

## Police (Ethics, Conduct and Scrutiny) (Scotland) Bill Call for views

Deadline: 5pm on 8 December

### About you

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(Required)  I would like my response to be published in its entirety.

If you do not want your response to be published in its entirety and would like to discuss your options, please contact the Committee before making your submission: [policeethicsbill@parliament.scot](mailto:policeethicsbill@parliament.scot).

**3.** What is your name?

Name

Police Authority

**4.** What is your email address?

Email:

**5.** Are you responding as an individual or on behalf of an organisation?

(Required)  Individual  Organisation

### Section 2: Code of ethics

Section 2 of the Bill seeks to establish a statutory Code of Ethics for Police Scotland and would place a duty on the Chief Constable, with the assistance of the Scottish Police Authority, to prepare, consult on, and publish the Code.

It would also give powers to the Chief Constable to revise the Code when necessary (or at least once every 5 years).

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The Bill proposes that police officers must 'have regard to' the Code. A failure to comply with the Code would not of itself give rise to grounds for any legal action. Neither would a breach necessarily constitute misconduct, which would continue to be measured by the standards of professional behaviour alone.

**8.** What are your views on the proposals to establish a statutory Code of Ethics for Police Scotland, the requirement for police officers to have regard to the Code, and the procedures for producing the Code?

**Insert your answer in the textbox:**

The Authority supports these provisions in the Bill.

**Section 3: Duty of candour**

Section 3 seeks to introduce a duty of candour (a requirement to act with transparency, honesty, and integrity) for police officers in primary legislation by amending the conduct regulations.

It would also introduce an organisational duty of candour by adding an additional policing principle to the Police and Fire Reform (Scotland) Act 2012 that Police Scotland should be candid and co-operative with proceedings, including investigations against constables.

The constable's declaration would be amended to include, "that I will follow the Code of Ethics for Policing in Scotland".

**9.** What are your views on the proposal to introduce a duty of candour for constables as set out in section 3?

**Insert your answer in the textbox:**

The Authority supports these provisions in the Bill.

However, it is unclear from the Bill whether the duty of candour applies to matters occurring while a police officer is off-duty and, if so, to what extent. The Scottish Government's pre-Bill consultation sought views on this issue, and para 51 of the Policy Memorandum indicates that most respondents agreed that the duty should not be restricted to on-duty matters. The Bill does not contain any explicit provision addressing this issue.

**Section 4: Liability of the Scottish Police Authority for unlawful conduct of the Chief Constable**

## Police conduct

Sections 4 to 8 of the Bill are concerned with procedures for dealing with, and the consequences of, certain types of police conduct.

Section 4 of the Bill seeks to address a possible gap in legislation about the consequences of certain conduct on the part of the Chief Constable.

It would amend the 2012 Act to make the Scottish Police Authority (SPA) liable for any unlawful conduct by the Chief Constable in the carrying out of their functions. In doing so, it would align the treatment of unlawful conduct by the Chief Constable with the existing treatment of unlawful conduct by other constables (which provides for the Chief Constable to be liable for the unlawful conduct of constables).

**10.** Do you have any views on the proposal for the SPA to be liable for the unlawful conduct on the part of the Chief Constable in the carrying out of their functions?

**Insert your answer in the textbox:**

The Authority supports this provision in the Bill.

## Section 5: Misconduct procedures: functions of the Police Investigations and Review Commissioner

Section 5 proposes to remove the qualifications as to what functions can be conferred on the Police Investigations and Review Commissioner (PIRC) from the 2012 Act. Currently, the functions are limited to those which relate to investigations of whether a constable has been engaged in misconduct.

It provides the PIRC with more extensive functions in relation to disciplinary procedures, such as the preliminary assessment of allegations.

**11.** What are your views on the proposal to broaden the functions of the PIRC to include any aspect of the regulatory disciplinary procedures, not just misconduct investigations?

**Insert your answer in the textbox:**

The Authority supports this provision in the Bill.

