4 On 8 September 2011 the Scottish Government announced details of their intention to create a single Police Service of Scotland and a single Scottish Fire and Rescue Service. In parallel, the Scottish Government published:

- A consultation on the legislative framework for the new services;
- Two outline business cases (OBCs) which provided detail on the costs and benefits of the three options for reform;
- A partial Equality Impact Assessment; and
- A partial Business Regulatory Impact Assessment.

8.5 The second consultation ran from 8 September to 2 November 2011 and was issued to around 250 organisations. One hundred and forty-five responses were received in total, including 30 from individuals and 115 from groups and organisations. This included 26 local authorities, the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives, 6 police forces, 6 police joint boards or unitary police authorities, 4 fire and rescue services, 4 fire and rescue joint boards and unitary fire authorities, 18 police and fire specific organisations and a further 51 from NHS, voluntary sector and other stakeholders.

8.6 An independent analysis of responses was carried out and a summary report was published along with consultation responses on 16 December 2011 (<http://www.scotland.gov.uk/Publications/2011/12/15130636/0>).

A detailed report was published on 10 February 2012 (<http://www.scotland.gov.uk/Publications/2012/02/1912/0>). The proposals attracted broad support.

## **9. Guidance**

9.1 This Order stands alone, guidance is not necessary.

## **10. Impact**

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs.

10.2 There will be no impact on the public sector.

10.3 A full Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

## **13. Contact**

13.1 Emma Lopinska at the Scotland Office (tel: 0131 244 9026 or email: [emma.lopinska@scotlandoffice.gsi.gov.uk](mailto:emma.lopinska@scotlandoffice.gsi.gov.uk)) can answer any queries regarding the instrument.