

EXPLANATORY NOTES

Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025 (asp 5)

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POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section, does not seem to require any explanation or comment, none is given.

THE ACT – BACKGROUND AND OVERVIEW

3. The Act implements some of the recommendations contained in the work *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing* by Elish Angiolini, published in November 2020 ("the Angiolini Review")[1], having been jointly commissioned by the Scottish Government and the Lord Advocate. Although the majority of recommendations have been accepted in their entirety, only a limited number, which cannot be taken forward exclusively by the extensive existing powers to make secondary legislation or by non-legislative means and which therefore require primary legislation, are implemented by the Act.

4. The Act makes provision about the ethical standards of the Police Service of Scotland, the vetting of police staff and constables, procedures for dealing with, and the consequences of, certain conduct by constables, and how policing in Scotland is scrutinised. The following expressions are used throughout these Notes:

- The "2006 Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006;
- The "2012 Act" means the Police and Fire Reform (Scotland) Act 2012;
- The "2013 Conduct Regulations" means the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 made under the 2012 Act;
- The "2014 Conduct Regulations" means the Police Service of Scotland (Conduct) Regulations 2014 made under the 2012 Act;
- The "Conduct Regulations" means the 2013 Conduct Regulations and the 2014 Conduct Regulations collectively;

[1] Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (Angiolini, 2020)

- "Police Scotland" means the Police Service of Scotland, established by the 2012 Act, which is the single police constabulary for the whole of Scotland;
- "Constable" means an individual who holds the office of constable and forms part of the Police Service of Scotland;
- The "Chief Constable" means the individual office holder with the responsibility for the policing of Scotland, established by the 2012 Act;
- The "SPA" means the Scottish Police Authority, a body corporate with various functions in relation to the Police Service of Scotland, including maintaining it, established initially by the 2006 Act and, in its current form, by the 2012 Act;
- The "PIRC" means the Police Investigations and Review Commissioner, an individual office holder responsible for scrutinising Police Scotland, established by the 2012 Act;
- "HMICS" means His Majesty's Inspectorate of Constabulary in Scotland, an independent scrutiny body, recognised by the 2012 Act, which gave it wide ranging powers to look into the "state, effectiveness and efficiency" of both Police Scotland and SPA. Has a statutory duty to ensure that the Chief Constable and the SPA meet their obligations in terms of best value and continuous improvement;
- "misconduct" is a breach of the standards of professional behaviour;
- "disciplinary proceedings" mean proceedings (including any investigation) in respect of alleged misconduct under regulations made under section 48 of the 2012 Act;
- "senior officer" means a constable who holds the office of chief constable, deputy chief constable or assistant chief constable;
- "vetting" is an assessment as to a person's suitability, having regard to the person's character and personal circumstances, to hold a particular office or role or employment. It is defined more particularly with reference to constables and police staff in the provisions of the Act which refer to it, discussed below.

5. The Act is an entirely amending act. It operates on two Acts of the Scottish Parliament: the 2006 Act and the 2012 Act.

6. The 2012 Act reformed the law of policing in Scotland in a pronounced way by establishing a single police force for the entirety of the country, Police Scotland. In chapter 1 of Part 1, it sets up the SPA to maintain etc. the Police Service of Scotland, which is how Police Scotland is referred to in the legislation. Police Scotland is itself established by section 6 of the 2012 Act. It is a single constabulary comprising a chief constable and a number of other senior and non-senior officers. It does not have legal personality. The chief constable's responsibility for the policing of Scotland is set out in section 17 of the 2012 Act.

7. The 2006 Act set up the scrutiny and oversight of the previous policing arrangements (multiple regional police forces), including an office called the Police Complaints Commissioner for Scotland. When a single force for the whole of Scotland was set up by the

2012 Act, changes were also required to the scrutiny and oversight arrangements. The 2012 Act amended the 2006 Act. It renamed the existing complaints commissioner to the PIRC, placed a number of requirements on the SPA and the chief constable in terms of dealing with complaints against the police, and set out the general functions of the PIRC, which are to:

- ensure that the SPA and the chief constable have suitable arrangements for the handling of complaints about the police,
- investigate offences by the police and deaths involving police, when directed to do so by the Lord Advocate or a procurator fiscal,
- investigate and report on deaths, serious injuries or firearms incidents involving police,
- investigate other police-related matters in the public interest.

8. The Act amends those two Acts and the Conduct Regulations made under them. The 23 sections of the Act are organised under italic cross-headings:

- The second – *Ethics of the police* – gives legal recognition to a code of ethics for the police and a duty of candour on individual constables (through amendments to the 2012 Act),
- The third – *Police vetting* – requires a code of practice for the vetting of police staff and constables and, in respect of constables only, requires regulations to be made which provide for constables to be re-vetted on an ongoing basis and with cause and for dismissal, if unable to maintain vetting.
- The fourth – *Police conduct* – amends the 2012 Act in respect of liability for unlawful conduct of the chief constable, and enables future changes to be made to the regulatory regime of disciplinary procedures and consequences for misconduct. These changes relate to the role of the PIRC in those procedures, and how those procedures deal with senior officers and former officers,
- The fifth – *Functions of the Police Investigations and Review Commissioner* – makes changes in respect of the functions of the PIRC, adding to them and seeking to clarify certain issues identified in the Angiolini Review (through amendments to the 2006 Act),
- The sixth – *Governance of the Police Investigations and Review Commissioner* – makes provision for an advisory board (through amendments to the 2006 Act).

THE ACT – GENERAL INTERPRETATIVE MATTERS

Crown Application

9. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. This Act applies to the Crown in the same way as it applies to everyone else. The Act makes no change to the application to the Crown of the enactments that it amends.

Interpretation

10. The Act's freestanding text, that is its sections, are interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

11. Text that the Act inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. Accordingly—

- text inserted into 2006 Act must be interpreted in accordance with the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, and
- text inserted into the 2012 Act, or the Conduct Regulations, must be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.

THE ACT – SECTION BY SECTION

References to Acts

Section 1: Meaning of "2006 Act" and "2012 Act"

12. Section 1 of the Act provides that, in the Act, the "2006 Act" means the Police, Public Order and Criminal Justice (Scotland) Act 2006 and the "2012 Act" means the Police and Fire Reform (Scotland) Act 2012.

Ethics of the police

13. All of the provision under this cross-heading concerns the ethics of the police and amends the 2012 Act.

14. There are several sources of ethics of Police Scotland. Firstly, there are the policing principles. By section 17(4) of the 2012 Act, the chief constable must seek to ensure that the policing of Scotland is done with due regard to the policing principles. By section 2(1)(b) of the 2012 Act, the SPA has, as one of its functions, the promotion of the policing principles. The policing principles are set out in section 32 of that Act. They set out, at a high level of generality, the main purpose of policing and how the Police Service of Scotland should seek to achieve that aim.

15. Secondly, there is the constable's declaration. The constable's declaration and its effect is set out in section 10 of the 2012 Act. The existing wording is as follows: *"I, do solemnly, sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable with fairness, integrity, diligence and impartiality, and that I will uphold fundamental human rights and accord equal respect to all people, according to law."*

16. Thirdly, there are the standards of professional behaviour. Section 52(2)(a)(i) of the 2012 Act gives the Scottish Ministers a power to set out in regulations standards of behaviour which, if breached, may be treated as misconduct. The standards of professional behaviour are found in schedule 1 of the Conduct Regulations. There are ten headings in total. A breach of the standards is not a criminal or a civil wrong, but may constitute a breach of a public law duty (in *AB v A Chief Constable* [2014] EWHC 1965 (QB), it was decided, in respect of the

equivalent professional standards in England and Wales that, given they are made pursuant to statute, they form the basis of a series of public law duties imposed on all police officers[2]). A breach of the standards can lead to a finding of misconduct, but does not necessarily do so.

17. Fourthly, there is the code of ethics. A code of ethics is a type of code of conduct. It particularly relates to conduct which engages ethical standards. The Code of Ethics for Policing in Scotland is currently a non-statutory code, which sets out, in a non-binding way, the standards of those who contribute to policing in Scotland. It is produced by Police Scotland voluntarily but is well known about, both within policing and by the public, and is publicly available on the Police Scotland website[3].

Section 2: Code of ethics

18. Section 2 of the Act establishes a statutory code of ethics for Police Scotland (recommendation 1 of the Angiolini Review). References in this discussion to "the Code" are to the new statutory code. As explained above at paragraph 17, there has historically been a code of ethics for policing in Scotland, which has existed entirely outside of the statutory framework. Whilst it is envisaged that the Code will build on the existing non-statutory code in terms of its content and the role that it plays, that is not required by the provision.