The amendment is necessary in order to implement Lady Angiolini's recommendations (numbers 25 and 39 in her final report) that the PIRC perform a greater role in senior officer misconduct proceedings, beyond its current investigative functions.

**Section 6: Procedures for misconduct: former constables**

Section 6 of the Bill contains provisions that would enable disciplinary procedures for misconduct to continue to be applied should an officer retire or resign.

The procedures would apply where a preliminary assessment, carried out by the PIRC, found that the conduct of the person while a constable would, if proved, have amounted to gross misconduct.

A power would also be given to state a period of time from the date of resignation after which no steps, or only certain steps in the misconduct procedures, could be applied unless additional criteria were met.

The Scottish Government intends that regulations will set this period at 12 months and that the criteria will include a proportionality test carried out by the PIRC, having regard to a number of factors, including to the seriousness of the allegation, the impact of the allegation on public confidence in the police and the public interest. A period of 12 months is based on Lady Elish Angiolini's recommendation which drew on the system in place in England and Wales.

**12.** What are your views on the proposals to continue disciplinary procedures for gross misconduct, should an officer retire or resign?

**Insert your answer in the textbox:**

The Authority supports these provisions in principle.

The Bill simply provides an enabling power to Ministers to make regulations on this issue. While the detail of any new arrangements will be set out in regulations, the Authority would expect the continuation or commencement of gross misconduct proceedings in such circumstances to be discretionary, rather than mandatory in every case.

Any decision to continue or commence proceedings after an officer's retirement or resignation should be subject to a public interest test, taking

into account e.g. the nature of the alleged misconduct, and the need to maintain public confidence in policing.

**13.** Do you have any views on the proposed time period after which no steps, or only certain steps in the misconduct procedures would be applied unless additional criteria were met?

**Insert your answer in the textbox:**

A period of 12 months would seem appropriate; however, it is possible that something can be learned from the experiences in England and Wales where that timescale has been a feature of arrangements for some years.

### **Section 7: Scottish police advisory list and Scottish police barred list**

Section 7 proposes that the SPA must establish and maintain a Scottish police barred list and a Scottish police advisory list.

The lists would 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.

The creation of the lists would enhance vetting procedures, bring Scotland into line with England and Wales and provide a consistent approach across jurisdictions in Great Britain.

**14.** What are your views on the proposals to establish Scottish police barred and advisory lists and the criteria for the inclusion of an officer to either list?

**Insert your answer in the textbox:**

The Authority supports these provisions in principle, but see the paper apart for more detailed views.

### **Section 8: Procedures for misconduct: senior officers**

Section 8 would replace the current requirement in the 2012 Act that the SPA must determine senior officer conduct cases, with a requirement for

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an independent panel (consisting of a mix of police and non-police members) to determine these cases, regardless of how serious the allegation.

The SPA would continue to decide cases relating to senior officer performance.

**15.** What are your views on the proposal to have an independent panel determine misconduct cases against senior officers?

### **Insert your answer in the textbox:**

The Authority supports this provision in the Bill, which would enhance independence in the misconduct procedures for the most senior police officers.

## **Section 9: Investigations into possible offences by persons serving with the police**

### **Functions and governance of the Police Investigations and Review Commissioner**

The Commissioner is appointed by Scottish Ministers and is independent of the police service. The role of the PIRC is to provide independent oversight, investigating incidents involving the police and reviewing the way the police handle complaints from the public.

Sections 9 to 17 of the Bill concern the functions and governance of the PIRC and amend the 2006 Act.

Section 9 seeks to clarify the circumstances in which the PIRC can be asked to investigate matters in which an offence may have been committed by a person serving with the police.

It makes clear that the investigatory powers of the PIRC into criminal conduct could continue and occur when the person concerned:

- has left the police service,
- did not become an officer until after the conduct took place, or
- was not on duty at the time of the relevant incident.

