

**pirc**

Police Investigations &  
Review Commissioner



**HM Revenue  
& Customs**

**AGREEMENT**

**between**

**THE POLICE INVESTIGATION & REVIEW COMMISSIONER**

**and**

**THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND  
CUSTOMS**

## 1. INTRODUCTION

This agreement takes into account the provisions of the Police Public Order and Criminal Justice (Scotland) Act 2006 Act ("the 2006 Act") as amended by the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act"), the related Consequential Provisions and Modifications Order 2013 ("the Order"), and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013 ("the Regulations"). The agreement also recognises the obligations of the parties under section 6(1) of the Human Rights Act 1998, and, in particular, the obligation to act compatibly with Articles 2 and 3 of the European Convention on Human Rights (ECHR).

This agreement relates only to the investigative functions of the Police Investigations and Review Commissioner ("the PIRC"). A separate agreement is in place with the Commissioners of Her Majesty's Revenue and Customs ("the Commissioners") in relation to PIRC's complaint review functions.

## 2. STATUTORY ROLE OF THE PIRC

Sections 61 and 62 of the 2012 Act renamed, and extended the functions of, the former Police Complaints Commissioner for Scotland (established in 2006). The PIRC's extended statutory functions include:

- to investigate, where directed to do so by the appropriate prosecutor, any circumstances in which there is an indication that a person serving with the police may have committed a crime, or the circumstances of any death involving a person serving with the police which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976; and
- to determine whether to investigate, where requested to do so by the Scottish Police Authority ("the SPA") or the chief constable of the Police Service of Scotland ("the PSS"), certain serious incidents involving the police.

The 2006 Act, as amended, vests PIRC investigators with 'all the powers and privileges of a constable throughout Scotland' while conducting investigations on behalf of the PIRC. The Regulations make various requirements on the PSS and SPA regarding the provision of information and other assistance to the PIRC, and permits PIRC's investigators entry to premises used by the PSS or SPA.

The Order enables the PIRC and the Commissioners to enter into an agreement for the PIRC to investigate and report, where requested to do so by the Commissioners, on any serious incident involving Her Majesty's Revenue and Customs ("HMRC") but only when acting in exercise of specified "enforcement functions".

### 3. A FRAMEWORK FOR COLLABORATIVE WORKING

The PIRC and the Commissioners agree that the PIRC may investigate and report, when requested to do so by the Commissioners, on any serious incident involving HMRC when acting in exercise of enforcement functions.

For the purposes of this agreement "enforcement functions" include, in particular, the following:

- a) powers of entry;
- b) power to search persons or property;
- c) power to seize or detain property;
- d) power to arrest persons;
- e) power to detain persons; and
- f) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data).

In terms of the Order, a 'serious incident involving HMRC' has, subject to certain qualifications, the same meaning as a 'serious incident involving the police' in section 41B of the 2006 Act. Accordingly, for the purposes of this agreement, a serious incident involving the HMRC means:

- a) a circumstance in or in consequence of which a person has died or sustained serious injury<sup>1</sup> where –
  - i. the person, at or before the time of death or serious injury, had contact (directly or indirectly) with an officer of Revenue and Customs while exercising enforcement functions; and
  - ii. there is an indication that the contact may have caused (directly or indirectly) or contributed to the death or serious injury;
- b) any other circumstance in or in consequence of which a person has otherwise sustained serious injury at a time when the person was being detained or kept in custody by an officer of Revenue and Customs while exercising enforcement functions;
- c) any circumstance in which an officer of Revenue and Customs has, while purporting to exercise enforcement functions, used any item to:
  - i. attempt to cause a member of the public a serious injury; or
  - ii. cause or attempt to cause a member of the public an injury which is not serious;

The Commissioners agree that they will refer to PIRC for investigation all 'serious incidents' defined at (a) and (b) above, immediately it becomes clear that the matter

<sup>1</sup> The term 'serious injury' means a fracture, deep cut, deep laceration, injury causing damage to an internal organ or the impairment of any bodily function, or severe psychological trauma from which the victim's recovery is expected to be difficult or impossible

should be referred. The Commissioners may also refer to PIRC for investigation those serious incidents defined at (c).

The PIRC will investigate any serious incident defined at (a) above in which the person concerned has died. On receipt of all other referrals the PIRC will decide whether or not to investigate the incident. Should the PIRC decline to investigate, the PIRC will refer the matter back to the Commissioners and may include, for their consideration, recommendations on how an investigation of the incident might be taken forward.

The PIRC must investigate certain kinds of incident if directed to do so by the Crown Office and Procurator Fiscal Service ("the COPFS"). The incidents consist of investigations of deaths which the Procurator Fiscal is required to investigate under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976; and may include circumstances in which there is an indication that an officer of Revenue and Customs may have committed an offence.

The Commissioners will, in respect of any serious incident referred to PIRC for investigation:

- produce in a form acceptable to the PIRC investigators, any document, record or other information which the PIRC investigators may require;
- permit the PIRC's investigators to –
  - enter any premises which are used by HMRC
  - inspect those premises and anything on those premises which PIRC investigators consider to be relevant to the investigation; and
  - remove from those premises anything which the PIRC investigators consider to be relevant to the investigation; and
- provide any other assistance to the PIRC that the PIRC investigators may reasonably require,
- ensure that referrals to the PIRC do not delay any initial action by the HMRC in managing the scene or securing or preserving evidence, and
- provide assistance at the scene of a live incident.

The Commissioners recognise that PIRC investigators have the powers and privileges of constables throughout Scotland.

#### **4. RESOLVING DISAGREEMENTS**

PIRC and the Commissioners are committed to working together in an environment of mutual trust and respect and in promoting a culture of openness. This approach should minimise the risk of disagreements. Should disagreements arise, they should be resolved amicably between the people concerned, and failing that through discussions between relevant senior managers.

**5. REVIEWING THE AGREEMENT**

This agreement will be reviewed by the parties annually to ensure the parties are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances.

Signed ..... *R. McNeill*  
Date..... *13 November 2013*

**Police Investigations & Review Commissioner**

Signed ..... *Jennie Grant*  
Date..... *10 February 2014*

**The Commissioners for Her Majesty's Revenue and Customs**