19. The Code will not have any particular legal effect. A failure to comply with the Code will not of itself give rise to grounds for any legal action. Neither will a breach necessarily constitute misconduct, which will continue to be measured by the standards of professional behaviour alone.

20. The Code is established by inserting a new chapter, chapter 4A, into the 2012 Act, consisting of two sections, 36A and 36B, and a schedule 2ZA. Section 36A is concerned with the substance of the Code and the duties around it, while section 36B is concerned with the procedural aspects of the preparation and revision of the Code.

21. Inserted section 36A(1) requires the chief constable to prepare a code as soon as reasonably practicable. Subsection (2) provides that the Code sets out the Police's values and the expectation of its constables and staff. Subsection (4) requires the chief constable to have regard to certain sources of police ethics when preparing the Code. This guides the chief constable as to the content and purpose of the Code and also makes clear that the Code stands alongside and builds on the standards of behaviour etc. The first two of the sources (the policing principles and standards of behaviour) are elements of the existing statutory regime and the requirement to have regard to them ensures that the Code is woven into the existing legal context in a cohesive way. The third is a code of ethics emanating from the Council of Europe. The fourth and fifth are sources of international standards in police ethics emanating from the UN. The sixth and seventh are rights which have been incorporated into Scottish law and the eighth source is rights that are contained in instruments which do not form part of domestic law but which the chief constable nonetheless considers to be relevant. The purpose is to ensure that the Code upholds and promotes human rights and international ethical standards and that policing practice is encouraged to also.

[2] *AB v A Chief Constable* [2014] EWHC 1965 (QB) per Cranston J at paragraph 69
[3] https://www.scotland.police.uk/about-us/who-we-are/code-of-ethics-for-policing-in-scotland/

22. The chief constable must involve the SPA in the preparation of the Code and the SPA must provide the chief constable with such assistance as the chief constable may reasonably require in that regard (section 36A(3)). This is a model of collaboration which already exists between the two elsewhere under the 2012 Act (see section 34(4) in respect of the strategic police plan for example).

23. Once prepared, section 36A(5) provides that the chief constable must maintain the practice of making the Code freely available to the public on Police Scotland's website and must also lodge a copy with the Scottish Parliament so it can be brought to the attention of MSPs. The chief constable may also publish the Code in any other way the chief constable sees fit. Finally, in order to try to ensure that every constable and member of police staff is familiar with the Code's contents, the chief constable must take all necessary steps to ensure they have done so and a record must be kept of the steps.

24. Inserted section 36B requires the chief constable to consult on the draft code with certain people and organisations. The list is set out in a schedule, which can be changed by regulations made by the Scottish Ministers. Those regulations are subject to the affirmative procedure[4], by virtue of the amendment to section 125 of the 2012 Act made by section 2(5) of the Act. The list is designed to include those with relevant knowledge or expertise, including staff networks that represent particular minority groups and representatives of those who have complained against the Police etc. to seek to ensure that regard is had to their perspectives. The chief constable may review the Code and must do so at least every five years, or if either the policing principles or the standards of behaviour (to which the code must have regard) changes substantially. This is to ensure that the Code keeps step with the other elements of the ethical context. Following such a review, the chief constable must either revise the Code or lay a statement before the Scottish Parliament as to why the Code does not need to be revised. If the chief constable does decide to revise the Code, the chief constable must consult and share a draft of the revised Code with the same listed persons as when preparing the first Code. A copy of the revised Code must be laid, alongside a statement which summarises representations made during consultation and, where any representation has not resulted in a revision, gives reasons for that.

25. Because section 2 of the Act places on the chief constable a new duty or responsibility, it also, in subsection (4), amends the list of responsibilities of the chief constable set out in section 17 of the 2012 Act.

26. The Code is also embedded in the same way as the policing principles are, by stating that the chief constable is required to seek to ensure that the policing of Scotland is done with due regard to the Code (subsection (4)(b) of section 2 of the Act). That ties in with the duty on the chief constable to ensure that the Code is read and understood by every constable.

27. The final way in which section 2 of the Act weaves the Code in to the existing legal framework is to add reference to it in the constable's declaration, such that each constable must make a commitment to follow the Code (subsection (3) of section 2 of the Act).

[4] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010

Section 3: Duty of candour

28. Section 3 of the Act contains changes designed to make explicit in the legislation that constables are under a duty of candour, including a duty to attend interviews and to cooperate with proceedings. The duty of candour on public servants to explain fully what has occurred and why is an established concept in judicial review proceedings and has been the subject of extended judicial comment (see the summary in *R (Citizens UK) v SSHD* [2018] EWCA Civ 1812 at paragraph 105 for example[5]). It is a duty to be candid: to act with transparency, honesty, and integrity in the disclosure of relevant information.

29. It is well established in police law and ethics that the standard of honesty and integrity is of central importance to policing. A breach of it in an operational context will usually constitute gross misconduct and lead to dismissal because dishonesty is seen as inimical to the office of constable (*Salter v Chief Constable of Dorset Police* [2012] EWCA Civ 1047[6]).

30. Dame Elish Angiolini expressed in the Review her opinion that police officers are already under an implied duty to assist (paragraph 7.106) and recommended that the duty of candour be made explicit (recommendation 10). She also recommended that the duty of cooperation be added to the Conduct Regulations (recommendation 12). The Act implements these recommendations through several techniques, which each have a different legal effect and which cumulatively make the central importance of the duty clear.

31. The Act makes no provision as to the legal effect, enforcement or sanction of the duty of candour, except in relation to findings of misconduct, explained further below. As is clear from the way in which the duty is expressed and implemented, it is subject to the specific protections of the general law, which includes the right to silence and the privilege against self-incrimination.

32. The first way in which the duty is recognised is through an amendment to the constable's declaration. Subsection (2) of section 3 of the Act amends section 10(1) of the 2012 Act to insert into the wording of the declaration (set out above at paragraph 15) the quality of candour, after fairness and before integrity.

33. The second way in which the duty is recognised is through adding to the policing principles a principle that Police Scotland should be candid and co-operative with proceedings, including all investigations (subsection (3) of section 3 of the Act). By requiring the Police Service to be candid, the Act pleads into the duty of candour, which has an established legal meaning and which imports a body of caselaw etc. The reference to being co-operative in investigations places an explicit duty of candour on the police to co-operate fully with all investigations into allegations, whether made against its officers, staff or others. By amending the policing principles to make reference to the duty of candour and cooperation in this way, the chief constable and SPA will be required to embed the change in culture and ethos in a practical way, in order that the following duties can be fulfilled:

- Police Scotland is required to be candid and cooperative in proceedings, including all investigations.

[5] R (Citizens UK) v SSHD [2018] EWCA Civ 1812
[6] Salter v Chief Constable of Dorset Police [2012] EWCA Civ 1047

- A duty is placed on the chief constable to seek to ensure that the policing of Scotland is done with due regard to the principle that Police Scotland should be candid and cooperative in proceedings, and
- A duty is placed on the SPA to promote the principle that the Police Service should be candid and cooperative in proceedings.

34. The third way in which the duty of candour is incorporated is to directly amend the standards of professional behaviour. This is done in subsections (4) and (5) of section 3 of the Act. The standards of professional behaviour are set out in a schedule to each of the two sets of Conduct Regulations. They are identical for all ranks of constable. The legal effect of the standards has been discussed above at paragraph 18. Given the emphasis in the Review on the importance and centrality of the duty of candour, an entirely new standard called "Candour" is created. The duty of candour is located in a separate standard rather than subsumed within another pre-existing standard because the requirement to assist in investigations is not the same as following any other duty or order but is of a different, more serious and more fundamental nature. It also allows for the possibility that a body of learning and law will develop specifically around the standard of candour, which is more likely to engender the sort of organisational change that is intended than if the duty was subsumed within another pre-existing standard. It also allows the development of an approach which treats a breach of the standard of candour as automatically a more serious sort of misconduct than a breach of the other standards, as has happened with the standard of honesty and integrity. The standard consists of two subsets: the first sets out some detail about what is required by way of candour generally; and the second sets out the specific expectations in the context of investigations etc. While the duty of candour is, in every place it appears in the Act, impliedly subject to the specific protections of the general law, in the particular context of the standards of professional behaviour (which are addressed to individual constables), the duty is expressly said to be subject to the reasonable assertion of the privilege against self-incrimination. This is so individual constables can be in no doubt that they are entitled to rely on the privilege if the circumstances are such that the privilege arises.

Police vetting

35. Vetting is an assessment as to a person's suitability, having regard to the person's character and personal circumstances, to hold a particular office or role or employment. Someone can fail vetting checks, not because they have done anything wrong or because they are deficient in some way, but because there is something about their circumstances that is not suited to the person being a constable or a member of police staff, such as a family member being connected to someone in organised crime, or the person being heavily in debt.

