

15/3/14
pirc

Police Investigations &
Review Commissioner



Home Office



Border Force

AGREEMENT

between

THE POLICE INVESTIGATION & REVIEW COMMISSIONER

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

THE DIRECTOR OF BORDER REVENUE

To establish and maintain procedures in relation to the investigation of any serious incident involving an immigration officer, general customs officials, customs revenue official or other relevant individual acting in the exercise of specified enforcement functions in Scotland.

1. INTRODUCTION

This agreement takes into account the provisions of the Police Public Order and Criminal Justice (Scotland) Act 2006 ("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 between the PIRC and the Secretary of State in relation to the PIRC's complaint review functions.

2. STATUTORY ROLE OF THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER FOR SCOTLAND

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 permit PIRC's investigators entry to premises used by the PSS or SPA.

The Order enables the PIRC and the Secretary of State to enter into an agreement for the PIRC to investigate and report on any "serious incident" involving an immigration officer, general customs official, customs revenue official or relevant individual, carrying out enforcement functions.

This agreement is made in furtherance of the terms of the Order and broadly reflects the relevant provisions of the 2006 Act, as amended, and the Regulations. The agreement relates only to incidents that occur in Scotland.

3. A FRAMEWORK FOR COLLABORATIVE WORKING

The PIRC, the Secretary of State and the Director of Border Revenue agree that the PIRC may investigate and report on any serious incident involving an immigration officer, general customs official, customs revenue official or relevant individual acting in the exercise of enforcement functions relating to immigration, asylum, customs or customs revenue.

Interpretation

The agreement applies to:

- I. An immigration officer or an official of the Secretary of State carrying out functions relating to immigration or asylum, but only when acting in the exercise of enforcement functions
- II. A general customs official or any other person exercising general customs functions under the authority of the Secretary of State or the Director of Border Revenue, but only when acting in the exercise of enforcement functions
- III. A customs revenue official or any other person exercising customs revenue functions under the authority of the Director of Border Revenue, but only when acting in the exercise of enforcement functions

“Enforcement functions” includes, 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;
- f) powers to examine persons or otherwise to obtain information (including powers to take fingerprints or to acquire other personal data).
- g) powers regulated by the Regulation of Investigatory Powers Act 2000; and
- h) powers regulated by Part III of the Police Act 1997.

The PIRC shall not have functions in relation to acts or omissions of any person exercising a specified enforcement function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999.

"A serious incident" means:

- a) a circumstance in or in consequence of which a person has died or sustained serious injury **1** where –
 - I. the person, at or before the time of death or serious injury, had contact (directly or indirectly) with an immigration officer, general customs official, customs revenue official or relevant individual 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 immigration officer, general customs official, customs revenue official or relevant individual;
- c) any circumstance in which an immigration officer, general customs official, customs revenue official or relevant individual has, while acting in the exercise of 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;
- d) any circumstance in which an immigration officer, general customs official, customs revenue official or relevant individual has, while exercising enforcement functions, used a straight, side handled or friction lock truncheon (sometimes known as a baton).

Criteria for Investigations

The Secretary of State or the Director of Border Revenue (as appropriate) will refer to PIRC for investigation all 'serious incidents' defined at (a) and (b) above, immediately when it becomes clear that the matter constitutes a serious incident as defined at (a) and (b) above. The Secretary of State or the Director of Border Revenue (as appropriate) may also refer to PIRC for investigation those serious incidents defined at (c) and (d).

The PIRC will investigate any serious incident defined at (a) above in which the person has died. On receipt of all other referrals the PIRC will decide whether or not it is necessary to investigate the incident. Should the PIRC decline to investigate, the PIRC will refer the matter back to the Secretary of State or the Director of Border Revenue (as appropriate) and may include, for consideration, recommendations on how an investigation of the incident might be taken forward.

1 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

In accordance with section 33A(b) of the 2006 Act, the PIRC must investigate certain kinds of incident if directed to do so by the Crown Office and Procurator Fiscal Service ("the COPFS"). These 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 circumstances in which there is an indication that an immigration officer, general customs official, customs revenue official or relevant individual while exercising enforcement functions may have committed an offence in Scotland. Section 41A of the 2006 Act applies to the PIRC in respect of any directions made pursuant to this Agreement.

