



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

10th Meeting, 2013 (Session 4)

Tuesday 26 March 2013

The Committee will meet at 10.00 am in Committee Room 2.

1. **Decisions on taking business in private:** The Committee will decide whether to take items 3 to 5 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61);
 - Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63);
 - Scottish Police Authority (Provision of Goods and Services) Order 2013 (SSI 2013/73);
 - Police Service of Scotland (Temporary Service) Regulations 2013 (SSI 2013/76);
 - Police Federation (Scotland) Regulations 2013 (SSI 2013/86);
 - Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/92).
3. **Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003:** The Committee will consider the evidence received and what further action to take.
4. **Work programme:** The Committee will review its work programme in relation to consideration of research produced by the Scottish Campaign against Irresponsible Driving and the University of Dundee on fatal road accidents.
5. **Public Bodies Consent:** The Committee will further consider a draft report.

6. **Inquiry into purposeful activity in prisons (in private):** The Committee will consider a revised draft report.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk

J/S4/13/10/1

[Police Service of Scotland \(Performance\) Regulations 2013 \(SSI 2013/61\)](#)

[Police Appeals Tribunals \(Scotland\) Rules 2013 \(SSI 2013/63\)](#)

[Scottish Police Authority \(Provision of Goods and Services\) Order 2013 \(SSI 2013/73\)](#)

[Police Service of Scotland \(Temporary Service\) Regulations 2013 \(SSI 2013/76\)](#)

[Police Federation \(Scotland\) Regulations 2013 \(SSI 2013/86\)](#)

[Criminal Legal Aid \(Fixed Payments\) \(Scotland\) Amendment Regulations 2013 \(SSI 2013/92\)](#)

Agenda item 3

Paper by the clerk (private paper)

J/S4/13/10/2 (P)

Agenda item 4

Paper by the clerk (private paper)

J/S4/13/10/3 (P)

Agenda item 5

Draft report (private paper)

J/S4/13/10/4 (P)

Agenda item 6

Draft report (private paper)

J/S4/13/10/5 (P)

Justice Committee

10th Meeting, 2013 (Session 4), Tuesday, 26 March 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following seven negative instruments:

Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61);

Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63);

Scottish Police Authority (Provision of Goods and Services) Order 2013 (SSI 2013/73);

Police Service of Scotland (Temporary Service) Regulations 2013 (SSI 2013/76);

Police Federation (Scotland) Regulations 2013 (SSI 2013/86);

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89);

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/92).

2. Further details of the procedure for negative instruments are set out in Annexe A to this paper.

Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61)

Purpose of instrument

3. This instrument is one of seven instruments to be laid under section 48 of the Police and Fire Reform (Scotland) Act 2012 on the governance, administration and conditions of service of constables and police cadets.

4. The main policy aim of this instrument is to maintain existing procedures established by the Police (Efficiency) (Scotland) Regulations 1996 for the handling of unsatisfactory performance of constables below the rank of Assistant Chief Constable (ACC) who have completed their probation period. It also requires the Scottish Police Authority (SPA) to establish procedures for the handling of unsatisfactory performance of constables of the rank of ACC and above.

5. The instrument further makes transitional arrangements to ensure that:

- any unsatisfactory performance proceedings under the 1996 Regulations which are not concluded by 1 April 2013 can still be dealt with after that date;

- any proceedings commenced and decision made under the 1996 Regulations continue to have effect after 1 April 2013;
- any person appointed to carry out functions under the 1996 Regulations are able to continue carrying out those functions after they transfer to the Police Service of Scotland (PSoS); and
- any requirement to resign made before 1 April under the 1996 Regulations be treated as a requirement to resign from the PSoS.

6. The policy note on the instrument (at Annexe B) states that new performance procedures for all officers are currently being developed by a stakeholder working group. However, at the request of the Association of Chief Police Officers in Scotland (ACPOS) and other stakeholders, the Scottish Government has agreed not to introduce the new procedures at this time to allow more time for the necessary development work and training to be undertaken within the PSoS. New regulations on performance will therefore be introduced following agreement with stakeholders.

7. This instrument comes into force on 1 April 2013.

8. Further details on the purpose of the instrument can be found in the policy note (at Annexe B).

9. An electronic copy of the instrument can be found at:
<http://www.legislation.gov.uk/ssi/2013/61/contents/made>

Consultation

10. The Scottish Ministers are required to consult and share any draft regulations laid under section 48 of the 2012 Act with a number of specified organisations and to consider any representations from them. The policy note on the instrument (at Annexe B) states that the Scottish Government has consulted in line with this requirement.

Subordinate Legislation Committee consideration

11. The Subordinate Legislation Committee considered this instrument at its meeting on 12 March and agreed to draw the instrument to the attention of the Parliament on the basis of defective drafting. As drafted, the instrument allows both the appellant and the chairing officer to make oral representations at an appeal hearing, but only provides for the chief constable to take into account the appellant's oral representations and not those of the chairing constable.

12. The Scottish Government has confirmed that this was not the intention of the instrument and has agreed to make the necessary amendments to allow the chairing constable's representations to also be taken into account.

13. The extract from the SLC's report on this instrument is attached at Annexe C.

Justice Committee consideration

14. The Justice Committee is required to report to the Parliament on this instrument by 15 April 2013.

Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63)

Purpose of instrument

15. This instrument is made under section 56(3) of the Police and Fire Reform (Scotland) Act 2012 on the right of a constable to appeal to a police appeals tribunal (PAT) against any decision on their dismissal or demotion in rank.

16. The main policy aim of this instrument is to update the procedures set out in the Police Appeals Tribunals (Scotland) Rules 1996 to reflect the provisions of the 2012 Act and the role of the SPA.

17. Under the provisions of the 2012 Act the PAT members will be drawn from a list established and maintained by the Lord President of the Court of Session and appointed by the Lord President. The SPA will administer and fund the tribunals.

18. The instrument:

- sets out procedures for administering the appeal process, which is to be the responsibility of a Registrar appointed by the SPA;
- provides that the SPA is the respondent in relation to senior officers and for other ranks the chief constable is the respondent;
- ensures that the parties involved may be represented throughout the appeal process;
- allows the appellant or the respondent to make representations to the PAT;
- provides that hearings will be held in public, unless all parties agree that it should be in private; and
- provides that the tribunal, when reaching a decision, must record its decision including a statement of the reasons for that decision.

19. The instrument further makes transitional arrangements to ensure that:

- appeals pending on 1 April 2013 continue to be dealt with;
- responsibility for the administration of the appeals transfers to the SPA on 1 April 2013;
- appeals made before 1 April 2013 can proceed.

20. The instrument comes into force on 1 April 2013.

21. Further details on the purpose of the instrument can be found in the policy note at Annexe D.

22. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/63/contents/made>

Consultation

23. The policy note (at Annexe D) confirms that a public consultation on the instrument took place.

Subordinate Legislation Committee consideration

24. The Subordinate Legislation Committee considered this instrument at its meeting on 12 March and agreed to draw the instrument to the attention of the Parliament on the basis of an unexpected or unusual use of powers. The SLC considers that matters concerning the constitution of police appeals tribunals should have been addressed through modification of the relevant paragraph in Schedule 3 of the 2012 Act, rather than by way of a provision in this instrument.