Section 9 also makes it clear that the PIRC could be directed to investigate deaths involving off-duty police officers. It amends the 2006

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Act to provide expressly that it does not matter whether the circumstances of the death occurred in the course of duty.

**16.** What are your views on the proposals to clarify the PIRC's investigatory powers in relation to criminal conduct and incidents involving deaths of serving police officers, as set out in section 9?

**Insert your answer in the textbox:**

The Authority fully supports the underlying intention of these provisions. However, the amendment made by section 9(b) to section 33A(b)(ii) of the Police, Public Order and Criminal Justice (Scotland) Act 2006 could perhaps be clearer.

As amended, section 33A(b)(ii) provides that the PIRC may investigate 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. The PIRC may do so *whether or not* the circumstances occurred in the course of the person's duty, employment or appointment. However, sections 1 and 2(3) of the 2016 Act require the procurator fiscal to investigate only those accidents occurring while the person was acting in the course of their employment or occupation. The reference to "required" in amended section 33A(b)(ii) is therefore potentially confusing.

**Section 10: Investigations of complaints made by persons serving with the police**

Section 10 of the Bill proposes to amend the provisions in the 2006 Act which specify who can make a "relevant complaint" to the PIRC. This is to make clear that police officers or members of police staff can make a complaint about an act or omission that adversely affected them in their personal capacity, as opposed to their capacity as a person serving with the police.

It excludes complaints by persons serving with the police about acts or omissions that they have witnessed (but that do not directly affect them) from the definition of a "relevant complaint".

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The amendments to the 2006 Act also make it clear that police officers or staff would be able to make complaints about acts or omissions that occurred both during or outside of their working hours.

**17.** What are your views on the proposals to clearly define who can make a “relevant complaint” to the PIRC and in what circumstances?

### **Insert your answer in the textbox:**

The Authority supports these provisions in the Bill.

The provisions clarify the circumstances in which police officers, police staff and Authority staff may make relevant complaints. In short, they may only do so where the act or omission complained about (a) occurred other than in their official capacity; and (b) was in relation to them, or adversely affected them.

### **Section 11: Complaint handling reviews**

Section 11 adds a provision to the 2006 Act which would enable the PIRC to carry out a complaint handling review without a request from the complainer or the appropriate authority (the Chief Constable or the SPA), if it was in the public interest to do so.

It would also enable the PIRC to make recommendations in relation to the complaint in its report of the review. The provisions require the appropriate authority to respond within the timescales set out in the report, setting out the action taken or planned in response to the PIRC’s recommendations, or explaining why nothing has been done.

The PIRC would be able publish the response, if it considered it appropriate to do so.

**18.** What are your views on the proposals to enable the PIRC to carry out complaint handling reviews of its own volition and make recommendations in relation to complaints in a review report?

### **Insert your answer in the textbox:**

The Authority supports these provisions in the Bill.



## Section 12: Call-in of relevant complaints

The PIRC can currently review the way in which Police Scotland (or the SPA) have handled non-criminal complaints made about them by members of the public through a complaint handling review. In practice, a complaint handling review will only be undertaken once the complaint has been dealt with through the complaints handling process of the policing body, and a final response has been issued from them to the complainer.

Section 12 of the Bill would provide the PIRC with the power to take over consideration of complaints that are being dealt with by the Chief Constable or the SPA under the following circumstances:

- where the PIRC determines, following a complaint handling review 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, and following consultation with the authority which dealt with the complaint initially, 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.

The PIRC would be able to call-in a complaint at any stage in the complaints handling review, or reconsideration.

The Bill would also give the PIRC the ability to review the complaint handling following a request from the complainer before deciding whether to call it in.

**19.** What are your views on the proposal to give the PIRC a statutory power to take over investigation of complaints being dealt with by the Chief Constable or the SPA under the circumstances set out in section 12?