Where there is a scene of interest to both immigration officers, general customs officials, customs revenue officials, and/or relevant individuals, the PIRC and immigration officers/general customs officials/customs revenue officials/relevant individuals will, as soon as is reasonably practicable, discuss the incident and agree a primary controller for the scene. Primary control of the scene will normally lie with the organisation that is investigating the more serious potential offence.

Collaborative Working

The Secretary of State or the Director of Border Revenue (as appropriate) will, in respect of any serious incident being considered for investigation by the PIRC:

- produce in a form acceptable to the PIRC investigators, any document, record or other information which the PIRC investigators may require in relation to the investigation being carried out,
- permit the PIRC's investigators to –
 - enter any premises which are used by immigration officers, general customs officials, customs revenue officials or relevant individuals
 - inspect those premises and anything on those premises which PIRC investigators consider to be relevant to the investigation,
 - 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, where required, any initial action by immigration officers, general customs officials, customs revenue officials or relevant individuals in immediate management of the scene of a live incident or securing or preserving evidence, and
- provide, where required, immediate assistance at the scene of a live incident.

Section 46 of the Act applies to information obtained by the Commissioner in connection with an investigation under this agreement, subject to the requirement that the Commissioner consult with the Secretary of State or the Director of Border Revenue (as appropriate) before consenting to the further disclosure of any information. Consent shall not be provided by the Commissioner where the Secretary of State or the Director of Border Revenue (as appropriate) objects to the further disclosure of information on the basis that there is a real risk that disclosure would have a significantly adverse effect on:

- I. the interests of national security; or
- II. the prevention or detection of crime, or the apprehension or prosecution of offenders.

The Secretary of State or the Director of Border Revenue (as appropriate) recognises that PIRC investigators have the powers and privileges of a constable throughout Scotland.

Reports on Investigations

Section 41E of the 2006 Act applies in relation to reports to be produced pursuant to an investigation carried out under the terms of this agreement. The references are to be read as references to the Secretary of State or the Director of Border Revenue (as appropriate).

On completion of an investigation as requested by the Secretary of State or the Director of Border Revenue, the PIRC will provide to the Home Office Professional Standards Unit, a report of that investigation for consideration according to Home Office policy.

4. RESOLVING DISAGREEMENTS

The PIRC, the Secretary of State and the Director of Border Revenue 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 officials.

5. REVIEWING THE AGREEMENT

This agreement will be reviewed annually by the PIRC, the Secretary of State and the Director of Border Revenue to ensure the parties are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances.

Signed: *P. J. Keill*
Date: *28 July 2014*

Police Investigations & Review Commissioner

Signed *R. M. J.*
Date *26 September 2014*

Secretary of State for the Home Department

Signed *[Signature]*
Date *14 July 2014*

Director of Border Revenue

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Police Investigations &
Review Commissioner



Home Office



Border Force

AGREEMENT

between

THE POLICE INVESTIGATION & REVIEW COMMISSIONER

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

THE DIRECTOR OF BORDER REVENUE

In respect of immigration officers, general customs officials, customs revenue officials or other relevant individuals exercising specified enforcement functions in Scotland

**AGREEMENT TO ESTABLISH AND MAINTAIN PROCEDURES IN RELATION TO
COMPLAINTS MADE ABOUT THE EXERCISE OF SPECIFIED ENFORCEMENT
FUNCTIONS IN SCOTLAND**

made between

THE POLICE INVESTIGATIONS AND REVIEW COMMISSIONER ("the Commissioner")

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ("the Secretary of State")

and

THE DIRECTOR OF BORDER REVENUE

1. BACKGROUND, PURPOSE, COMMENCEMENT AND EXTENT

- (1) This Agreement is made under the provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 (S.I. 2007/1098).
- (2) The Order provides that the Commissioner and the Secretary of State may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the exercise by an immigration officer of specified enforcement functions and the exercise by officials of the Secretary of State of specified enforcement functions relating to asylum or immigration.
- (3) The Order further provides that the Commissioner and Her Majesty's Revenue and Customs may enter into an agreement to establish and maintain procedures which correspond to or are similar to those contained in Chapter 2 of Part 1 of the Act in relation to complaints made about the acts or omissions of Her Majesty's Revenue

and Customs, the Commissioners for Revenue and Customs, an officer of Revenue and

and any other persons specified in the agreement who are authorised to act for or on behalf of Her Majesty's Revenue and Customs. These provisions also apply to those designated as general customs officials and customs revenue officials, as well as other persons specified in the agreement as authorised to act for or on behalf of the Secretary of State in relation to general customs functions or for or on behalf of the Director of Border Revenue in relation to customs revenue functions by virtue of the relevant glossing provisions of the Borders Citizenship and Immigration Act 2009.¹

- (4) This Agreement, which is made with the approval of the Secretary of State, the Director of Border Revenue, the Commissioner and the Scottish Ministers, provides that the Commissioner may examine the manner in which relevant complaints have been handled by or on behalf of the Secretary of State or Director of Border Revenue (as appropriate).