25. The extract from the SLC's report on this instrument is attached at Annexe E.

Justice Committee consideration

26. The Justice Committee is required to report to the Parliament on this instrument by 15 April 2013.

**Scottish Police Authority (Provision of Goods and Services) Order 2013
(SSI 2013/73)**

Purpose of instrument

27. This instrument is made under sections 87(1) and (3) of the Police and Fire Reform (Scotland) Act 2012 on the provision of goods and services.

28. The main policy aim of this instrument is to allow the SPA and PSoS, in respect of goods and services provided in connection with the carrying out of the SPA's functions or police functions, to:

- honour contracts with organisations, private companies and persons that they will inherit on 1 April 2013; and
- provide, and charge for, goods and services to organisations, private companies and persons of specified types in the future.

29. The instrument also specifies the types of goods and services which may be provided and the types of person to whom they may be provided.

30. The instrument comes into force on 1 April 2013.

31. Further details on the purpose of the instrument can be found in the policy note at Annexe F.

32. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/73/contents/made>

Subordinate Legislation Committee consideration

33. The Subordinate Legislation Committee considered this instrument at its meeting on 19 March and agreed to draw the instrument to the attention of the Parliament on the basis that the form or the meaning of the instrument could be clearer.

34. The extract from the SLC's report on this instrument is attached at Annexe G.

Justice Committee consideration

35. The Justice Committee is required to report to the Parliament on this instrument by 22 April 2013.

Police Service of Scotland (Temporary Service) Regulations 2013 (SSI 2013/76)

Purpose of instrument

36. This instrument is made under section 15(3) of the Police and Fire Reform (Scotland) Act 2012 on temporary service outwith the Police Service of Scotland (PSoS).

37. The instrument specifies that the consent of the Scottish Ministers is required before a constable can engage in temporary service outwith the UK, either in the

connection with the provision of goods and services by the PSoS or where assistance is arranged by the UK Government under the International Development Act 2002. This is in line with current provisions.

38. It also sets out the types of temporary service in which a constable does not have the functions, powers or privileges of a constable, including service as a member of SPA staff, as an assistant inspector or staff officer of Her Majesty's Inspectorate of Constabulary of Scotland, and service with the Civil Nuclear Constabulary. The instrument further specifies the types of temporary service in respect of which a constable is not under the direction and control of the chief constable, including service with the British Transport Police Force and service as a customs revenue official.

39. The instrument comes into force on 1 April 2013.

40. Further details on the purpose of the instrument can be found in the policy note at Annexe H.

41. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/76/contents/made>

Consultation

42. The policy note (at Annexe H) confirms that a draft instrument was circulated for comment to the SPA, PSoS, police staff associations, HMICS and all the government departments responsible for the organisations affected.

Subordinate Legislation Committee consideration

43. The Subordinate Legislation Committee considered this instrument at its meeting on 12 March and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

Justice Committee consideration

44. The Justice Committee is required to report to the Parliament on this instrument by 22 April 2013.

Police Federation (Scotland) Regulations 2013 (SSI 2013/86)

Purpose of instrument

45. This instrument is made under section 60 of the Police Act 1996 on regulations for police federations.

46. The main policy aim of this instrument is to provide for the restructure of the Scottish Police Federation (SPF) in light of the establishment of the PSoS and to enable it to work effectively at a national and local level. It prescribes the SPF's constitution and proceedings from 1 April 2013, including:

- creation of a joint central committee (consisting of three central committees sitting together as a joint committee), area committees and a joint central conference;
- the joint central committee's power to make rules concerning specific matters regarding the SPF's constitution and proceedings;

- membership, proceedings, expenses, election of a chairperson, deputy chairperson, secretary and deputy secretary, and contributions to be made in respect of those officers' pay, pensions and allowances;
- the SPF's use of accommodation in premises that the SPA provides for police purposes;
- the raising of SPF funds by voluntary subscriptions and the restrictions on the use of those funds; and
- the joint central committee's duty to keep proper accounts (and related records) and to prepare an annual statement of accounts for independent audit.

47. The instrument further includes transitional provisions concerning:

- membership of the SPF's constituent bodies until the members of the central committees and area committees are first elected;
- the procedure for making the first rules under these regulations; and
- the continued effect of anything done before 1 April 2013 in relation to matters that are ongoing at that date.

48. The instrument comes into force on 1 April 2013.

49. Further details on the purpose of the instrument can be found in the policy note at Annexe I.

50. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/86/contents/made>

Consultation

51. The policy note (at Annexe I) confirms that a consultation on this instrument took place and a draft was shared with the SPF's three central committees.

Subordinate Legislation Committee consideration

52. The Subordinate Legislation Committee considered this instrument at its meeting on 12 March and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

Justice Committee consideration

53. The Justice Committee is required to report to the Parliament on this instrument by 22 April 2013.

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)

Purpose of instrument

54. This instrument amends the Police Pensions Regulations 1987 (as regards Scotland) and the Police Pensions (Scotland) Regulations 2007 to adjust the pension contributions of police officers as from 1 April 2013. The Regulations also amend both the 1987 and 2007 Regulations to correct errors contained in the Police Pensions (Contributions) Amendment (Scotland) Regulations 2012 (SSI 2012/71).

55. The main policy aim of this instrument is to make provision to apply the second stage of increases to the members' contributions from 1 April 2013. The first increase was applied with effect from 1 April 2012, and introduced "tiered" contribution rates.

This followed the 2010 UK Spending Review, which set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent of pay by April 2014 with the increases spread across three years.

56. The instrument comes into force on 1 April 2013.

57. Further details on the purpose of the instrument can be found in the policy note at Annexe J.

58. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/89/contents/made>

Consultation

59. The policy note (at Annexe J) confirms that a consultation on this instrument took place between 24 January and 20 February 2013.

Subordinate Legislation Committee consideration

60. The Subordinate Legislation Committee considered this instrument at its meeting on 19 March and agreed to consider it again at its meeting on 26 March.

Justice Committee consideration

61. The Justice Committee is required to report to the Parliament on this instrument by 22 April 2013.

**Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2013
(SSI 2013/92)**

Purpose of instrument

62. This instrument amends the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 to provide that in certain circumstances, and subject to certain conditions, the Scottish Legal Aid Board may determine that a solicitor is not to receive fixed payments for work done in connection with a grant of assistance by way of representation (ABWOR) but instead is to receive payment based on the amount of time spent and work done in providing the ABWOR.

63. The main policy aim of this instrument is to amend the 1999 Regulations, which already make provision for payment other than by fixed payments in respect of criminal legal aid, to extend that regulation to ABWOR.

64. The instrument comes into force on 26 April 2013.

65. Further details on the purpose of the instrument can be found in the policy note at Annexe K.

66. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/92/contents/made>

Consultation

67. The policy note (at Annexe K) confirms that the Scottish Legal Aid Board, which administers the Legal Aid Fund, and the Law Society of Scotland were consulted and were content with the proposals.

Subordinate Legislation Committee consideration

68. The Subordinate Legislation Committee considered this instrument at its meeting on 19 March and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

Justice Committee consideration

69. The Justice Committee is required to report to the Parliament on this instrument by 29 April 2013.

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

ANNEXE B**Policy Note****Police Service of Scotland (Performance) Regulations 2013
(SSI 2013/61)**

1. The above instrument was made in exercise of the powers conferred by sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to negative procedure.