36. Police Scotland has non-statutory vetting practices in place which are undertaken in line with a non-statutory manual of guidance. The 2012 Act requires that constables are to hold and vacate office as set out in legislation but there is currently no legislative provision for vetting. Accordingly, if a person cannot meet the current non-statutory vetting requirements, that person cannot be dismissed, albeit if the situation that led to them fail vetting was conduct otherwise amounting to a breach of the standards of professional behaviour, then they could be dismissed for misconduct. Therefore, if there is to be the possibility of dismissal for a failure of vetting (for example, in response to matters that leave a constable open to corruption but would not amount to misconduct, like associations with criminals, or unmanaged debt), that requires to be set out in legislation. The Act provides for such a possibility.

37. This gap was identified by the HMICS assurance review of vetting within Police Scotland[7], published on 3 October 2023, which made a recommendation to place into legislation provision for both constables and staff in three different respects: requirements to obtain and to maintain a minimum standard of vetting clearance, and a power for the Chief Constable to dismiss for a failure of vetting.

38. The gap was also identified by the Criminal Justice Committee at Stage 1 of the Bill, who recommended that the Bill should include a power for the Chief Constable to remove someone who is unable to maintain their vetting.

39. There have also been developments in respect of vetting in the wider UK context. On 29 February 2024, Lady Elish Angiolini published her report[8] into the murder of Sarah Everard by serving Met Police Officer Wayne Couzens, commissioned by the then UK Home Secretary in November 2021. In it, she expressed concerns about a lack of periodic re-vetting in England and Wales and, although the recommendations are for police forces in England and Wales, they are also relevant to Police Scotland.

40. The Home Office has published a Vetting Code of Practice and is currently considering vetting regulations for England and Wales, which focus on providing the power to dismiss police officers who are unable to maintain vetting.

41. The Act places vetting on a statutory footing. It requires three things:

- A statutory Vetting Code of Practice to be developed for constables and police staff;
- Regulations to be developed for constables only, which must include the power for the chief constable to dismiss a constable who is unable to maintain vetting; and
- The addition to the barred list of a constable who is dismissed for failing vetting.

42. It treats constables and police staff differently to each other in some respects, reflecting the different legal underpinnings of each. Police constables are 'office holders' and their conditions are set out in regulations under the 2012 Act, which also set out the reasons for which they can be dismissed. In contrast, police staff are employees and are bound by employment law and their contractual terms and conditions. They are employed by the SPA, who therefore have a power of dismissal under general employment law but, under section 21(3) of the 2012 Act, they are under the direction and control of the chief constable. This direction and control is reflected elsewhere, such as in section 17(3) of the 2012 Act, which says that the chief constable must, when directing constables, police cadets and police staff in the carrying out of their functions, comply with any lawful instruction given by various bodies. The chief constable also has a power to dismiss police staff. A dismissal for a failure to achieve or maintain vetting is a potentially fair reason for dismissal in terms of general employment law.

43. Accordingly, in respect of constables, the legal authority to dismiss etc. must come from the regulations, with the Code fleshing out and supplementing things that are set out in the regulations in respect of constables. In respect of police staff, the power to dismiss etc. already exists and the Code will set out how it is to be exercised in respect of vetting.

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[7] https://www.hmics.scot/media/j31bevpb/hmics20231003pub-assurance-review-of-vetting-policy-and-procedures-within-police-scotland.pdf

[8] The Angiolini Inquiry – Part 1 Report

44. The Act's provision is exclusively concerned with ongoing vetting, after a person has been employed/appointed. It is not concerned with recruitment vetting, which is regulated entirely separately.

Section 4: Vetting code of practice

45. Section 4 of the Act amends the 2012 Act, by inserting into it a new chapter, Chapter 4B Vetting Code of Practice, which consists of two sections: sections 36C and 36D. Section 36C requires the chief constable to develop a statutory code for vetting to be known as the vetting code of practice (subsection (1)) and defines vetting with respect to both constables and police staff (subsection (3).

46. Subsection (2) of section 36C sets out the sequencing of the Code (which applies to police staff and, in some respects, to both police staff and constables) and the regulations (which apply to constables only). This is necessary because, as secondary legislation, the regulations must take precedence over the Code (which is set out for the avoidance of doubt in subsection (8)) and because, in respect of constables, it will be the regulations that set out the essentials of the vetting regime, on which the Code will build. Therefore, subsection (2) provides that, while the Code must be prepared as soon as practicable after section 4 of the Act comes into force, the chief constable is not to begin consultation in respect of the Code until the chief constable has seen the content of the draft vetting regulations (so the chief constable can, before the a draft of the Code is shared, be sure that it is consistent with the regulations). Finally, the Code will not have effect until the regulations come into force, ensuring that the underlying framework of vetting procedures for constables is in force before the Code comes into effect to add flesh to that framework.

47. Subsection (3) defines vetting for the purposes of the Code: it is an assessment as to a person's suitability, having regard to the person's character and personal circumstances, in respect of constables, to hold the office or a particular rank or role and, in respect of police staff, to be a member of staff or to hold a particular role. The reference to suitability for the particular role indicates that vetting checks, and the outcomes that result, should be tailored to the particular circumstances. It is not expected that police staff in lower grade roles without access to sensitive information will have to comply with the same regime or be subject to the same sanctions as a member of staff whose privileges and powers are akin to a constable.

48. Subsection (4) sets out mandatory requirements of the Code in respect of police staff (the things that must be set out in respect of constables will be in regulations and so this provision applies only to staff). The Code must provide for periodic vetting and for vetting if a reason to do so arises. It must also provide for the circumstances in which staff will be subjected to a particular outcome following vetting, including complying with conditions, redeployment, demotion and dismissal (with or without notice). It will not be proportionate to dismiss a member of staff who has undergone vetting if a lesser sanction would suffice to meet the risk. Subsection (4)(b)(iv) requires the Code to provide for either dismissal with notice or dismissal without notice and it allows the Code to provide for both. It does not require both dismissal with notice and dismissal without notice.

49. Subsection (5) requires that provision in the Code about the vetting of constables and police staff must include provision about the types of evidence required to demonstrate that the person is not suitable for their role etc. There are many types of evidence, including direct, circumstantial, documentary, statistical, physical, and testimonial evidence. The provision does not set any minimum requirements or limits as the type of evidence that can be so required, so it is of limited practical effect.

50. Subsection (6) applies to both constables and police staff and requires the Code to include provision for written reasons to be provided if a person is required to comply with conditions, or is redeployed, demoted or dismissed. Reasons for a decision of that nature would typically be provided in writing anyway and the provision does not set any particular requirement as to the adequacy of reasons, so it is of limited practical effect.

51. Subsection (7) applies to both constables and police staff. It sets out things which the Code may, *in particular*, do. The Code can make provision about anything that the chief constable would have power to make provision about, whether on the list or not. The list removes any doubt that might exist about particular things. Provision made under subsection (7) will flesh out what is set out in the Code for staff under subsection (4) and set out in regulations for constables. Such provision may include the frequency of vetting of a person (subject to the provision in regulations which makes provision for the minimum frequency of vetting of individual constables), the circumstances in which with-cause vetting will occur, different categories of vetting, and steps that may be taken upon the disclosure of certain information. In addition to providing for what the non-exhaustive list in subsection (7) sets out, it is expected that the Code will set out many additional details including appeal processes, support for individual members of staff and procedural safeguards, and will cross-refer to other policies and processes.

52. Subsection (9) allows the chief constables to prepare more than one vetting code of practice to make provision for different categories of person, roles or other purposes. Given that there is a wide variety of roles that staff can perform, not all of which carry the same risk, the vetting regime for staff will not be the same in every respect for all staff and the regime for at least some staff will look different to that for constables.

53. Whilst the duty to prepare the Code lies with the chief constable, there is a duty to involve the SPA in the preparation of the Code and the SPA must assist the chief constable (subsection (10)). This reflects the role that both have in respect of the direction of police staff in particular. It is a model of working together that already exists under the 2012 Act (see section 34(4) in respect of the strategic police plan for example) and which is also set out for the Code of Ethics (discussed above).

54. The Code must be published on a website and laid before the Scottish Parliament (subsection (11)).

55. Section 36D relates to the preparation and revision of the Code. The Code must be consulted on with the organisations and representative bodies listed in subsection (1) and any representations made must be considered. The chief constable must review the Code at least once every five years, ensuring it is current and up to date (subsection (2)).