### Insert your answer in the textbox:

The Authority supports these provisions in the Bill. However, the Bill should clarify whether or not a complainer who is dissatisfied with the PIRC's handling of a "called-in" complaint has any further recourse by way of an appeal, review etc.

## Section 13: Review of investigation of whistleblowing complaints

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Both Police Scotland and the Scottish Police Authority have procedures in place for police constables and/or staff to report concerns internally. Currently, the 2006 Act requires the PIRC to audit the SPA and Chief Constable's arrangements for handling relevant complaints. Section 13 gives the PIRC the power to audit and have oversight of the SPA and Chief Constable's arrangements for handling whistleblowing complaints.

The PIRC would be required to keep under review all arrangements maintained by the SPA and the Chief Constable for the investigation of information provided in a whistleblowing complaint. It would also give the PIRC the power to make recommendations or give advice to them on the arrangements for the handling of whistleblowing complaints in the form of a report. Such a report would have to be published.

**20.** What are your views on the proposals for the PIRC to audit and have oversight of the SPA and Chief Constable's arrangements for handling whistleblowing complaints and to report and make recommendations on the arrangements?

### **Insert your answer in the textbox:**

The Authority supports these provisions in the Bill. However, see the paper apart for views on a further recommendation by Lady Angiolini in respect of whistleblowing.

### **Section 14: Investigations involving constables from outwith Scotland**

Section 14 of the Bill proposes to amend the 2006 Act to allow the PIRC, where directed to do so by the appropriate prosecutor, to investigate serious incidents or potential criminal offending by English, Welsh and Northern Irish police officers who are carrying out policing functions in Scotland, either on behalf of their own forces or on behalf of Police Scotland.

The PIRC would be able to investigate serious incidents, and some deaths involving these constables (that have to be investigated by the Crown Office and Procurator Fiscal Service (COPFS) under legislation on fatal accidents and sudden deaths, etc.). Depending on the circumstances this could happen if the chief officer or constable of the English or Welsh force or the Police Service of Northern Ireland (PSNI) makes the request, or if the Chief Constable of Police Scotland requests it.

**21.** What are your views on the proposals to allow the PIRC to investigate serious incidents, potential criminal offending and some deaths involving

English, Welsh and Northern Irish constables who are carrying out policing functions in Scotland?

**Insert your answer in the textbox:**

The Authority supports this provision in the Bill.

**Section 15: Review of, and recommendations about, practices and policies of the police**

Section 15 of the Bill proposes to add a power to the 2006 Act that would enable the PIRC to make recommendations to the SPA and the Chief Constable in relation to individual complaints, as well as a power to allow the PIRC to review a practice or policy of the SPA or the Chief Constable generally, if the Commissioner thought it was in the public interest to do so. Following a review, the PIRC would be required to prepare a report. The report would also be published if the PIRC considered it appropriate to do so.

A duty would be placed on the Chief Constable and the SPA to provide a written response to any recommendations directed at them within a set time frame. Where it did not relate to an individual complaint, but instead to a review or arrangements for complaints handling more generally, a duty is placed on the Chief Constable and the SPA to provide an update on progress in implementing recommendations.

The PIRC would also be able to publish the responses to their recommendations, if they considered it appropriate to do so.

**22.** What are your views on the proposals for the PIRC to review and make recommendations on the practices and policies of Police Scotland or the SPA, either in relation to a specific complaint or more generally?

**Insert your answer in the textbox:**

This additional power is not dissimilar to HMICS's existing powers to inquire, at the direction of Ministers, into "any matter relating to the Authority or the Police Service as they consider appropriate"; and to inquire into the "state, efficiency and effectiveness" of Police Scotland or the Authority (section 74(2) Police and Fire Reform (Scotland) Act 2012).

It is therefore unclear what these proposed powers would add to HMICS's existing powers. However, given that section 85 of the 2012 Act requires

the PIRC to coordinate activity with HMICS to prevent unnecessary duplication of work, the Authority does not oppose this new provision.