Policy Objectives

2. The 2012 Act, which received Royal Assent on 7 August 2012, changes the policing landscape in Scotland. It brings together the current eight forces, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency into a single Police Service of Scotland (“the Police Service”) from 1 April 2013. The main policy objective of these Regulations is to maintain in the Police Service existing procedures established by the Police (Efficiency) (Scotland) Regulations 1996) for the handling of unsatisfactory performance of constables below the rank of assistant chief constable (ACC) who have completed their probation period, and to require the Scottish Police Authority to establish procedures for the handling of unsatisfactory performance of constables of the rank of assistant chief constable and above.

3. So far as it applies to constables below the rank of ACC, this instrument is a technical update of the current regulations (Police (Efficiency) (Scotland) Regulations 1996(a)) in order to reflect the establishment and role of the new Police Service. It is envisaged that new performance procedures for all officers, which are currently being developed by a stakeholder working group, will be implemented in the Police Service. However, following a request from ACPOS and with support from other key stakeholders it was decided that it was not feasible for the necessary development work and training to be undertaken within the police service by 1 April. New regulations will be introduced in due course following agreement with stakeholders; in the meantime the procedures implemented by these Regulations continue to be fit for purpose.

4. These regulations set out the process and procedure for dealing with a constable below ACC whose performance is considered to be unsatisfactory. Part 6 of these regulations also provides for the Scottish Police Authority to establish and maintain procedures for the handling of performance issues relating to constables of the rank of ACC and above.

5. The key procedures established by these regulations are described below:

6. When a constable’s reporting officer considers his or her performance to be unsatisfactory, Part 2 sets out the process for arrangement of a first interview and procedure to be followed before, during and after that interview, including the constable’s right to be accompanied by another constable of their choice and to make representations. Regulation 7(3) provides for an interviewing officer to issue a warning if they are satisfied that the constable’s performance has been unsatisfactory together with information as to the specific action required to achieve an improvement in performance. A period must be specified within which the constable’s performance is to improve.

7. Part 3 establishes the process for a second interview with a senior manager where the reporting officer considers that the performance of constable who has been warned following a first interview has not improved. Again a warning can be given as to future performance and a period set for that performance to improve.

8. Part 4 provides for the arrangement of an inefficiency hearing if the constable's countersigning and reporting officers are satisfied that there has not been sufficient improvement in the constable's performance during the period set following the second interview. The Deputy Chief Constable must appoint a constable of at least the rank of superintendent to act as a chairing constable at the hearing. At the conclusion of that hearing, the chairing constable will determine whether the constable's performance continues to be unsatisfactory. Regulation 18 provides for the chairing constable to require a constable whose performance continues to be unsatisfactory to resign, be demoted in rank or be issued a warning requiring an improved performance within a set timeframe.

9. Part 5 provides for a right for the constable to appeal to the Chief Constable against a decision of the chairing constable at an inefficiency hearing. Regulation 21 to sets out the procedures for an appeal hearing and regulation 22 allows for the Chief Constable to reverse or vary the chairing constable's determination or to dismiss the appeal.

10. Part 6 deals with performance procedures for senior officer ranks. Regulation 23 requires the SPA to set standards of performance for senior officer ranks (of ACC and above) and to maintain procedures for measuring the performance of those officers against those standards.

11. Including this duty in the regulations ensures Ministers comply with their duty under section 52(3) of the Act to place responsibility for performance procedures on the SPA and enables the SPA to carry forward existing practice until new statutory performance procedures are implemented.

Transitionals and Savings

12. Regulation 3 of the Schedule saves the Police (Efficiency) (Scotland) Regulations 1996 to deal with any unsatisfactory performance proceedings under those Regulations which are not concluded prior to 1 April 2013. The Schedule also makes transitional provision to ensure that any proceedings commenced and decision made under the 1996 Regulations may continue to have effect and that any persons appointed to carry out functions under the 1996 Regulations are able to continue carrying out those functions after they transfer to the Service. It also ensures that any requirement to resign made before 1 April under the 1996 Regulations is to be treated as a requirement to resign from the Police Service of Scotland.

Consultation

13. To comply with the requirements of section 54(2) of the 2012 Act, the Scottish Ministers have consulted and shared a draft of the Regulations with the persons mentioned in section 54(2)(a)(i) to (vi) of that Act and have considered the representations made in response.

14. A public consultation took place from 14 December 2012 to 11 January 2013 and key police stakeholders have been involved in a 'reference group' to discuss any significant policy changes to the regulations.

Impact Assessments

15. A Business Regulatory Impact Assessment (BRIA) was carried out for the Police and Fire Reform (Scotland) Bill, which became the Act. No BRIA is therefore required for these regulations. An Equality Impact Assessment was carried out for the suite of workforce regulations.

Scottish Government
Safer Communities Directorate
21 February 2013

ANNEXE C*Extract from the Subordinate Legislation Committee 18th Report 2013***Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61) (Justice Committee)**

1. This instrument specifies the procedures which will apply to the handling of unsatisfactory performance by constables of the Police Service of Scotland.
2. These Regulations are subject to the negative procedure and come into force on 1 April 2013.
3. In considering the instrument, the Committee raised one matter with the Scottish Government. The correspondence is reproduced in the Appendix.
4. Section 52 of the Police and Fire Reform (Scotland) Act 2012 requires the Scottish Ministers to make regulations which establish procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory. The detailed procedures set out in the instrument apply to regular constables below the rank of assistant chief constable, so long as they have completed their probationary period.
5. Concerns about a constable's performance may result in an inefficiency hearing. Where an inefficiency hearing considers that the constable's performance has been unsatisfactory, the chairing constable may require that constable's resignation, order a demotion in rank, or issue a written warning. The constable may appeal to the chief constable against a determination that his or her performance has been unsatisfactory, or against the disposal ordered by the inefficiency hearing. Regulation 21 sets out the procedure to be followed for that appeal, and regulation 22 makes provision about how the chief constable is to determine the appeal.
6. **The Committee draws the instrument to the attention of the Parliament on reporting ground (i) as it appears to be defectively drafted in the following respect.**
7. **Regulation 21 provides that, where the chief constable considers it necessary for the purpose of determining an appeal, he or she may fix an appeal hearing for the purpose of affording the opportunity of making oral representations to (a) the appellant and (b) the chairing constable. In certain circumstances, therefore, the chairing constable may elect to make oral representations where an appeal hearing has been fixed.**
8. **Regulation 22(1), however, provides that the chief constable must determine the appeal on the basis of the things listed at paragraphs (a) to (e). While regulation 22(1)(d) specifies as one of those things any representations made by the appellant at the appeal hearing, no provision is made in respect of representations made by the chairing constable. The Scottish Ministers accept that, as a result, the chief constable cannot take into account the chairing constable's representations, although the chairing constable has a right, in terms of regulation 21(1) to make them.**
9. **The effect of these two regulations is that the chief constable is to afford the opportunity of making oral representations to both the appellant and the chairing constable, but may only take into account those of the appellant in**

reaching a decision. The Committee accordingly reports that regulations 21 and 22 appear to be defectively drafted.

10. The Committee notes that the Scottish Ministers have advised that they will amend regulation 22(1) to permit the representations of the charring constable to be taken into account.