- (5) This Agreement shall come into effect on the day after the day on which it is made.

¹ Section 1 of the Borders Citizenship and Immigration Act 2009 ("BCIA 2009") states that any references to Her Majesty's Revenue and Customs or to the Commissioners for Her Majesty's Revenue and Customs in any instrument issued before the passing of the BCIA 2009 should be read as including a reference to the Secretary of State so far as it relates to a function exercisable in relation to a general customs matter. Section 7 states that references to the Commissioners for Her Majesty's Revenue and Customs are also to be read as including a reference to the Director of Border Revenue so far as it relates to a function exercisable in relation to a customs revenue matter. Sections 3 and 11 of the BCIA 2009 states that any references to an officer of Revenue and Customs or to Her Majesty's Revenue and Customs made in any enactment, instrument or document issued before or after the passing of the Act are to be read as including a reference to a general customs official and a customs revenue official respectively. Therefore, the procedures outlined in the agreement made under the Act and the Order, shall apply equally to Border Force designated customs officials and any other official specified in this agreement as authorised to act for or on behalf of the Secretary of State or Director of Border Revenue undertaking general customs or customs revenue functions.

- (6) Subject to the provisions of article 15, this Agreement shall not be made, varied or terminated or otherwise departed from without the approval of any of the signatories to this Agreement and the Scottish Ministers.
- (7) Complaints procedures established and maintained in accordance with this Agreement shall have no effect in relation to anything done outside Scotland by any person or body in relation to whom complaints procedures are so established and maintained.

2. INTERPRETATION

In this Agreement–

- (1) “the Act” means the Police, Public Order and Criminal Justice (Scotland) Act 2006, as amended by the Police and Fire Reform (Scotland) Act 2012²;
- (2) “the Order” means the Police, Public Order and Criminal Justice (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007;
- (3) “the Agreement” means this agreement;
- (4) “the 2009 Act” means the Borders, Citizenship and Immigration Act 2009;
- (5) “the Commissioner” means the Police Investigations and Review Commissioner;
- (6) “the Secretary of State” means the Secretary of State for the Home Department;

² The relevant sections of the Act in respect of this Agreement are sections 33 to 41 and 42A to 47 under Part 1, Chapter 2 “Complaints and Misconduct”.

- (7) "the Director of Border Revenue" means the person designated by the Secretary of State under section 6 of the 2009 Act;
- (8) "immigration officer" means a person appointed by the Secretary of State under paragraph 1 of Schedule 2 to the Immigration Act 1971;
- (9) "customs revenue official" means a person designated by the Director of Border Revenue under section 11 of the 2009 Act;
- (9) "general customs official" means a person designated by the Secretary of State under section 3 of the 2009 Act;
- (10) "contractor" means a person authorised to act for or on behalf of: –
- (a) the Director of Border Revenue in respect of functions relating to customs revenue matters, within the meaning of section 7 of the 2009 Act; or
 - (b) the Secretary of State in respect of functions relating to general customs matters, within the meaning of section 1 of the 2009 Act.
- (11) "official" means –
- (a) a customs revenue official;
 - (b) a general customs official;
 - (c) an immigration officer; or
 - (d) an official of the Secretary of State exercising functions relating to asylum or immigration.
- (12) "specified enforcement functions" has the meaning given by article 5 of the Agreement.

- (13) "appropriate authority" has the meaning given by article 4 of the Agreement.
- (14) "reconsidering authority" means the authority appointed by the Commissioner to reconsider a complaint.
- (15) the "relevant authority" means—
- (i) the Chief Constable of the Police Service of Scotland;
 - (ii) the Scottish Police Authority; and, for the purposes of this Agreement
 - (iii) the Secretary of State; and
 - (iv) the Director of Border Revenue.