Section 5: Procedures for vetting

56. Section 5 relates to constables only. As explained, constables are office holders. They are mainly regulated by the 2012 Act, section 12 of which provides that a constable is to hold and vacate office in accordance with regulations made under section 48 of the 2012 Act, or any other enactment which makes provision in that regard. Section 48 requires the Scottish Ministers to make regulations as to the governance, administration and conditions of service of constables and cadets. This very wide power is limited as provided for in sections 49 to 53 of the 2012 Act, each of which is concerned with one or more particular topics.

57. Of the provisions dealing with limitations in respect of particular topics, section 52 of the 2012 Act is concerned with disciplinary procedures. For the most part, the ways that constables can be vacated from office are contained in the current regulations relating to conduct and performance, made under section 52 of the 2012 Act, read with section 48.

58. Section 5 of the Act inserts a new section 50A, Ongoing vetting, into the run of sections detailing how the regulation-making powers under section 48 should be used. Section 50A requires the Scottish Ministers to prepare and lay regulations for the ongoing vetting of constables so as to require a vetting regime that ensures that police constables are re-vetted on an ongoing basis and that provides for dismissal in appropriate cases. Subsection (3) defines vetting for this purpose as, "an assessment as to a constable's suitability, having regard, insofar as they relate to the ethical standards and behaviour expected of constables, to the constable's character and personal circumstances, to hold the office of constable or a particular rank or role". This makes clear that vetting can be tailored to the particular professional circumstances of the constable. The reference to rank does not require there to be vetting on promotion.

59. Subsection (1)(a) requires regulations to provide that constables are to undergo vetting periodically and if a reason to do so arises. Currently, constables can undergo vetting, but they cannot be dismissed directly from failing vetting, as there are no regulations allowing for dismissal following vetting. Section 50A(1)(b) requires the regulations to set out the circumstances in which a constable may be dismissed (with or without notice) or demoted, following vetting. Paragraph (b) does not require the regulation to provide for dismissal both with and without notice but gives the power to provide for either of them and requires that, if either of them is to be a possible outcome, the regulations must set out the circumstances in which it may apply.

60. Subsection (2) sets out provision that may be (but is not required to be) set out in regulations. It gives the power to set out certain things in the regulations but the regulations can make provision about anything that the chief constable would have power to make provision about, whether on the list or not. The purpose of the list is not to list exhaustively everything but to remove any doubt that might exist about particular things. Such provision may include circumstances in which a constable must undergo vetting, other than periodically or with cause, such as upon application for a particular role. It would also allow vetting on promotion, should that be wanted. They may also make provision for the process to be followed in the carrying out of vetting, a minimum frequency for the vetting of individual constables and for vetting to be the responsibility of a particular position. The regulations may provide for duties on constables to disclose changes in circumstances (whether personal (expressly mentioned) or professional (unnecessary to expressly mention because it is obvious that such regulations may provide for duties to disclose changes in professional circumstances)) and to cooperate with vetting. The regulations may (but do not have to) provide for circumstances in which a constable who has undergone vetting is to be required to comply with conditions, such as to move away from a particular role or location, and such conditions may be as to the constable's personal circumstances, as well as professional. Regulations may also provide for circumstances in which a constable may be redeployed. They may provide for appeals against outcome. They may provide that, pending the completion of vetting or an appeal, a constable may be required to comply with conditions, suspended or redeployed. Finally, the provision expressly provides the power for the regulations to set out what is to happen if something which is at issue in a constable's vetting is, or is potentially, the subject of criminal proceedings or misconduct proceedings.

61. As regulations made under section 48 of the 2012 Act, the ongoing vetting regulations must be consulted upon as set out in section 54. Section 54(2) requires mandatory consultation on draft regulations with the chief constable, the SPA, the joint central committee of the Police Federation for Scotland, and groups/organisations representative of various ranks of constable. The Scottish Ministers must consider any representations made by these persons/groups. There are therefore arrangements already in place for this mandatory consultation on section 48 regulations. In effect the Scottish Police Consultative Forum ("SPCF") provides a space for engagement and meeting the mandatory consultation requirements on draft regulations that are set out above. The SPCF meets regularly throughout the year.

62. By virtue of section 125 of the 2012 Act, section 48 regulations are subject to the negative procedure.

Police conduct

63. All of the provision under this cross-heading is concerned with procedures for dealing with, and the consequences of, certain conduct on behalf of police constables and amends the 2012 Act.

Section 6: Liability of the Scottish Police Authority for unlawful conduct of the chief constable

64. This provision is to address a possible gap in the legislation about the consequences of certain conduct. It provides for the SPA to have liability for any unlawful conduct on the part of the chief constable in the carrying out of the chief constable's functions. It aligns the treatment of unlawful conduct by the chief constable with the existing treatment of unlawful conduct by other constables by section 24(1) of the 2012 Act, which provides for the chief constable to be liable for the unlawful conduct of constables.

65. Section 6 of the Act inserts in to section 24 of the 2012 Act a new subsection (3A). The provision in new subsection (3A) follows the model of section 24(1). Subsection (4) of section 24 of the 2012 Act is amended to capture new subsection (3A) such that, in the event that the office of chief constable is empty, the SPA will be liable for whoever is acting as chief constable. No provision cognate to subsection (3) is required because the SPA will have all of the usual obligations to pay that flow from being liable.

Misconduct procedures

66. Chapter 8 of the 2012 Act is concerned with the governance and administration of police. Section 48 requires the Scottish Ministers to make regulations as to the governance, administration and conditions of service of constables and cadets. This very wide power is limited as provided for in sections 49 to 53 of the 2012 Act, each of which is concerned with one or more particular topics.

67. Of the provisions dealing with limitations in respect of particular topics, section 52 of the 2012 Act is concerned with disciplinary procedures. Subsection (1) requires regulations to establish procedures for dealing with a constable whose standard of behaviour or performance is unsatisfactory. Subsection (2) goes on to set the limits of the disciplinary procedures that may be set up. When reviewed as a whole, section 52 is concerned with disciplinary procedures

for both conduct and performance but some provision deals with conduct only. It provides for two strands of regulation which makes separate provision for each, albeit that provision is often identical:

- Conduct, the expectations in relation to which are set by standards of behaviour, breach of which constitutes misconduct; and
- Performance, the expectations in relation to which are set by standards of performance, breach of which constitutes unsatisfactory performance.

68. This is borne out in the way that regulations have in fact been made under section 48 of the 2012 Act: there are two sets of regulations for each of senior and other officers, one dealing with performance and one dealing with conduct. There is separate guidance for each type of procedure.

69. The Act does not seek to make changes in respect of the procedures for unsatisfactory performance but only in respect of procedures for misconduct.

70. The Conduct Regulations set out procedures by which allegations are preliminarily assessed to determine if they are capable of amounting to misconduct, gross misconduct or neither. At that point, there is a choice whether to investigate or not. If the decision is made not to investigate, then no further action or improvement action can be taken. If the decision is made to investigate, an investigator is appointed and notice is given to the constable, who is interviewed. Upon the investigator's report being submitted, a further decision is required as to whether there is a case to answer as to misconduct or gross misconduct and only then is the decision made to refer the allegation to misconduct proceedings for determination. In the Conduct Regulations, misconduct proceedings mean specifically a misconduct meeting or a misconduct hearing, that is, a type of proceeding to decide the facts and determine sanction.

Section 7: Procedures for misconduct: functions of the Police Investigations and Review Commissioner

71. Section 7 of the Act amends paragraph (d) of section 52(2). As it stands, paragraph (d) limits what functions can be conferred on the PIRC to those which are in relation to investigations of whether a constable has been engaged in misconduct. In order to allow the PIRC to be given more extensive functions in relation to disciplinary procedures in future, such as the preliminary assessment of allegations, section 7 removes that limit. It replaces it with wording which will allow the PIRC to have functions in relation to any aspect of the regulatory disciplinary procedures, not just investigations.

Section 8: Procedures for misconduct: former constables

72. The amendments to section 52 contained in section 8 of the Act are to prevent a constable from being able to avoid disciplinary procedures for conduct and findings of gross misconduct and sanction by resigning. Whilst a constable's resignation cannot be prevented, section 6 enables those procedures to be applied to a constable who has ceased to be a constable.

73. By inserting into section 52(2) the power contained in paragraph (f), the Scottish Ministers are enabled to apply the procedures for misconduct to a person who has ceased to be a constable. A new regulatory scheme is intended which will set out the detail of how this will operate in practice and which will dovetail with existing procedures. Some requirements about how the power to regulate is to be exercised are set out in a new subsection inserted into section 52: subsection (2A). Only the more serious cases of misconduct by an ex-constable can be subjected to the procedures: no investigation may take place unless the person is alleged to

have engaged in behaviour which would amount to gross misconduct (subsection (2A)(a)(i)). As set out in paragraph 44 above, under the current procedures for misconduct, every allegation is subjected to a preliminary assessment, which determines if it is capable of amounting to gross misconduct. Only after that preliminary assessment is the decision made whether to investigate the allegation and only after the investigation is the allegation potentially subjected to the determination described in the Conduct Regulations as "misconduct proceedings". Gross misconduct is defined in regulation 2 of the 2014 Conduct Regulations and regulation 2 of the 2013 Conduct Regulations: a breach of the standards of professional behaviour so serious that demotion in rank or dismissal may be justified. The definition of gross misconduct in new subsection (5) of section 52 is the same definition.