APPENDIX

Police Service of Scotland (Performance) Regulations 2013 (SSI 2013/61)

On 1 March 2013, the Scottish Government was asked:

Regulation 21(1) enables the chief constable, where it is considered necessary, to fix an appeal hearing "...for the purpose of affording the opportunity of making oral representations to— (a) the appellant; and (b) the charring constable." Regulation 22(1) provides that the chief constable must determine the appeal on the basis of the information specified in sub-paragraphs (a) to (e) of regulation 22(1). In particular, regulation 22(1)(d) obliges the chief constable to determine the appeal on the basis of "any representations made by the constable at the appeal hearing". There is no provision, however, obliging the chief constable to determine the appeal on the basis of any representations made by the charring constable at the appeal hearing. The Scottish Government is accordingly asked:

(a) Does it agree that, at an appeal hearing under regulation 21(1), the appellant and the charring constable are both entitled to make oral representations to the chief constable?

(b) Does it agree that regulation 22(1) specifies the only matters which the chief constable may take into account in determining an appeal – and, if not, why does it take a different view?

(c) Does it accordingly follow that the chief constable may not take into account the oral representations made by the charring constable in terms of regulation 21(1), and if so does this represent the Scottish Ministers' policy intention?

(d) What does the Scottish Government consider to be the consequences of this position, particularly in relation to the procedural fairness of any determination of the appeal by the chief constable where oral representations have been made by both the appellant and the charring constable?

The Scottish Government responded as follows:

We thank the Committee for raising the questions above and adopt the same numbering in response.

(a) An appeal hearing may be fixed for the purpose of affording an opportunity to make representations to the appellant and the charring constable where that is necessary for the determination of the appeal. This does not mean that where an appeal hearing is fixed both the appellant and charring constable acquire a right to make oral representations. Rather, the chief constable may afford a right to make representations to such of them as is necessary for the determination of the appeal. In practice it is difficult to envisage an appeal hearing taking place in the presence of the

chairing constable only, but rather less difficult to envisage it taking place in the presence of the appellant only.

(b) We agree that regulation 22(1) specifies the only matters the chief constable may take into account when determining the appeal.

(c) We agree that it follows that the chief constable may not take into account oral representations (if any) made by the chairing constable at an appeal hearing. We note that this reflects the position as set out in regulation 21 of the Police (Efficiency) (Scotland) Regulations 1996. The Committee will be aware that the Scottish Ministers' policy is to replicate, so far as possible within a single Service structure, the policy encapsulated in the existing regulations made under section 26 of the Police (Scotland) Act 1967. In doing so, in this case, it is apparent that an anomaly in the process established by the 1996 Regulations has been carried forward into the current instrument.

The Committee will be aware that the Scottish Government wrote on 4 March undertaking to bring forward regulations to amend the Police Service of Scotland Regulations and the Police Service of Scotland (Special Constables) Regulations. We intend to take the opportunity to use that instrument to amend regulation 22 of the Police Service of Scotland (Performance) Regulations to permit the chief constable to consider any representations made by the chairing constable at an appeal hearing.

(d) That notwithstanding, we do not consider that any procedural unfairness arises from the process established by the Regulations. While the chairing constable may be afforded an opportunity to make oral representations, those representations are made in the knowledge that they are not, in themselves, to be taken into account in the determination of the appeal. It is therefore clear before the process commences that these representations are not by themselves relevant considerations in the determination of the appeal.

No prejudice is suffered by either the chairing constable or the appellant by virtue of this approach. The chairing constable has no right or interest at stake in the proceedings and the appellant is entitled to put his or her own case orally and in writing and have both considered and tested against the chairing constable's original determination (which must also be taken into account in the determination of the appeal).

Policy Note**Police Appeals Tribunals (Scotland) Rules 2013
(SSI 2013/63)**

1. The above instrument was made in exercise of the powers conferred by sections 56(3), 125(1) and paragraph 4 of schedule 3 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to the negative procedure.

Policy Objectives

2. Section 53 and Schedule 3 of the 2012 Act make provision for appeals by constables to the Police Appeals Tribunal (‘the PAT’). The main policy objective is to update the procedures set out in the Police Appeals Tribunals (Scotland) Rules 1996 to reflect the provisions of the 2012 Act and the role of the Scottish Police Authority (‘the SPA’).

3. An appeal to the PAT may only be made where the constable has, as a result of disciplinary action, been demoted or dismissed except in the case of constables of the rank of Assistant Chief Constable or above who may only appeal against dismissal. The PAT may either confirm or replace the decision being appealed.

4. Under the provisions of the 2012 Act the PAT members will be drawn from a list established and maintained by the Lord President of the Court of Session and appointed by the Lord President. The SPA will administer and fund the tribunals.

5. The Rules set out procedures for administering the appeal process which is to be the responsibility of a Registrar appointed by the SPA. Rule 4 provides that the respondent in relation to senior officers is the SPA and for other ranks is the chief constable of the Police Service. The parties involved may be represented throughout the appeal process. The representatives may be legally qualified.

6. The Registrar will, under the Rules, ensure the PAT is convened, all the relevant notices are sent and documents and other information are provided to all the parties involved in the appeal procedure.

7. Section 57(2) of the 2012 Act allows the appellant or the respondent to make representations to the PAT and either party may require that these representations are made by way of an oral hearing. Rule 8 sets out the procedures for establishing whether an oral hearing is required.

8. The Rules provide that hearings will be held in public, unless the tribunal and the parties agree that the hearing should be in private, and that witnesses may be required to attend the hearing, or give evidence, or to produce documents or information.

9. Rule 15 allows the tribunal to determine its own procedure subject to the provisions in the Rules. When it has reached a decision the tribunal must record its decision including a statement of the reasons for that decision. That document must be sent to each of the parties.

Transitionals and Savings

10. The Schedule makes provisions to allow appeals which are pending on 1 April 2013 to continue to be dealt with under the 1996 Rules or under these Rules, depending on when the notice of appeal was sent to the Registrar. Responsibility for the administration of these appeals will transfer to the SPA on 1 April 2013.

11. To allow appeals made before 1 April 2013 it has also been necessary to save the relevant sections of the Police (Scotland) Act 1967. This has been done in The Police and Fire Reform (Scotland) Act 2012 (Supplementary, Transitional, Transitory and Savings Provisions) Order 2013 which was laid before the Scottish Parliament on 18 February 2013.

Consultation

12. A public consultation on the draft Rules took place from 25 January 2013 to 8 February 2013 and key stakeholders have been involved in a 'reference group' to discuss the provisions needed in the Rules. A full list of those consulted is set out below.

ACPOS (Association of Chief Police Officers in Scotland)
 ASPS (The Association of Scottish Police Superintendents)
 Central Scotland Police
 Chief Constable of the Police Service of Scotland
 Christian Police Association
 Dumfries and Galloway Constabulary
 Fife Police
 Gay Police Association
 Grampian Police
 HMICS (Her Majesty's Inspectorate of Constabulary for Scotland)
 Lord President of the Court of Session
 Lothian and Borders Police
 Muslim Police Association
 Northern Constabulary
 Police Boards
 Scottish Committee (Administrative Justice & Tribunals Councils Scottish Committee)
 Scottish Police Authorities Convenors Forum
 Scottish Police Authority
 Scottish Police Federation
 Scottish Police Muslim Association
 Scottish Women's Development Forum
 Scottish Advisory Committee on Arbitration Law
 SCPOSA (Scottish Chief Police Officers Staff Association)
 SEMPER Scotland (Supporting Ethnic Minority Police staff for Equality in Race Scotland)
 SPSA (The Scottish Police Services Authority)
 Strathclyde Police
 Tayside Police

Impact Assessment

13. A Business Regulatory Impact Assessment (BRIA) was carried out for the Police and Fire Reform (Scotland) Bill, which became the Act. No BRIA is therefore required for these regulations. An Equality Impact Assessment was carried out for the suite of workforce regulations.