3. "RELEVANT COMPLAINT"

- (1) "Relevant complaint" means a complaint which is given or sent to the appropriate authority, by—
- (a) a member of the public who claims to be the person in relation to whom the relevant official or relevant contractor exercised the specified enforcement functions which are the subject of the complaint;
 - (b) a member of the public not falling within sub-paragraph (a) who claims to have been adversely affected by the exercise of the specified enforcement functions, which are the subject of the complaint;
 - (c) a member of the public who claims to have witnessed the exercise of the specified enforcement functions, which are the subject of the complaint; or
 - (d) a person acting on behalf of a person falling within any of sub-paragraphs (a) to (c).

(2) In sub-paragraph (1) "complaint" means a statement (whether oral, written or electronic) expressing dissatisfaction about the exercise of specified enforcement functions by an official or contractor.

(3) But "complaint" does not include—

(a) any statement made by an official or contractor who exercises, or who has exercised, specified enforcement functions, about the terms and conditions of their service;

(b) a statement which consists of or includes an allegation of an act or omission which constitutes a crime;

(c) a statement in relation to a general customs official, a customs revenue official or a contractor about the exercise of specified enforcement functions, whilst employed by, and serving as an officer of, Her Majesty's Revenue and Customs or Revenue and Customs or whilst authorised to act for or on behalf of Her Majesty's Revenue and Customs; or

(d) a statement in relation to acts or omissions of any person exercising a specified enforcement function conferred on him by or under Part 8 of the Immigration and Asylum Act 1999.

(4) A complaint need not identify the official or contractor who is the subject of the complaint in order to fall within sub-paragraph (2).

4. APPROPRIATE AUTHORITY IN RELATION TO A COMPLAINT

For the purposes of the Agreement, the appropriate authority in respect of any complaint—

(a) relating to the exercise of specified enforcement functions by:

- (i) a contractor exercising general customs functions within the meaning of section 1 of the 2009 Act;
- (ii) a general customs official;
- (iii) an immigration officer; or
- (iv) an official of the Secretary of State exercising functions relating to immigration or asylum

means the Secretary of State; and

- (b) relating to the exercise of specified enforcement functions by
 - (i) a contractor exercising customs revenue functions within the meaning of section 7 of the 2009 Act; or
 - (ii) a customs revenue official; or

means the Director of Border Revenue.

5. SPECIFIED ENFORCEMENT FUNCTIONS

- (1) For the purposes of this Agreement, specified enforcement functions means—
 - (a) powers of entry;
 - (b) powers to search persons and property;
 - (c) powers to seize or detain property;
 - (d) powers to arrest persons;
 - (e) powers to detain persons;
 - (f) powers to examine persons or otherwise obtain information (including powers to take fingerprints or acquire other personal data);
 - (g) powers regulated by the Regulation of Investigatory Powers Act 2000; and
 - (h) powers regulated by Part III of the Police Act 1997.

- (2) The following shall not be regarded as a specified enforcement function—
- (a) the making of an immigration decision, as defined at section 82(2) of the Nationality, Immigration and Asylum Act 2002;
 - (b) the making of a decision to grant or refuse asylum under paragraph 334 of the Immigration Rules; or
 - (c) the giving of any directions or the making of any arrangements to remove persons from the United Kingdom.

6. EXAMINATION OF MANNER OF HANDLING OF COMPLAINT

- (1) The Commissioner may, at the request of —
- (a) the person who made the complaint (“the complainer”); or
 - (b) the appropriate authority in relation to the complaint,
- examine the manner in which a relevant complaint has been dealt with (such an examination being a “complaint handling review”).
- (2) The Commissioner may carry out a complaint handling review under sub-paragraph (1)(b) only if satisfied that the appropriate authority in relation to the complaint has taken reasonable steps to deal with the complaint.
- (3) On completion of a complaint handling review, the Commissioner must—
- (a) inform the complainer about—
 - (i) the conclusions the Commissioner has drawn from the complaint handling review and the reasons for them;
 - (ii) what action (if any) the Commissioner proposes to take in consequence of those conclusions;

- (b) draw up a report of the complaint handling review and the conclusions, reasons and proposed action referred to in sub-paragraph (3)(a)(ii) and send it to the appropriate authority in relation to the complaint.
- (4) where the complaint relates to the exercise of a specified enforcement function by an official or contractor who is identified by the complaint as being the person who is the subject of it, the appropriate authority must inform the official or contractor of the matters specified in sub-paragraph 3 (a) above.
- (5) The duties imposed by sub-paragraph (3)(a) are subject to such exceptions as may be prescribed by regulations made by the Scottish Ministers under sections 35(5) and (6) of the Act.³
- (6) If, having completed a complaint handling review, the Commissioner is of the opinion that the complaint should be reconsidered, the Commissioner may give a direction requiring the reconsideration of the complaint (a “reconsideration direction”).
- (7) A reconsideration direction may be given—
- (a) to the appropriate authority in relation to the complaint; or

