POLICY NOTE

THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER (APPLICATION AND MODIFICATION OF THE CRIMINAL JUSTICE (SCOTLAND) ACT 2016) ORDER 2017

SSI 2017/DRAFT

Introduction

1. This Order is made in exercise of the powers conferred by paragraph 7B of schedule 4 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. Those sections allow the application, with modifications, of enactments relating to constables to staff of the Police Investigations and Review Commissioner ("PIRC").

Policy Objectives

2. Part 1 of the Criminal Justice (Scotland) Act 2016 includes provisions on the powers of the police to arrest, hold in custody and question a person suspected of an offence. The PIRC can undertake criminal investigations into persons serving with the police if instructed to do so by the procurator fiscal. The requirements of Part 1 of the 2016 Act need to extend to cover PIRC investigative staff undertaking such investigations to ensure that the same processes apply as would apply if the Police Service were investigating a crime, and to ensure that individuals serving with the police are afforded the same rights as everybody else in this context.

3. On a practical level, while the Order ensures that PIRC investigators have all the necessary powers and responsibilities as regards holding suspects in custody, it is likely that PIRC investigative staff would use Police Service of Scotland custody facilities for these purposes. A memorandum of understanding between the Police Service and the PIRC will set out how that arrangement is to be managed and implemented. That will include measures to secure the proper care and welfare of any detainee throughout a PIRC investigation. Whatever these practical arrangements may be, it will be PIRC investigators who will make the decisions on any investigative requirements.

Consultation

4. The Scottish Government have not undertaken any formal consultation on this Order as it is simply makes clear that PIRC investigators when undertaking a criminal investigation into a person serving with the police are covered by the requirements of the relevant sections of the Criminal Justice (Scotland) Act 2016, which was subject to prior consultation.

5. A working group involving relevant practitioners was established by Scottish Government to consider the requirement of this Order. The membership consisted of representatives of the Crown Office and Procurator Fiscal Service, Police Investigations and Review Commissioner and Police Scotland.

Content of the Order

6. This Order provides that where a member of the PIRC's investigations staff is exercising the powers and privileges of a constable, Part 1 of the 2016 Act applies to that member as if the power were exercised by a constable of the Police Service of Scotland. This ensures that the powers and duties in Part 1 apply to PIRC criminal investigations as they apply to other criminal investigations.

7. The Order also makes a number of modifications of Part 1 as it applies to PIRC staff. These are mainly concerned with ensuring that where a provision in Part 1 relies on the rank structure within the Police Service, that provision, in its application to PIRC staff, takes account of the different hierarchical structure within the PIRC.

Impact Assessment

8. No business or equality assessment is required for this Order. Those assessments were provided for the Criminal Justice (Scotland) Act 2016 and are not required for this Order, which simply extends the provisions to cover PIRC investigations into persons serving with the police and ensure police officers subject to PIRC investigations into alleged criminality are provided with the same safeguards as members of the public.

Financial Effects

9. Any financial impacts will be very minimal with no impact on funding.

Directorate for Safer Communities
November 2017