Scottish Government
Safer Communities Directorate
22 February 2013

ANNEXE E*Extract from the Subordinate Legislation Committee 18th Report 2013***Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63) (Justice Committee)**

1. This instrument makes provision about the procedure before a police appeals tribunal in relation to appeals under section 56 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”).
2. This instrument is subject to the negative procedure, and comes into force on 1 April 2013.
3. In considering the instrument, the Committee asked the Scottish Government for an explanation as to the powers relied upon in making part of the instrument. The correspondence is reproduced in the Appendix.
4. Section 56 of the 2012 Act permits a constable to appeal to a police appeals tribunal against any decision to dismiss that constable, or to impose a demotion in rank. Schedule 3 to the 2012 Act makes provision about the constitution and membership of police appeals tribunals. In particular, paragraph 1(1) provides: “[a] police appeals tribunal is to consist of three members, one of whom is to be appointed to chair the tribunal.”
5. Paragraph 4 of schedule 3 enables the Scottish Ministers to make rules about the procedure to be followed on appeal to a police appeals tribunal. This instrument accordingly sets out in some detail the procedural rules which are to be followed, and the procedure specified is broadly similar to other statutory tribunals of a similar nature.
6. Schedule 3 makes no provision about what is to happen should one of those members be absent when an appeal comes before a tribunal for a hearing. However, rule 15(6) of this instrument provides that, if one member (other than the chairing member) is absent, the appeal may nevertheless be heard by the remaining members if the parties consent. Rule 15(6) goes on to deem the tribunal properly constituted in those circumstances.
7. From the Scottish Ministers’ response, it appears that they consider section 125(1)(b) of the 2012 Act, in conjunction with paragraph 4 of schedule 3, to provide the necessary powers for the making of that provision. Paragraph 4 of schedule 3 is the general power to make rules about procedure for police appeals tribunals. Section 125(1)(b) provides that any rule-making power of the Ministers includes power to make, among other things, such supplementary provision as they consider appropriate.
8. The Committee observes that there is no precise definition as to what constitutes a supplementary power. However, it notes the courts have interpreted it as meaning something which is required to supplement the provisions of the instrument or its parent Act in order to make it work, and it views this as constraining the manner in which supplementary powers may be used. The Committee does not consider that they can be used to make provision which is contrary to provision found elsewhere in the Act. If it is intended that the Scottish Ministers should be able to make provision which derogates from the provisions to be found on the face of an Act, then the

Committee would expect to see an express power in the Act enabling the Ministers to make that provision.

9. The Committee considers that it is less than clear whether providing for police appeals tribunals to be differently constituted in certain circumstances can properly be said to be filling in the details of the 2012 Act. It appears to the Committee that the Act is capable of operating absent the provisions of rule 15(6) – albeit it may not work exactly as the Scottish Ministers would wish it to.

10. In the Committee's view, the Parliament in enacting schedule 3 of the 2012 Act has, among other things, prescribed the composition of police appeals tribunals. It has not seen fit to confer an express power upon the Scottish Ministers enabling them to vary that composition, although such powers do exist for similar tribunals. The separate power to make supplementary provision found in section 126 of the Act does permit the terms of the Act to be modified for the purpose of giving full effect to the Act. That power is subject to the affirmative procedure.

11. If the Scottish Ministers consider that it is necessary to make alternative provision about the constitution of police appeals tribunals to that found in paragraph 1(1) of schedule 3, it appears to the Committee that it would have been preferable had this been addressed through a modification of that provision. Addressing it by way of supplementary provision within these Rules therefore appears to represent an unusual or unexpected use of the supplementary power in section 125(1)(b) of the 2012 Act.

12. The Committee draws the instrument to the attention of the Parliament on reporting ground (g). Paragraph 1(1) of schedule 3 to the Police and Fire Reform (Scotland) Act 2012 provides that a police appeals tribunal is to consist of three members, one of whom is to be appointed to chair the tribunal. Rule 15(6) of this instrument purports to enable the tribunal to conduct a hearing while differently constituted (in the absence of a member other than the chair) in certain circumstances.

13. The Scottish Ministers consider that this provision is a supplementary provision and that it has been made in terms of the power conferred by section 125(1)(b) of that Act. It appears to the Committee that it would have been preferable had matters concerning the constitution of police appeals tribunals been addressed through a modification of the provision contained in paragraph 1(1) of schedule 3. It accordingly considers that this represents an unusual or unexpected use of the powers conferred in section 125 of the Police and Fire Reform (Scotland) Act 2012.

APPENDIX

Police Appeals Tribunals (Scotland) Rules 2013 (SSI 2013/63)

On 1 March 2013, the Scottish Government was asked:

Paragraph 1(1) of schedule 3 to the Police and Fire Reform (Scotland) Act 2013 provides that a police appeals tribunal is to consist of three members. Rule 15(6) provides that, if one member of the tribunal (other than the chairing member) is absent after the commencement of the hearing, the appeal may be heard by the remaining members (if the parties consent). What power has been relied upon to make provision to this effect? If the power relied upon is the general power to make rules about procedure on appeal to a police appeals tribunal in paragraph 3 of schedule 3, the

Scottish Government is asked to explain why this is considered to be sufficiently broad to permit provision of this nature which derogates from the provisions of paragraph 1(1). We observe that while similar provision may have been made in respect of other statutory tribunals (e.g. the Parole Board), the examples of which we are aware are made in virtue of a specific enabling power (e.g. section 20(4)(a) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in respect of the Parole Board).

The Scottish Government responded as follows:

The Scottish Government thanks the Committee for raising this point. Section 125(1) of, and paragraph 4 of schedule 3 to, the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act") are relied upon to make the supplementary provision in rule 15(6) and those powers are cited in the preamble to the instrument. Paragraph 1 of schedule 3 to the 2012 Act sets out the requirements for initial constitution of a police appeals tribunal. That is unaltered by the provision in rule 15(6). Rather, rule 15(6) deals with the circumstance of a tribunal constituted in compliance with paragraph 1 of schedule 3 which later becomes absent a member. Rule 15(6) makes supplementary procedural provision so that, if parties agree, the proceedings may continue. We therefore consider there is vires for the provision and that all of the relevant powers have been cited in the preamble.

Policy Note

Scottish Police Authority (Provision of Goods and Services) Order 2013 (SSI 2013/73)

1. The above instrument (copy attached) is made in exercise of the powers conferred by section sections 87 (1) and (3) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). The instrument is subject to negative procedure.

Policy Objectives

2. The 2012 Act, which received Royal Assent on 7 August 2012, changes the policing landscape in Scotland. It brings together the current eight forces, the Scottish Police Services Authority (SPSA) and the Scottish Crime and Drug Enforcement Agency (SCDEA) into a single Police Service of Scotland from 1 April 2013.