74. The preliminary assessment referred to above, by which the seriousness of an allegation against a constable is assessed in advance of the full fact-finding process, takes place pursuant to regulation 10 of the 2014 Conduct Regulations and regulation 8 of the 2013 Senior Officer Conduct Regulations 2013. It is the outcome of that preliminary assessment which will determine whether the conduct alleged is such as to allow the procedures to be applied.

75. Once a determination has been made at the preliminary assessment that the allegation consists of behaviour which would amount to gross misconduct, the person must be given notice of the fact that the procedures may be applied to the person even if they cease to be constable (subsection (2A)(a)(ii)).

76. There is no existing mechanism in the regulatory regime for a decision, after such a fact-finding process has been held, as to how a former constable would have been dealt with, had the constable remained in post. Such a decision is necessary to the operation of the police barred and advisory lists (established under section 59A, inserted by section 9) and so subsection (2A)(a)(iii) requires the regulations to provide for such a decision to be made.

77. In order to prevent stale allegations from being pursued against former constables, the regulations must state a period of time, not exceeding one year from the date of resignation, after which no steps or only certain steps in the procedures can be applied unless additional criteria are met (subsection (2A)(b)) It may be, for example, that an investigation into an allegation can take place at any time but that no misconduct proceedings may be pursued to actually determine the allegations unless additional tests are met. These additional tests will be set out in the regulations but they will have to include that it would be in the public interest for the procedures to apply (subsection (2B)).

78. Because these amendments allow the procedures to be applied to those who have ceased to be constables, it is necessary to refer to them in other places in the 2012 Act where it is intended to cover former constables (new subsection (3)(b) of section 52 of the 2012 Act (inserted by section 10(2) of the Act) and new subsection (2A) of section 56 of the 2012 Act) (inserted by section 3(b) of the Act)).

Section 9: Scottish police advisory list and Scottish police barred list

79. The police barred and advisory lists aim to provide information as to officers who are subject to disciplinary procedures for misconduct or who have been dismissed or would have been dismissed had they still been in office. Their creation will bring Scotland into line with England and Wales and provide a consistent approach across jurisdictions in Great Britain. The Act provides that the SPA must establish and maintain a Scottish police barred list and a Scottish police advisory list, with powers allowing the Scottish Minsters to make provision in regulations in respect of those lists.

80. Section 9 inserts a new chapter 9A, and new section 59A, into Part 1 of the 2012 Act, after the provision about the police appeals tribunal. New section 59A makes some provision about the lists on the face of the 2012 Act, and provides for the rest to be made in regulations.

81. The duty to establish and maintain the lists is placed on the SPA by section 59A(1) (although the regulations make provision for the circumstances in which the SPA can delegate those functions (section 59A(5)(h)). The circumstances in which the SPA must enter the person on the advisory list are set out in section 59A(2) and (3), and on the barred list in subsection (4).

82. Subsections (2)(a) and (3) of inserted section 59A require a person to be entered on the advisory list if disciplinary proceedings have been brought against the person for gross misconduct and the person ceases to be a constable (whether through resignation, retirement or dismissal for performance) before those proceedings are concluded. Subsection (2)(b) requires a person to be entered on the advisory list if, after the person has ceased to be a constable, disciplinary proceedings are brought against the person for gross misconduct. In either case, it will be possible for regulations under subsection (5) to provide for the person to be removed from the advisory list when the proceedings conclude and to be added to the barred list (if the requirements of subsection (4) are met).

83. Subsection (4) of inserted section 59A requires a person to be added to the barred list if the person is dismissed as a constable for gross misconduct, or a decision is made in disciplinary proceedings for gross misconduct against a former constable that they would have been dismissed if still a constable at that time or they are dismissed as a constable after undergoing vetting.

84. Subsection (5) of inserted section 59A requires that certain persons consult the advisory and barred list before employing or appointing a person.

85. Subsection (10) of inserted section 59A explains what is meant by disciplinary proceedings in section 59A. These are proceedings for gross misconduct brought under the Conduct Regulations. Subsection (10) also provides that the proceedings are brought when the person who is the subject of them is notified of them. Under the current regulatory regime, this means that the giving of the notice of the investigation would be the trigger for entry on to the advisory list.

86. The rest of the detail about the lists, and their effect, is to be made in regulations. Subsection (6) requires the regulations to provide for notice to be given to a person who is added to or removed from either list. Subsection (7) of inserted section 59A, each paragraph of which sets out something that the regulations are empowered to do, allows provision to be made about when someone is not to be entered onto or is to be removed from the lists. This includes making provision for the effect of being on the advisory list or the barred list and expressly includes the power to make provision preventing the employment or appointment of someone on the barred list by a person specified in the regulations. Subsection (7)(i) is a general catch-all to allow the regulations to make provision about other matters concerning the operation of the lists. Subsection (3) of section 9 of the Act amends section 125 of the 2012 Act to provide that regulations under section 59A are subject to the affirmative procedure[9]. Section 125(1) of the 2012 Act will enable the regulations to make different provision for different purposes (including different types or ranks of constable) and to include ancillary

[9] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010

provision. Subsection (9) of inserted section 59A requires the Scottish Ministers to consult the SPA, the chief constable, the joint central committee of the Police Federation for Scotland and such other persons as they consider appropriate before making regulations under subsection (7) to give full effect to the advisory and barred lists.

Section 10: Procedures for misconduct: senior officers

87. Subsection (2) of section 10 of the Act amends subsection (3) of section 52, which relates to senior officers only. Subsection (3) in its current form, in relation to both conduct and performance, requires that the SPA must determine the case against a senior officer. Subsection (3) is amended to instead enable regulations to provide for an independent (consisting of a mix of police and non-police members) panel to determine any conduct case against a senior officer, regardless of how serious the allegation. No change is made as regards performance cases.

88. Subsection (3) of section 10 of the Act makes changes to chapter 9 of the 2012 Act which concerns appeals to the police appeals tribunal. Section 56 (1) gives to all constables a right of appeal to a police appeals tribunal ("PAT") against any decision to dismiss or demote the constable. Subsection (3)(a) of section 10 of the Act inserts new subsection (1A) in to section 56. This gives to senior officers an additional right of appeal to the PAT, where the decision is less serious than demotion or dismissal. This change is necessitated by the future move to an independent panel determining all conduct cases against senior officers enabled by the change made by subsection (2) and discussed above. No such change is required in respect of non-senior officers. Subsection (3)(b) of section 10 of the Act inserts new subsection (2A) in to section 56 of the 2012 Act, to ensure that the provisions apply equally to a former senior officer. The position as regards to performance is unchanged.

Section 11: Review of policies, practices and guidance relating to misconduct

89. Section 11 of the Act requires the chief constable to carry out a review of the Police's misconduct policies, practices and guidance and to make such changes as the chief constable considers appropriate in light of the Code of Ethics. The time allowed for carrying out the review and making the appropriate changes does not start to run until section 11 comes into force. This means that it need not be triggered until after the new Code of Ethics has been prepared and published and the Conduct Regulations and associated policies, practices and guidance have been refreshed to reflect the changes made by the Act. This will allow the review to be of the most up to date materials. The time allowed to carry out the review is the period of one year and any changes identified must be made as soon as they reasonably can be after that.

Functions of the Police Investigations and Review Commissioner

90. All of the provision under this cross heading concerns the functions of the PIRC and amends the 2006 Act.

91. The PIRC was established by section 33 of the 2006 Act as the Police Complaints Commissioner for Scotland and was renamed the Police Investigations and Review Commissioner by section 61 of the 2012 Act, which also transformed the office in various other ways to respond to the need to scrutinise the newly formed Police Scotland. It provided for a new centralised approach to investigating significant matters and gave the PIRC an increased remit and powers. The PIRC is an office-holder and is independent of Police Scotland.

92. Section 60 of the 2012 Act places a number of requirements on the SPA and the chief constable in terms of dealing with relevant complaints, the definition of which is the same as in the 2006 Act, including a requirement to maintain suitable arrangements for the handling of relevant complaints.