³ Sections 35(5) and (6) of the Act provides that Scottish Ministers are to make regulations under this paragraph only to the extent that they consider it necessary for the purpose of any of the following—

(a) preventing the premature or inappropriate disclosure of information that is relevant to, or may be used in, any criminal proceedings or prospective criminal proceedings;

(b) preventing the disclosure of information in any circumstances in which it has been determined in accordance with the regulations that its non-disclosure—

- (i) is in the interests of national security;
- (ii) is for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders;
- (iii) is justified on proportionality grounds; or
- (iv) is otherwise necessary in the public interest.

The non-disclosure of information is justified on proportionality grounds only if its disclosure would cause, directly or indirectly, an adverse effect which would be disproportionate to the benefits arising from its disclosure.

(b) if the Commissioner thinks it more appropriate to do so, to any other person who is a relevant authority

(The person to whom the direction is given being "the reconsidering authority").

- (8) A reconsideration direction given under sub-paragraph (7)(b) must be accompanied by a copy of the report sent to the appropriate authority in relation to the complaint under sub-paragraph (3)(b).
- (9) A reconsideration direction may be given as respects so much of the complaint as has been, or is, the subject of any proceedings or management process, other than criminal proceedings, during which the conduct of a relevant official or relevant contractor is considered in order to determine whether a sanction or punitive measure is to be imposed against him or her in relation to that conduct. Such a reconsideration direction may be given only in so far as it relates to the extent of compliance with the procedures established for such proceedings or management process.
- (10) A reconsideration direction may (either or both)—
- (a) instruct that the reconsideration of the complaint is to have regard to such further information as may have become available (whether or not as a result of the complaint handling review) after the complaint was dealt with by the appropriate authority;
 - (b) contain a requirement that reconsideration of the complaint is to take place under the supervision of the Commissioner (a "supervision requirement").
- (11) In deciding whether a reconsideration direction should contain a supervision requirement, the Commissioner must have regard to—
- (a) the seriousness of the case; and

(b) the public interest.

(12) The Commissioner may at any time issue a direction varying a reconsideration direction by inserting or, as the case may be, deleting a supervision requirement.

(13) Where a reconsideration direction is varied under sub-paragraph (12), the Commissioner may give—

(a) the reconsidering authority; or

(b) any person previously appointed to carry out the reconsideration,

such directions as the Commissioner considers appropriate for the purpose of giving effect to the variation.

7. DUTY OF COMMISSIONER NOT TO PROCEED WITH CERTAIN COMPLAINT HANDLING REVIEWS

(1) If it appears to the Commissioner (whether on an application by the appropriate authority in relation to the complaint or otherwise) that a complaint handling review is or would, if it took place, be one to which sub-paragraph (2) applies, the Commissioner must discontinue or, as the case may be, not proceed with the review.

(2) This paragraph applies to a complaint handling review which relates or, if it took place, would relate to a relevant complaint of a specified description.

(3) In paragraph (2), “specified” means specified in regulations made by the Scottish Ministers pursuant to sections 35(5) and (6) of the Act.

- (4) Where a complaint handling review is, under this article, discontinued or not proceeded with—
- (a) the Commissioner must notify the appropriate authority in relation to the complaint and the persons mentioned in article 6(4) of that fact;
 - (b) the Commissioner may give the appropriate authority in relation to the complaint, directions to do any such things as the Commissioner is authorised to direct by regulations made by the Scottish Ministers;
 - (c) the Commissioner may himself or herself take any steps of a description specified in regulations so made as the Commissioner considers appropriate for purposes connected with the discontinuance of the complaint handling review or the fact that it is not to take place; and
 - (d) subject to sub-paragraphs (b) and (c), the Commissioner is to take no further action in accordance with this Agreement in relation to the review or the complaint to which it relates.

8. APPOINTMENT OF PERSON TO RECONSIDER COMPLAINT

- (1) Where a reconsideration direction is given under article 6(6), the reconsidering authority must appoint a person to reconsider the complaint to which the direction relates.
- (2) But where the reconsideration direction contains a supervision requirement, the reconsidering authority must not appoint a person unless the Commissioner has given notice to the authority that the Commissioner approves the person whom the appropriate authority proposes to appoint.