3. The Act establishes the Scottish Police Authority (SPA) which is responsible for the governance, oversight and maintenance of the Police Service of Scotland and for holding the chief constable to account for the policing of Scotland. The SPA must also provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and procurators fiscal.

4. The Act sets out the governance arrangements and framework for the new services, including the statutory framework for the delivery of police services and appropriate scrutiny and oversight arrangements.

5. This instrument made under Section 87 (1)(b) and (3)0(b) is required to allow the SPA to honour contracts in place prior to 1 April 2013 with private companies and persons for the provision of various goods and services, and which need to continue for periods beyond the end of March 2013. It is also required to provide for new contracts with private companies and persons.

6. Scottish Ministers wish to provide that the Scottish Police Authority and the Police Service of Scotland should:

a) be able to honour contracts with organisations, private companies and persons that they will inherit on 1 April 2013, and

b) be able to provide, and charge for, goods and services to organisations, private companies and persons of specified types in the future,

provided that the goods and services are provided in connection with the carrying out of the Authority’s functions or, as the case may be, police functions. It is not the intention that the provision of such goods and services should be unrestricted.

7. Schedules 1 and 2 of the Order specify the types of goods and services which may be provided and the types of person to whom they may be provided.

Provisions

8. Chapter 13 of the 2012 Act provides for the Scottish Police Authority and the Chief Constable to charge for goods and services provided by the Authority and/or the Police Service of Scotland. This consists of two sections: 86 and 87.

9. Section 86 provides for provision of and charging for police services (such as the policing of major events including football matches, music festivals etc.) and is not subject to the provisions of this order.

10. Section 87 (1)(b) and (3)(b) provides for the provision of and charging for 'other' goods and services (i.e. non-police services including vehicle maintenance, ICT, training etc) and is subject to the Order.

11. Section 87 (8) (a and b) of the Act sets out some of the areas of goods and services which may be provided in pursuance of subsection (1) or (3) (or which may be specified in an order made under those subsections) to include—

(a) information technology systems and equipment (and services involving the development, provision, procurement, maintenance, management, support or oversight of such systems or equipment),

(b) services involving the inspection, testing, maintenance or repair of vehicles,

12. Sub section 8 (c) provides for any other type of corporate or support service which is provided by the Authority or the Police Service in connection with the carrying out of the Authority's functions or, as the case may be, police functions and therefore an order is required to specify the 'types of goods and services' and the 'types of persons'.

Impact Assessment

13. A Business Regulatory Impact Assessment (BRIA) was carried out for the Police and Fire Reform (Scotland) Bill, which became the Act. No BRIA is therefore required for these regulations.

Scottish Government
Safer Communities Directorate
February 2013

*Extract from the Subordinate Legislation Committee 21st Report 2013***Scottish Police Authority (Provision of Goods and Services) Order 2013
(SSI 2013/73) (Justice Committee)**

1. This instrument specifies the types of goods and services which may be supplied by the Scottish Police Authority (“the Authority”) and the Police Service of Scotland (“the Police Service”) under section 87 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). It also specifies the types of person to whom those goods and services may be supplied.
2. Section 87 of the 2012 Act, broadly speaking, contains two types of function: the first is a function of the Authority in providing goods and services. The second is a function of the Scottish Ministers, the legislative function of specifying in subordinate legislation the types of goods and services which may be supplied by the Authority, and the persons to whom they may be supplied. In other words, the Scottish Ministers have power to make an order which authorises the Authority to supply types of goods and services which it could not otherwise supply, to persons that it could not otherwise supply.
3. The Order is subject to the negative procedure and comes into force on 1 April 2013.
4. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 3.
5. It appeared to the Committee that, particularly by reference to the types of persons who were specified for each type of service, the instrument purported to authorise the exercise of the Authority’s functions of supplying goods and services otherwise than in or as regards Scotland. For example, paragraph 1 of Schedule 1 provides that the Authority may provide training services to (a) persons licensed under the Private Security Industry Act 2001 (“the 2001 Act”), an Act which now applies throughout the United Kingdom, and (b) to persons carrying out security service activities which are regulated, licensed or authorised by a public authority established by law otherwise than in the United Kingdom.
6. In their response, the Scottish Ministers helpfully clarify that the Order is to be seen as providing that the goods and services are to be provided within the territory of Scotland or in circumstances where they are as regards Scotland only. However, on its face the instrument is capable of being read more widely than the Ministers intend. The Committee accordingly takes the view that it is necessary to consider whether it is capable of being read sufficiently narrowly so as to give it the limited effect the Ministers intend.
7. The Committee had anticipated that the Scottish Ministers might seek to rely upon section 101 of the Scotland Act 1998 in order to read down the provisions of this instrument, and so it asked not whether section 101 might apply, but how it would apply, in the Ministers’ view.
8. The Scottish Ministers’ response explains their view that the effect of section 101 would be that goods and services could be provided only in or as regards Scotland,

but does not explain what narrow reading could be given to the words of Schedule 1 in order to achieve this.

9. The Committee notes that section 101 does not apply in every situation: it provides that a provision which could be read in such a way as to be outside devolved competence is to be read as narrowly as is required for it to be within competence, if such a reading is possible. If it is not possible to read the provision narrowly in such a way as to bring it within competence, then section 101 is of no assistance.

10. On this basis, it appears to the Committee that applying a narrow reading is quite possible in respect of some of the types of person specified in Schedule 1. For instance, paragraph 1 permits training to be provided to persons licensed under the 2001 Act. It is possible to read that provision narrowly as applying only to persons licensed as regards Scotland (or, at best, to any licensed person who comes to Scotland to receive the training). The effect is that paragraph 1, when read sufficiently narrowly to bring it within competence, is much narrower than might appear to be the case at first sight.

11. It is not clear to the Committee that the same might be said in respect of all the types of person who are specified in Schedule 1. At the same time, however, it cannot exclude the possibility that it might be possible to read each of them sufficiently narrowly as to bring them within competence. It observes that the Scottish Ministers could usefully have provided further information in relation to this matter. However, they have not volunteered any view beyond their general position that it is possible (by unspecified means) to read the provisions of Schedule 1 sufficiently narrowly as to bring them within devolved competence. The Committee therefore concludes that the meaning of the order could have been more clearly expressed.

12. The Committee draws the instrument to the attention of the Parliament on reporting ground (h). The form or meaning of the instrument could be clearer. On its face, column 2 of Schedule 1 purports to specify types of person to whom the specified services in column 1 may be supplied. However, those types of person are so widely specified that it is possible to read those provisions as being outside competence. To bring the instrument within devolved competence, the provisions have to be read as narrowly as is required for them to be within competence. The consequence is that the types of person specified in Schedule 1 are very much narrower than would appear to be the case on the face of the instrument, and accordingly its meaning could have been more clearly expressed, particularly as it is the Scottish Ministers' stated intention that this instrument relate only to the provision of goods and services in or as regards Scotland.

13. The Committee observes that, further to this, the Scottish Ministers have been unable to comment on the practical effect of reading the provisions sufficiently narrowly as to bring them within competence. This arises, at least in part, because no view has been ventured as to the circumstances in which the specified services could be provided to persons who are outwith Scotland in a manner which is "as regards Scotland".