93. Section 33A of the 2006 Act (inserted by section 62 of the 2012 Act) sets out the general functions of the PIRC, which relate to complaints concerning the police, the investigation of criminal offences and deaths involving persons serving with the police, the investigation of certain serious incidents involving the police, and the investigation of other matters that it would be in the public interest to investigate.

94. The phrase "person serving with the police" is defined in section 47 of the 2006 Act. Section 47 defines "a person serving with the police" as (a) a constable, (b) a member of the police staff or (c) a member of the SPA's staff.

95. Section 34 of the 2006 Act makes provision about "relevant complaints". Subsection (2) provides that a complaint is a statement expressing dissatisfaction about an act or omission by the SPA, the Police Service of Scotland or a person serving with the police. Subsections (1) and (6) provide that a relevant complaint is one made by a member of the public who claims (a) to be the person in relation to whom the act or omission took place, (b) to have been adversely affected by the act or omission, or (c) to have witnessed the act or omission.

96. The 2012 Act also inserted new sections 41A to 41F into the 2006 Act which describe in more detail the PIRC's powers, duties and functions.

Section 12: Investigations into matters involving persons serving with the police

97. Section 33A(b)(i) of the 2006 Act (general functions of the PIRC) requires the PIRC, when directed to do so by the Lord Advocate or a procurator fiscal, to investigate any circumstances in which there is an indication that a person serving with the police may have committed an offence. This provides for an investigation by someone who has no connection with the person who is the subject of the investigation.

98. Section 12 of the Act amends section 33A(b)(i) to clarify its application in relation to investigations into alleged criminality by constables or members of staff who have subsequently left the police.

99. Paragraph (a) amends section 33A to make clear the circumstances in which the PIRC can be directed to investigate circumstances in which an offence may have been committed by a person serving with the police. The amendment clarifies that the PIRC can investigate any circumstances involving someone who is, or has been, a person serving with the police. A currently-serving officer could be investigated for an offence allegedly committed either before or after they joined the force, and a former officer could be investigated for an offence allegedly committed before or after they joined the force, or after they retired. It also does not matter whether the person was on- or off-duty when the offence was allegedly committed.

100. Section 33A(b)(ii) of the 2006 Act requires the PIRC, when directed to do so by the Lord Advocate or a procurator fiscal, to investigate any circumstances of a death involving a person serving with the police which the procurator fiscal is required to investigate under section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016. Paragraph (b) of section 12 clarifies that the PIRC can be directed to investigate deaths

involving off-duty police officers. It adjusts section 33A(b)(ii) of the 2006 Act so to provide expressly that it does not matter whether the circumstances of the death occurred in the course of duty etc.

Section 13: Complaints made by persons serving with the police

101. Sections 34 to 41 of the 2006 Act are concerned with the PIRC's oversight of complaints made about the police. The PIRC's oversight functions relate only to "relevant complaints". A complaint can be made in any circumstances but it will not fall within the statutory complaints handling system or the PIRC's oversight function unless it is a relevant complaint as defined in section 34 of the 2006 Act.

102. Section 13 amends section 34 of the 2006 Act, which makes provision about "relevant complaints" for the purpose of Chapter 2 of Part 1 of that Act. Section 34 currently requires a relevant complaint to have been made by a "member of the public" (see section 34(6)). The Angiolini Review expressed doubt as to whether an off-duty constable would be treated as a "member of the public" for these purposes, i.e. whether a complaint made by the constable about events directly affecting the constable whilst off-duty would be a relevant complaint.

103. Section 13(1)(c) of the Act amends section 34(6) to provide that a complaint can be made by any person (including a person serving with the police). However, it also amends section 34(3) and inserts a new section 34(3A) to make provision about complaints by constables, or members of police staff, which are not to be treated as being "relevant complaints".

104. Section 34(3) of the 2006 Act sets out what is not a relevant complaint for these purposes. Section 13(1) amends it so that section 34(3)(aa) excludes from the meaning of "relevant complaint" any complaint made by currently-serving constables and staff about acts or omissions mentioned in new subsection (3A). Subsection (3A)(a) excludes complaints about an act or omission relating to, or adversely affecting, the person in their role as a constable or member of police staff from the meaning of "relevant complaint". Complaints about acts or omissions relating to, or adversely affecting, the person in their capacity as a private citizen are "relevant complaints" which can be reviewed by the PIRC.

105. Subsection (3A)(b) also excludes complaints by persons serving with the police about acts or omissions witnessed by them (but not directly affecting them) from the definition of a "relevant complaint".

106. The exclusion in subsection (3)(aa) does not apply to former constables or police staff although subsection (3)(a) (which is not amended by the Act) excludes complaints made by current or former constables or police staff about their terms and conditions from the definition of "relevant complaint".

107. Section 13(2) amends the title of section 34 to more accurately reflect its content.

Section 14: Complaint handling reviews

108. Section 35 of the 2006 Act makes provision about complaints handling reviews ("CHRs") carried out by the PIRC. A CHR can be carried out by the PIRC only on the request of the complainer or the appropriate authority in relation to the complaint (which is either the SPA or the chief constable – see section 41 of the 2006 Act). Section 35 currently requires the

PIRC to prepare a report following such a review and to set out the PIRC's proposed actions following the review, but it does not provide for the PIRC to make any recommendations to the authority about action the authority should take in relation to the complaint following the review.

109. Section 14 of the Act amends section 35. In paragraph (a), it inserts provision, at subsection (1A), to enable the PIRC to carry out a complaint handling review in the absence of a request made by the complainer or the appropriate authority, if it is in the public interest to do so, and, at subsection (1B), to require the Commissioner to notify the complainer of a decision to carry out a complaint handling review as soon as that can reasonably be done after the decision to carry out a review has been made.

110. It also, in paragraph (b), enables the PIRC to make recommendations in relation to the complaint in its report of the review. Where the PIRC makes such recommendations, new section 35(4A) and (4B) (inserted by paragraph (c)) requires the authority to respond to the PIRC, within the timescales set out in the report, setting out what the authority has done, or proposes to do, in response to the recommendations, or explaining why nothing is being done in response. The PIRC must, as soon as reasonably practicable, publish the response to its recommendations, subject to certain qualifications set out in subsection (4C).

Section 15: Call-in of relevant complaints

111. Section 35 of the 2006 Act enables the PIRC to review the handling of a relevant complaint, where requested to do so by the person who made the complaint, or the authority to which the complaint was made (i.e. the SPA or the chief constable). Under section 35(7), the PIRC can, following a CHR, direct that the complaint be reconsidered. However, there is no power for a complaint to be considered by the PIRC.

112. Section 15(3) of the Act inserts new sections 40ZA and 40ZB into the 2006 Act. Section 40ZA provides for complaints to be considered by the PIRC instead of, or in addition to, consideration by the authority to which the complaint is made, or a person appointed to reconsider the complaint following a CHR. Section 40ZA(1) enables the PIRC to call a complaint in for consideration by the PIRC ("call-in") in any of the following circumstances:

- where the PIRC determines, following a CHR, that the complaint is to be considered by the PIRC,
- when requested to do so by the authority to which the complaint was made, or
- of the PIRC's own volition or on the request of the complainer (see subsection (4), and following consultation with the authority (see subsection (5)), if the PIRC has reasonable grounds to believe that the appropriate authority is not handling, or has not handled, the complaint properly and it is in the public interest for the PIRC to consider the complaint.

113. Section 15(2)(b) of the Act amends section 35(7) of the 2006 Act to provide that the PIRC can decide to call-in a complaint following a CHR if satisfied that doing so is in the public interest, as an alternative to requiring it to be reconsidered by another person.

114. Section 40ZA(2) explains that a complaint is not considered properly if the arrangements for handling relevant complaints, which must be maintained by the SPA and the chief constable under section 60 of the 2012 Act, have not been adhered to in relation to the complaint.

115. Section 40ZA(3) clarifies that the PIRC can call in a complaint at any stage in the complaint handling process or CHR or reconsideration and it is not necessary for those processes to have completed or been discontinued.

116. Section 40ZA(6) allows the PIRC to treat a request by the complainer to call in the complaint as if it were a request for the PIRC to carry out a CHR under section 35. This allows the PIRC to review the complaint handling before deciding whether to call it in (if the conditions for doing so in section 35 are met). Section 40ZA(7) also clarifies that nothing in section 40ZA prevents either the complainer or the authority from requesting a CHR. For example, such a request may be made where the PIRC refuses a request to call in the complaint.

117. Section 15(2)(a) of the Act amends section 35 to make it clear that consideration of a complaint by the PIRC under section 40ZA cannot itself be the subject of a CHR.