- (3) Where the reconsidering authority is the appropriate authority in relation to the complaint, the person appointed must be one who was not previously involved in the consideration of the complaint.
- (4) Where the reconsideration of a complaint is subject to a supervision requirement, the person appointed under this article to reconsider the complaint must comply with all such requirements in relation to the carrying out of that reconsideration as may be imposed by the Commissioner in relation to that reconsideration.

9. RECONSIDERATION OF COMPLAINT: DUTIES TO KEEP PERSONS INFORMED

- (1) This article applies where there is a reconsideration of a complaint in accordance with article 6(6).
- (2) The reconsidering authority or, where the reconsideration of a complaint is subject to a supervision requirement the Commissioner, must provide the persons mentioned in sub-paragraph (3) with all such information as will keep those persons properly informed, while the reconsideration is being carried out and subsequently, of—
 - (a) the action (if any) which is taken in respect of the matters dealt with in any report under article 11; and
 - (b) the outcome of any such action.
- (3) Those persons are—
 - (a) the complainer;
 - (b) the appropriate authority in relation to the complaint (except where that authority is the reconsidering authority); and

(c) where the complaint relates to the exercise of a specified enforcement function by an official or contractor who is identified by the complaint as being the person who is the subject of it, that person.

- (4) Sub-paragraph (5) of article 6 of the Agreement applies in relation to the duties imposed by sub-paragraph (2) of this article as it applies to the duties imposed by sub-paragraph (3)(a) of that article.
- (5) A person appointed under article 8(1) of the Agreement to reconsider a complaint must provide the Commissioner with all such information as is reasonably required by the Commissioner for the purposes of the Commissioner's functions.
- (6) Where the reconsideration of a complaint is not subject to a supervision requirement the reconsidering authority must comply with any direction or guidance given by the Commissioner as to how the authority is to perform its functions under this article.

10. POWER OF COMMISSIONER TO DISCONTINUE RECONSIDERATION

- (1) If it appears to the Commissioner (whether on an application by the reconsidering authority or otherwise) that a relevant complaint which is being reconsidered under article 6(6) is of a "specified description", the Commissioner may by order require the discontinuance of the reconsideration.
- (2) In sub-paragraph (1), "specified description" means a description as specified in regulations made by the Scottish Ministers under sections 35(5) and (6) of the Act.

- (3) Where the reconsideration of a complaint is discontinued in accordance with this article—
- (a) the Commissioner must notify the persons mentioned in article 9(3) of that fact;
 - (b) the Commissioner must give a copy of the order requiring the discontinuance to the reconsidering authority and the person appointed to reconsider the complaint;
 - (c) the Commissioner may give the reconsidering authority or the person appointed to reconsider the complaint directions to do any such things as the Commissioner is authorised to direct by regulations made by the Scottish Ministers;
 - (d) the Commissioner may himself or herself take any steps of a description specified in regulations made by the Scottish Ministers so made as the Commissioner considers appropriate for purposes connected with the discontinuance of the reconsideration; and
 - (e) subject to sub-paragraphs (c) and (d), the reconsidering authority, the person appointed to reconsider the complaint and the Commissioner are to take no further action in accordance with this Agreement in relation to that complaint.

11. FINAL REPORTS ON RECONSIDERATION

- (1) On the completion of the appointed person's reconsideration, a person appointed under article 8(1) must—
- (a) submit a report on it to the Commissioner; and
 - (b) send a copy of the report to—
 - (i) the reconsidering authority; and
 - (ii) where different, the appropriate authority in relation to the complaint.
- (2) A person submitting a report under this article is not prevented by any obligation of secrecy imposed by any rule of law or otherwise from including all such matters as the person thinks fit in the person's report.

12. GENERAL FUNCTIONS OF THE COMMISSIONER

(1) The Commissioner has the general functions of—

(a) securing the maintenance by the Commissioner, and by each of the relevant authorities, of suitable arrangements for the handling of relevant complaints;

(b) keeping under review all arrangements maintained for that matter;

(c) securing that arrangements maintained for that matter—

(i) are efficient and effective;

(ii) contain and manifest an appropriate degree of independence; and

(iii) are adhered to.