Policy Note

Police Service of Scotland (Temporary Service) Regulations 2013 (SSI 2013/76)

The above instrument was made in exercise of the powers conferred by section 15(3) of the Police and Fire Reform (Scotland) Act 2012. The instrument is subject to negative procedure.

Policy Objectives

Section 15 of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) allows the chief constable of the Police Service of Scotland to make arrangements, or give consent, for constables to be engaged on temporary service outwith the Police Service. Constables on temporary service continue to hold the office of constable and are entitled to revert to the Police Service of Scotland at the end of their temporary service at their previous rank. The time on temporary service is treated as service within the Police Service of Scotland for the purposes of pay and promotion.

Except where contrary provision is made, constables on temporary service continue to have all the functions, powers and privileges of a constable of the Police Service of Scotland and are under the direction and control of the chief constable in the performance of policing functions. Scottish Ministers may make regulations prescribing types of temporary service where those default conditions do not apply. They may also prescribe types of temporary service which are not permitted, or which require the consent of the Scottish Police Authority or Scottish Ministers, and make other provision about temporary service, including provision about liability for unlawful conduct of a constable while on temporary service. Section 24 of the 2012 Act provides that the chief constable is liable in respect of any unlawful conduct on the part of any constable under the chief constable’s direction and control.

Constables may go on temporary service to a wide range of organisations. In many of these their role is essentially administrative or advisory, for example working for staff associations or advising Scottish Ministers or partners such as local authorities. In these circumstances there is no conflict with them retaining their police powers, but if they need to use them they should do so under the direction and control of the chief constable. The default provision in section 15 of the 2012 Act therefore applies in these cases. In other cases constables go to serve with other police forces or in roles that have their own enforcement powers, and provision needs to be made to avoid any conflict of powers or confusion over direction and control of that individual.

Regulation 2(1) provides that the consent of Scottish Ministers is required for a constable to go on temporary service outwith the United Kingdom, either in connection with the provision of goods and services by the police service under section 87 of the 2012 Act, or where assistance is arranged by the UK Government under the International Development Act 2002. This is in line with current provisions (in section 12A of the Police (Scotland) Act 1967) and ensures Ministers are aware of the number of police officers on service overseas and the circumstances in which they are engaged.

Regulation 2(2) sets out types of temporary service in which a constable does not have the functions, powers or privileges of a constable. These are:

- service as a member of staff of the Scottish Police Authority;
- service as an assistant inspector of constabulary or staff officer of HM inspectors of constabulary;
- service with the British Transport Police Force;
- service with the Civil Nuclear Constabulary;
- service with the Ministry of Defence Police;
- service with SOCA;
- service as an officer of Revenue and Customs;
- service as an immigration officer;
- service as a general customs official;
- service as a customs revenue official

((h), (i) and (j) are posts within the UK Border Agency.)

Regulation 2(3) provides that a constable is not under the direction and control of the chief constable when on temporary service under (c) to (j) above, or with Scottish Ministers in connection with functions under the Proceeds of Crime Act 2002.

In (c) to (j) above, constables will acquire the functions, powers and privileges of the organisation or office in which they are serving, and will exercise them under the direction and control of the relevant chief constable or head of that organisation. All of these organisations operate in Scotland. No provision is made for temporary service with police forces in England and Wales or with the Police Service of Northern Ireland, because constables of the Police Service of Scotland have very limited powers outwith Scotland, so there is unlikely to be any conflict.

The 2012 Act provides that constables serving with the Scottish Police Authority or HM inspectors of constabulary are under the direction and control of the Authority (paragraph 7 of schedule 1) or the inspectors (sections 72 and 73) respectively. Constables serving with Scottish Ministers in connection with the Proceeds of Crime Act 2002 need to retain their police powers, but exercise them under the direction and control of Scottish Ministers. If constables serving in these ways are recalled to the Police Service to provide support for specific operations, this will be treated as a suspension of the temporary service arrangement and for the duration of that operation they will revert to being a normal constable of the Police Service.

Consultation

A draft of these Regulations was circulated for comment to the Scottish Police Authority, Police Service of Scotland, police staff associations, HMIC and all the government departments responsible for the organisations affected.

Impact Assessments

No Equality Impact Assessment has been carried out. This Order has no effect on any equality issues.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate

26 February 2013

Policy Note

Police Federation (Scotland) Regulations 2013 (SSI 2013/86)

The above instrument was made in exercise of the powers conferred by section 60 of the Police Act 1996 (“the 1996 Act”). The instrument is subject to negative procedure.

Policy Objectives

The Police and Fire Reform (Scotland) Act 2012, changes the policing landscape in Scotland. It brings together the current eight forces, the Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency into a single Police Service of Scotland from 1 April 2013.

The Scottish Police Federation (SPF) is the staff association which represents constables, sergeants, inspectors, chief inspectors (“the federated ranks”), cadets and special constables in Scotland in matters affecting their welfare and efficiency as set out at section 59(1) of the 1996 Act. The main policy objective of these Regulations is to provide for the restructure of the SPF in light of the establishment of the Police Service of Scotland and to enable it to work effectively at a national and local level.

These Regulations prescribe the SPF’s constitution and proceedings from 1 April 2013. Some of the key policies delivered through the regulations are described below:

Part 2 prescribes the SPF’s membership and structure, so that it can act through central and local representative bodies in accordance with section 59(4) of the 1996 Act. Regulation 5 provides for the establishment of a joint central committee (consisting of three central committees, representing each of the federated ranks, sitting together as a joint committee) and a joint central conference. It also provides for the establishment of a number of area committees, the number of which must be approved by Scottish Ministers. Regulation 6 gives the joint central committee, as the SPF’s governing body, the power to make such rules relating to the SPF’s constitution and proceedings as are needed to supplement these Regulations. The Regulations require the SPF’s constituent bodies to act in accordance with any such rules.

Part 3 prescribes the membership and proceedings of the joint central committee and the central committees. It also provides for the SPF to determine the total number of members of the joint central committee, subject to the Scottish Minister’s approval. Regulation 8 sets out the meetings which the joint central committee may hold and the manner in which it may make representations to the Scottish Ministers, the Scottish Police Authority, the chief constable of the Police Service of Scotland and other specified persons. Regulation 10 provides for the joint central committee’s members to elect four officers (a chairperson, a deputy chairperson, a secretary and a deputy secretary). Each such officer will continue to be a member of the central committee and area committee to which he/she was elected, and also the joint central conference.

Part 4 prescribes the membership and proceedings of the SPF’s local representative bodies, the area committees. Regulation 11 provides for the joint central committee to determine the total number of area committees to be established, and the number of

members to be elected to each of the area committees, subject to the Scottish Ministers' approval. Each area committee must consist of an equal number of representatives from each of the federated ranks, and have equal voting rights during its proceedings. This ensures that the federated ranks are represented equally and fairly. Regulation 12 sets out the meetings which the area committees may hold and regulation 13 allows them to establish sub-committees (where expedient) with the chief constable's consent.

Part 5 prescribes the membership and proceedings of the joint central conference. The membership of the area committees determines the membership of the joint central conference as, under Regulation 14, every member of an area committee is automatically a member of the joint central conference. Regulation 15 sets out the meetings which the joint central conference may hold.