118. Section 40ZB makes provision about the steps to be taken by the PIRC after considering a complaint. These steps are similar to those to be taken following a CHR. In particular, the PIRC must inform the complainer (and, if relevant, a person serving with the police to whom the complaint relates) about the PIRC's conclusions following consideration of the complaint (which will include her decision on the substance of the complaint), the reasons for those conclusions, what actions (if any) the PIRC proposes to take as a result and any recommendations the PIRC proposes to make to the appropriate authority about the complaint. The PIRC must also give the authority a report on the PIRC's consideration of the complaint, and the conclusions reached, reasons for those conclusions, proposed action and recommendations (if any). The PIRC may publish that report if the PIRC considers it appropriate to do so.

119. If the PIRC does make recommendations about the complaint, subsection (3) requires the appropriate authority to respond to them in writing within the timescales set out in the report, setting out what the authority has done, or proposes to do, in response to the recommendations, or explaining why nothing is being done in response. The PIRC must, as soon as reasonably practicable publish the response to its recommendations, subject to certain qualifications.

120. Section 35(5) of the 2006 Act allows the Scottish Ministers to make regulations setting out exceptions to the steps required to be taken following a CHR. Section 40ZB(5) applies those exceptions to the steps required to be taken following the consideration of a complaint by the PIRC.

121. Section 15(4) to (6) of the Act makes consequential amendments to other provisions of the 2006 Act as a result of the insertion of sections 40ZA and 40ZB, in particular adjusting sections 36 and 39 so that the PIRC is not prevented from calling in a complaint where a CHR, or the reconsideration of a complaint, is discontinued or not proceeded with. Subsection (7) amends section 46A of the 2006 Act to extend the protections from actions for defamation under that section to statements made in relation to a called-in complaint.

Section 16: Review of arrangements for investigation of whistleblowing complaints

122. Section 16 amends section 40A of the 2006 Act to add the SPA and chief constable's arrangements for handling whistleblowing complaints to the things which the PIRC is to audit. Section 40A currently requires the PIRC to audit the SPA and chief constable's arrangements for handling relevant complaints.

123. New section 40A(1)(a)(ii) requires the PIRC to keep under review all arrangements maintained by the SPA and the chief constable for the investigation of information provided in a whistleblowing complaint. New section 40A(1A) defines a whistleblowing complaint as a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996 which is made to the SPA or the chief constable. The provision is not concerned with reviewing the handling of individual whistleblowing complaints but is rather concerned with arrangements for investigating information provided in such complaints. Nor is it concerned with arrangements for ensuring that the whistleblower receives the protections provided by the 1996 Act. Rather, it is concerned with arrangements for investigating the substance of such a complaint.

Section 17: Investigations involving constables from outwith Scotland

124. Section 17 of the Act inserts two new sections into the 2006 Act and makes some consequential amendments, to allow the PIRC to investigate serious incidents or allegations of criminality involving constables from forces other than the Police Service of Scotland who are carrying out policing functions in Scotland, either on behalf of their own forces or on behalf of Police Scotland pursuant to section 98 of the Police Act 1996 (known as "mutual aid").

125. New section 41G(1) sets out the officers who are covered by this section. Subsection (2) sets out that the PIRC must, when directed to do so by the Lord Advocate or a procurator fiscal, investigate: (a) alleged criminality by such officers allegedly committed in the course of their duties, and (b) deaths involving such officers in the course of their duties. Section 41G(3) applies section 41A to investigations under subsection (2) as it applies to the equivalent investigations into persons serving with the police under section 33A(b).

126. Section 41G(4) requires the PIRC to investigate serious incidents occurring in Scotland involving officers from other UK forces where requested to do so. That requirement is, however, subject to provision made in regulations under section 41H(1) (section 41G(5)). Such regulations may provide for circumstances in which an investigation is not to be, or need not be, carried out, or may be discontinued.

127. Subsection (6)(a) applies the concept of a "serious incident" in section 41B(1) involving a person serving with Police Scotland to incidents involving a person serving with another UK police force. Section 41G(4) and (6)(b) allow the chief constable of Police Scotland to request an investigation into a serious incident involving a constable providing mutual aid, and the chief officer or constable of the constable's home force to make such a request in other cases.

128. Section 41G(7) makes it clear that the duties of constables providing mutual aid are to be treated as if they were the duties of the constable's home force. Such constables are not subject to investigation under other provisions of the 2006 Act as they are not persons serving with the police. However, where a constable is engaged on temporary service with Police Scotland under section 16 of the 2012 Act, that constable is a person serving with the police and any incident involving that person can be investigated under section 33A(b), (c) or (d).

129. New section 41H makes provision for the procedures to be followed, and reports to be prepared in relation to, investigations under section 41G(4) into serious incidents involving constables from outwith Scotland. The provision in section 41H is similar to sections 41D and 41E of the 2006 Act which make provision for these matters in relation to investigations involving persons serving with the police. Section 41H(1) to (3) gives the Scottish Ministers the power to make regulations about the procedure to be followed in such an investigation, subject to the affirmative procedure[10] by virtue of section 103(3) of the 2006 Act (as amended by section 17(6) of the Act). Section 41H(4) to (6) requires reports to be prepared following such investigations.

130. The consequential amendments in section 17(3) to (5) are to add to section 33A to include (in new paragraph (e)) the carrying out of investigations under section 41G in the PIRC's general functions. Sections 46(6) (which concerns the disclosure of information by and to the PIRC) and 46A (which protects certain statements from actions for defamation) are also adjusted to cover information and statements in investigations carried out under section 41G.

Section 18: Review of, and recommendations about, practices and policies of the police

131. Sections 33A(d) and 41C of the 2006 Act enable the PIRC to carry out investigations into relevant police matters. A "relevant police matter" is defined in section 41C(2) as an incident in relation to which there is an indication that the SPA, the Police Service or a person serving with the police has been involved (other than certain matters investigated under other powers).

132. These powers allow the PIRC to investigate particular incidents, including incidents where particular practices or policies of the police were followed, but they do not allow the PIRC to review practices or policies of the police generally.

133. Section 18 of the Act inserts a new section 41I into the 2006 Act giving the PIRC a bespoke power to review practices and policies of the police generally, and not just in relation to a particular incident.

134. Section 41I(1) allows the PIRC to review a practice or policy of the SPA or the chief constable if the PIRC considers that it would be in the public interest to do so.

135. Section 41I(2) requires the PIRC to consult His Majesty's Inspectorate of Constabulary in Scotland before deciding whether to carry out such a review.

136. Subsection (3) excludes the review of arrangements for the handling of complaints or investigation of whistleblowing complaints as there is a separate requirement for the PIRC to audit such arrangements under section 40A(1) of the 2006 Act (as amended by section 16 of the Act).

137. Subsection (4) requires the PIRC, before carrying out such a review, to tell the person whose practice or procedure is to be reviewed which practice or policy is under review and give reasons why the review is proposed. That person must, under section 41I(5), assist the PIRC in carrying out the review.

[10] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010

138. Following a review, subsection (6) requires the PIRC to prepare a report of the review. By subsection (8), the PIRC must give copies to the SPA, the chief constable, HMICS, the Scottish Ministers and such other persons as the PIRC considers appropriate. The PIRC may also publish the report if the PIRC considers it appropriate to do so. Subsection (9) provides that the report must not include information enabling an individual (other than the chief constable) to be identified. The PIRC may withhold any of the report from publication in the public interest.

139. Subsection (7) enables the PIRC to make recommendations in the report in relation to the practice or policy which has been reviewed, or any other practice of the SPA or the chief constable (for example, where concerns about another such practice emerge in the course of the review). Where such recommendations are made, the duty for the SPA or the chief constable to respond in new section 41K is engaged.

140. Section 40A(2) of the 2006 Act currently allows the PIRC to make recommendations, or give advice, for the modification of the arrangements for handling relevant complaints maintained by the SPA and the chief constable, or any other practice of the SPA or the chief constable, if that appears from the carrying out of the PIRC's functions (other than keeping under review the arrangements for handling relevant complaints) to be necessary or desirable. For example, where the PIRC carries out a CHR, the PIRC may subsequently make recommendations for the modification of the complaints handling arrangements or for any practice of the SPA or chief constable which was relevant to the review.

141. Section 43(4) requires the PIRC to prepare such reports for the purposes of making such recommendations, or giving such advice, as the PIRC considers appropriate, and section 43(6)(b) requires copies of such reports to be sent to the SPA, the chief constable and the Scottish Ministers. Section 43(5) require the Scottish Ministers to lay those reports before the Parliament if and to the extent that they consider it appropriate to do so.

142. Sections 40A(2) and 43 do not require reports to be prepared where recommendations are made under section 40A(2), nor is there any requirement for the person to whom a recommendation relates to respond to the recommendation. There is also no express provision in the 2006 Act for recommendations to be made as a result of the PIRC's audit of the arrangements for handling complaints, although the PIRC is required to secure that the arrangements are efficient and effective, and contain and manifest an appropriate degree of independence (under section 40A(1)).