### **Section 16: Provision of information to the Commissioner**

Section 16 sets out an enabling power for Scottish Ministers to make provision that would allow the PIRC to have remote access to Police Scotland's complaints management database which holds information and documents that the PIRC must review in order to meet its statutory functions. The PIRC currently accesses the database under the supervision of Police Scotland at a designated police office.

The regulation making power would also allow regulations to be made in relation to accessing the SPA's systems, should this be deemed necessary in the future.

**23.** What are your views on the proposal to allow the PIRC to have remote access to Police Scotland's complaints management database?

**Insert your answer in the textbox:**

The Authority supports this provision in the Bill.

### **Section 17: Advisory board to the Commissioner**

Section 17 of the Bill seeks to introduce a statutory advisory board to provide the Commissioner with advice and expertise to support the decision making process, and to provide a suitable level of challenge in light of the PIRC's new responsibilities.

The Board would advise as to corporate governance and administration and not on the operational work of the PIRC. The Board members would be appointed by Scottish Ministers.

**24.** What are your views on the proposal to establish a statutory advisory board for the PIRC?

**Insert your answer in the textbox:**

The Authority supports this provision in the Bill.

## Recommendations made by Lady Elish Angiolini

There were 72 non-legislative recommendations made by Lady Elish Angiolini across her two reports. As of May 2023, 58 recommendations have been marked as complete, 12 are in progress and two are being kept under review. In response to the two reports work has been undertaken by the policing bodies to address the non-legislative issues raised about the complaints handling systems. These include a lack of transparency, accountability, clarity, time taken to deal with complaints, impartiality, robustness, confidentiality, and fairness.

**25.** What are your views on the implementation of these recommendations?

### Insert your answer in the textbox:

Impact measures have been developed and approved by the SPA Complaints & Conduct Committee in respect of recommendations directed (either singly or jointly) at the Authority, which going forward will be formally reported to the Committee on an annual basis. By way of summary of key developments to date:

- A Framework is in place setting out how the Authority provides oversight of ethical issues within policing in Scotland
- Independent Custody Visitors are trained to consistently check that third parties have been notified of an individual's detention
- Police Scotland reports to Committee continue to develop in providing understanding of the number and nature of complaints and conduct matters, and the effectiveness with which they are handled
- The Authority annually assesses the suitability of complaint handling arrangement and reports this within its Annual Report & Accounts. Additionally, it publishes an annual Committee report which highlights trends in complaints received, complaint handling performance and provides assurance in respect of Committee scrutiny in this important area
- Public sessions of the Committee are livestreamed and able to be watched in full retrospectively. Items are only taken in private by exception, with equivalent reporting in public where possible, and the Authority publishes a public version of the minutes of discussion of private agenda items
- The Authority actively encourages individuals to safely disclose data to enable the organisation to develop an understanding of the diversity profile of those raising complaints
- Authority Complaint Handling Procedures and Guidance on Senior Officer Conduct Regulations have been reviewed in response to specific recommendations around prioritisation, use of suspension and preliminary assessment of potential conduct matters. This was

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undertaken in consultation with the PIRC and SCPOSA, as key stakeholders in this regard

- Authority officials have formal qualifications in complaint handling and undertake regular continuous professional development activity to maintain their knowledge and skills. The impact of this can be demonstrated through improvements in terms of the proportion of complaints resolved via Early-stage Resolution; timescales taken to close complaints; and the fact that, in respect of complaints closed from April 2019, PIRC have only undertaken one complaint handling review, with the complaint assessed as having been reasonably handled

In addition to the above, the Committee will, in its oversight capacity, seek assurance as to the development and monitoring of impact measures in respect of non-legislative recommendations directed at Police Scotland.

**26.** Are there provisions which are not in the Bill which you think should be?

**Insert your answer in the textbox:**

Please see the paper apart.

**27.** Do you have any additional comments on the Bill?

**Insert your answer in the textbox:**

Please see the paper apart.

**Almost done...**

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