Part 6 makes provision in relation to accommodation, funding and accounts. Regulation 16 provides for the Scottish Police Authority to make accommodation available to the SPF, without any obligation on the SPF to pay for the use of such accommodation. Regulation 17 allows the SPF to raise funds by collecting voluntary subscriptions from its members and sets out restrictions on the use of those funds. Regulation 18 ensures financial accountability by requiring the joint central committee to keep proper accounts and to send a statement of its accounts, for each financial year, to an independent auditor for audit. It also requires copies of each statement of accounts and auditor's report to be provided to the Scottish Ministers.

Revocation and Transitionals

Regulation 19 revokes the Police Federation (Scotland) Regulations 1985 ("the 1985 Regulations"). Regulation 20 makes provision intended to ensure a smooth transition from the SPF's structure under the 1985 Regulations to that provided for by these Regulations. It makes provision in respect of the membership of the SPF's constituent bodies until the members of the central committees and area committees are first elected under these Regulations, and the procedure for making the first rules under these Regulations. For the purposes of any on-going federation activity, it provides for anything done before 1 April 2013 by any of its constituent bodies established under the 1985 Regulations to continue to have effect as if it had been done by the corresponding constituent body established under these Regulations. It also makes transitional provision for the officers of chairman and secretary, elected under the 1985 Regulations, to be treated as having been elected to the respective offices of chairperson and secretary of the joint central committee under these Regulations. The chairperson is to nominate a deputy chairperson and a deputy secretary until the first elections to those offices are held under these Regulations.

Consultation

These regulations have been developed in close collaboration with senior officials in the SPF and in accordance with section 60(4) of the Police Act 1996, a draft of the Regulations was shared with the three Central Committees of the Police Federation of Scotland, sitting together as a Joint Committee, for their comment. A public consultation also took place from 25 January to 8 February 2013 and the Scottish Ministers considered the responses made.

Impact Assessment

An Equality Impact Assessment was carried on this instrument as part of the suite of workforce regulations. The Cabinet Secretary of Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Safer Communities Directorate
27 February 2013

Policy Note

Police Pensions (Contributions) Amendment (Scotland) Regulations 2013 (SSI 2013/89)

The above instrument was made in exercise of the powers conferred by sections 1 to 8 of the Police Pensions Act 1976 and all other powers enabling them to do so. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

Policy Objectives

The Police Pension Regulations 1987 (SI 1987/257) and the Police Pensions (Scotland) Regulations 2007 (SSI 2007/201) require members of both police pension schemes to pay contributions to the relevant scheme as a condition of membership. Although the Scottish Ministers have responsibility for the police schemes, wider policy for occupational pensions is reserved to the UK Government.

The 2010 UK Spending Review set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent of pay by April 2014 with the increases spread across three years. The first increase was applied with effect from 1 April 2012 and also introduced "tiered" contribution rates which reflect that higher earners generally receive larger scheme benefits from final salary defined benefit schemes. Following further consideration of this policy and whether there were any viable alternatives, Scottish Ministers determined to apply the second round of increases. The above instrument makes provision to apply the second stage of increases to the members' contributions from 1 April 2013.

The instrument also includes corrections to amendments made to the police pension schemes by the Police Pensions (Contributions) Amendment Regulations 2012 (SSI 2012/71).

Consultation

To comply with the requirements of section 1 (1) of the Police Pensions Act 1976 a formal consultation was undertaken which included the Police Negotiating Board from 24 January to 20 February 2013. The consultation was issued to representatives of police officers and employers and relevant Scottish and UK Government Departments. Staff associations remain opposed to any increases to members' contributions. 189 responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency website www.sppa.gov.uk.

Impact Assessments

An equality impact statement is being finalised for this instrument which builds on the assessment undertaken for the first year of members' contribution increases and will be published when finalised.

Financial Effects

The increases, as designed, are expected to raise in the region of an additional £7 million a year from 1 April 2013. This will add to the additional yields arising from the increases introduced from April 2012.

No Business and Regulatory Impact assessment has been prepared because no impact on the private or voluntary sector is foreseen.

Scottish Public Pensions Agency
An Agency of the Scottish Government
4 March 2013

Policy Note

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2013 (SSI 2013/92)

The above instrument was made in exercise of the powers conferred by sections 33A and 36 of the Legal Aid (Scotland) Act 1986. The instrument is subject to negative procedure.

Policy Objectives

Since 1999 a solicitor providing “relevant” criminal legal aid in summary proceedings has been entitled to the fixed payments prescribed in Schedule 1 the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 (“the principal Regulations”). “Relevant criminal legal aid” means criminal legal aid provided by a solicitor in relation to summary proceedings other than excluded proceedings. A solicitor can apply to the Scottish Legal Aid Board (“the Board”) where he or she feels that the case may be exceptional. It is for the Board to determine whether the case can be granted exceptional case status as set out in regulation 4A of the principal regulations.

However, unlike for criminal legal aid, there is no provision for payment to solicitors over and above this fixed amount where the circumstances of the case are exceptional in relation to Assistance By Way Of Representation (ABWOR). ABWOR is usually the aid type available in summary criminal proceedings where the accused pleads guilty. Fixed payments were extended to summary ABWOR proceedings in 2008

Last year in *PF Edinburgh v Marshall* (ED11011303) the sheriff dismissed the case against the accused and upheld a devolution minute which argued that there was a breach of article 6 of the European Convention on Human Rights because the accused’s agents had incurred costs significantly above the fixed payment provided for in the 1999 Regulations, and would be forced to withdraw from acting for the accused as a result.

The Appeal Court recently upheld the sheriff’s decision, describing the circumstances in the case as being exceptional. Scottish Ministers cannot predict when such exceptional circumstances might arise again in a case.

These Regulations therefore amend the 1999 Regulations to provide that in certain circumstances, and subject to certain conditions, the Board may determine that a solicitor is not to receive fixed payments for work done in connection with a grant of ABWOR but instead is to receive payment based on the amount of time spent and work done in providing the ABWOR.

The Regulations amend regulation 4A of the principal Regulations, which already makes provision for payment other than by fixed payments in respect of criminal legal aid, to extend that regulation to criminal ABWOR cases. Regulation 4A of the prescribes the factors to be taken into account by the Board in deciding whether to determine that a solicitor should not receive fixed payments; makes provision in relation to the form of application for a determination by the Board; requires solicitors to keep proper records of professional services and provide for a procedure for review of the Board’s decision.

These Regulations also amend regulation 4A of the principal Regulations to provide that, where there has been a change of solicitor, any solicitor who provided ABWOR to the assisted person at any time before that change is, in certain circumstances and subject to certain conditions, to receive payment based on the amount of time spent and work done.

Consultation

The Board, which administers the Legal Aid Fund, and the Law Society of Scotland, which is the regulator and representative body for the legal profession in Scotland, have been consulted on the proposals. Both bodies have indicated that they are content with the proposals.

Impact Assessments

An equality impact assessment has been completed on the draft SSI and is attached. No negative impacts were identified. The Board will continue to monitor the effect of the regulations as part of its ongoing programme of research and analysis on the supply of and access to legal aid and factors that might affect this.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that solicitors' firms carrying out publicly funded legal assistance could recover costs above the prescribed criminal ABWOR fixed payment where the case was granted exceptional status. The accused could continue to be represented by the same agent. The estimated cost to the Scottish Legal Aid Fund is £75,000 to £120,000 per year.

Scottish Government
Justice Directorate
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