143. Section 18 of the Act inserts a new section 41J into the 2006 Act which replaces sections 40A(2) and 43(4) and (6)(b) with new provision enabling the PIRC to prepare reports making recommendations in relation to the arrangements for handling relevant complaints (and, as a result of section 16 of the Act, whistleblowing complaints) and other practices of the SPA or the chief constable as a result of the exercise of the PIRC's audit function under section 40A(1) or any of the PIRC's other functions (apart for the power of review under section 41I which includes a bespoke power to make recommendations).

144. Section 41J(2) allows such advice and recommendations to be set out in a report (as is currently the case under section 43(4)), with copies being given to the SPA, the chief constable, HMICS, the Scottish Ministers and any other person whom the PIRC considers appropriate, or for the recommendations and advice to be made or given in such other manner as the PIRC considers appropriate. If recommendations are made in a report, they attract the requirements

of sections 41K and 41L, in particular the requirement for the SPA or the chief constable to respond to the recommendations. The PIRC must publish a report containing advice or recommendations unless the PIRC considers it is not in the public interest to do so. Subsection (4) aligns with section 41I(8) as to what information must be withheld and what information may be withheld (see paragraph 138).

145. Section 18 of the Act goes on to insert two further new sections (41K and 41L) into the 2006 Act making new provision requiring the SPA and the chief constable to respond to recommendations made to them by the PIRC.

146. Section 41K(1) provides that the requirement to respond applies to recommendations made following a review under section 41I, or to recommendations flowing from the exercise of the PIRC's other functions which are made in a report under section 41J.

147. Section 41K(2) requires the person to whom the recommendation is made ("the recipient") to give the PIRC an initial response to the recommendation, and to follow this up with an implementation report.

148. The initial response must be given within 8 weeks of the recipient receiving the recommendation, or such other period as the PIRC specifies in the report containing the recommendation (subsection (6)(a)). The initial response must set out details of what the recipient has done or proposes to do in response to the recommendation, or set out the reasons why the recipient does not intend to do anything in response.

149. The implementation report must be given to the PIRC as soon as reasonably practicable after the end of the implementation period (subsection (6)). The implementation period is the period of 12 months beginning with receipt of the recommendation, or such other period as the PIRC specifies in the report containing the recommendation (subsection (9)). The implementation report must set out what the recipient has done in response to the recommendation since receiving it, and anything else that the recipient proposes to do in response to it.

150. No implementation report is needed if the initial response indicates that, when that response is given, the recipient has already done everything that the recipient intends to do in response to the recommendation, or else that the recipient does not intend to do anything in response (subsections (2)(b) and (5)).

151. Subsection (7) lists the people who are to receive a copy of an initial response or implementation report (in addition to the PIRC), in alignment with the requirements of section 41I or 41J in relation to the report containing the recommendation. The people listed in subsection (7) as mandatory recipients are the same as those to whom a copy of a report containing recommendations must be given, under section 41I or 41J, but the duty to do so is placed on the person giving the response to the PIRC, rather than on the PIRC. Subsection (8) requires the PIRC to give a copy of an initial response or implementation report to anyone else to whom the report containing the recommendation was given under section 41I or 41J.

152. Section 41L(1) provides for the publication of responses to recommendations (either an initial response or an implementation report). The publication requirements are aligned with those in sections 41I and 41J. It requires the PIRC to publish the response or report as soon as reasonably practicable after receiving it. Publication may be in full (withholding identifying

details other than those which would identify the chief constable) or in part. If the initial response is not received within the applicable period, the PIRC must publish notice that it has not been received (section 41L(4)).

153. Section 18(3) amends the PIRC's general functions in section 33A of the 2006 Act to include the carrying out of reviews and making of recommendations under sections 41I and 41J, and section 18(4) and (5) consequentially repeals section 40A(2) and 43(4) and (6)(b), which are replaced by section 41J. Section 18(6) amends section 46A to extend the protections given to the PIRC and the PIRC's staff from actions for defamation under that section to statements made in relation to a review and report under section 41I, a report under section 41J(2), as well as to statements made to the PIRC or any of the PIRC's staff in relation to a review.

Section 19: Provision of information to the Commissioner

154. Section 19 inserts into section 44 of the 2006 Act (provision of information to the Police Investigations and Review Commissioner) a new power to enable regulations to require or authorise the provision of information and documents to the PIRC by giving the PIRC access to an electronic database on which they are stored. This will, in particular, allow the PIRC to see information about the handling of complaints as they are being dealt with.

155. Regulations under this section are subject to the negative procedure[11] by virtue of section 103(3) of the 2006 Act.

Governance of the Police Investigations and Review Commissioner

156. This part of the Act adds an advisory board to the PIRC structure, to advise as to the corporate governance of the PIRC.

Section 20: Advisory board to the Commissioner

157. This section inserts a new section 46B in to the 2006 Act. It requires the PIRC to establish a statutory advisory board. By subsection (1), the PIRC must establish and maintain it.

158. The board is to advise as to corporate governance and administration and not on the operational work of the PIRC, which is reflected in subsection (2).

159. The members are to be appointed by the Scottish Ministers (subsection (3)). The PIRC is not able to appoint or terminate members, which is provided for in subsection (4), by requiring a decision to appoint or terminate a member of the Board to be made independently of the PIRC. The procedure of the Board is for the PIRC to determine (subsection (7)), as is the remuneration and allowances of the members of the Board (subsection (6)), subject to the approval of Scottish Ministers.

[11] See section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010

Final provisions

Section 21: Ancillary provision

160. Section 21 empowers the Scottish Ministers to, by regulations, make ancillary provision for the purposes of, or in connection with, or for giving full effect to the Act.

161. Regulations made under this section are subject to the negative procedure,[12] unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure[13].

Section 22: Commencement

162. Section 22 provides that the final provisions in sections 21, 22 and 23 of the Act come into force on the day after Royal Assent, and that other provisions of the Act come into force on such days as the Scottish Ministers may by regulations appoint.

Section 23: Short title

163. Section 23 of the Act provides for the Act to be known as the Police (Ethics, Conduct and Scrutiny) (Scotland) Act 2025.

PARLIAMENTARY HISTORY

164. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
Introduction	
Bill	SP Bill 29 Session 6 (2023)
Explanatory Notes	SP Bill 29-EN Session 6 (2023)
Policy Memorandum	SP Bill 29-PM Session 6 (2023)
Financial Memorandum	SP Bill 29-FM Session 6 (2023)
Delegated Powers Memorandum	SP Bill 29-DPM Session 6 (2023)
Statements on Legislative Competence	SP Bill 29-LC Session 6 (2023)
Stage 1	
Criminal Justice Committee	
14th Meeting 2024, Session 6, 17 April 2024	Col 1 - 36
15th Meeting 2024, Session 6, 24 April 2024	Col 1 - 33
17th Meeting 2024, Session 6, 8 May 2024	Col 1 - 54
18th Meeting 2024, Session 6, 15 May 2024	Col 9 - 60
19th Meeting 2024, Session 6, 16 May 2024	Col 1 - 18
20th Meeting 2024, Session 6, 22 May 2024	Col 1 - 52
21st Meeting 2024, Session 6, 23 May 2024	Col 1 - 24
22nd Meeting 2024, Session 6, 29 May 2024	Col 1 - 28
Stage 1 Report, 2 July 2024	SP Paper 633–7th Report, 2024 (Session 6)
(b) Consideration by Parliament	

[12] See section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010
[13] See section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010

Proceedings and reports	***Reference***
Stage 1 Debate on the Bill, 10 September 2024	Col 12 - 62
Motion on financial resolution	S6M-13797
Stage 2	
Marshalled list of amendments for Stage 2	SP Bill 29 - ML Session 6 (2024)
Groupings of amendments for Stage 2	SP Bill 29 - G Session 6 (2024)
30th Meeting 2024, Session 6, 2 Oct 2024	Col 1 - 58
Bill as amended at Stage 2	SP Bill 29A Session 6 (2024)
Revised Explanatory Notes	SP Bill 29A–EN Session 6 (2025)
Revised Financial Memorandum	SP Bill 29A–FM Session 6 (2024)
Supplementary Delegated Powers Memorandum	SP Bill 29A-DPM Session 6 (2024)
Stage 3	
Marshalled list of amendments for Stage 3	SP Bill 29A - ML Session 6 (2025)
Groupings of amendments for Stage 3	SP Bill 29A - G (Timed) Session 6 (2025)
Consideration of amendments and debate by the Parliament, 15 January 2025	Col 24 - 77
Royal Assent, 4 March 2025	2025 asp 5

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