(d) making such recommendations, and giving such advice, for the modification of—

(i) the arrangements maintained for that matter; and

(ii) the practice of relevant authorities in relation to other matters,

as appear from the carrying out of the Commissioner's other functions, to be necessary or desirable.

13. REPORTS TO THE SCOTTISH MINISTERS AND THE SECRETARY OF STATE

(1) The Commissioner must make such reports to the Scottish Ministers, the Secretary of State and the Director of Border Revenue about matters relating generally to the carrying out of the Commissioner's functions under this agreement as they may, from time to time, require.

(2) The Commissioner may, from time to time, make such other reports to the Scottish Ministers, the Secretary of State and the Director of Border Revenue as the Commissioner considers appropriate for drawing their attention to matters which—

(a) have come to the Commissioner's notice; and

(b) are matters which the Commissioner considers should be drawn to their attention by reason of their gravity or of other exceptional circumstances.

- (3) The Commissioner must prepare such reports containing advice and recommendations as the Commissioner considers appropriate for the purpose of carrying out the function under article 12(1)(d).
- (4) The Commissioner may send a copy of any report made under this article to any person the Commissioner thinks fit, including, but not being limited to, the Independent Chief Inspector of Borders and Immigration⁴.

14. PROVISION OF INFORMATION TO THE COMMISSIONER

- (1) An appropriate authority must –
 - (a) provide the Commissioner with all such information and documents specified or described in a notification given by the Commissioner to the appropriate authority; and
 - (b) produce to the Commissioner all such evidence and other things so specified or described,
as appear to the Commissioner to be required by the Commissioner for the purposes of the carrying out of any of the Commissioner's functions.
- (2) Anything failing to be provided or produced by the appropriate authority in pursuance of a requirement imposed under sub-paragraph (2) must be provided or produced in such form, in such manner and within such period as may be specified in—
 - (a) the notification imposing the requirement; or
 - (b) in any subsequent notification given by the Commissioner to that person for the purposes of this sub-paragraph.

⁴ The Independent Chief Inspector of Borders and Immigration is the person appointed under section 48 of the UK Borders Act 2007

- (3) Nothing in this article requires the appropriate authority to provide the Commissioner with any information or document, or to produce any other thing, before the earliest time at which it is practicable for the authority to do so.
- (4) A requirement imposed by any notification or regulations under this article may authorise or require information or documents to which it relates to be provided to the Commissioner electronically.

15 GUIDANCE

(1) Insofar as its provisions are relevant for the purpose of this Agreement, all parties agree to have regard with the statutory guidance issued under section 45 of the 2006 Act when carrying out the functions to which guidance relates.⁵

16 DISCLOSURE OF INFORMATION BY AND TO THE COMMISSIONER

- (1) Information obtained by the Commissioner in connection with any of the Commissioner's functions in regard to this Agreement may be disclosed by the Commissioner to any public body or office-holder (in Scotland or in any other part of the United Kingdom)—
 - (a) for any purpose connected with the carrying out of any of the Commissioner's functions; or
 - (b) for the purpose of enabling or assisting the public body or office-holder to carry out any function.
- (2) Prior to the disclosure of any information under paragraph 16(1) the Commissioner must consult with the Secretary of State or the Director of Border Revenue (as appropriate). Consent to the disclosure of the information shall not be given by the

⁵ http://pirc.scotland.gov.uk/assets/0000/3923/PCCS_statutory_guidance_web.pdf

Secretary of State or the Director of Border Revenue (as appropriate) if either considers that there is a real risk that disclosure would have a significantly adverse effect on –

(a) the interest of national security; or

(b) the prevention or detection of crime, or the apprehension or prosecution of offenders.

(3) Information disclosed by the Commissioner under this article to any body or office-holder must not be further disclosed except—

(a) for a purpose connected with any function of that body or office-holder; and

(b) with the consent of the Commissioner.

(4) Consent under sub-paragraph (2)(b) may be given—

(a) in relation to a particular disclosure; or

(b) in relation to disclosures made in circumstances specified or described in the consent.

(5) Prior to providing consent under paragraph 16(3)(b) the Commissioner must consult with the Secretary of State or the Director of Border Revenue (as appropriate). Consent shall not be provided by the Commissioner where the Secretary of State or the Director of Border Revenue (as appropriate) objects to the further disclosure on the basis that there is a real risk that further disclosure would have a significantly adverse effect on –

(a) the interest of national security; or

(b) the prevention or detection of crime, or the apprehension or prosecution of offenders.

- (6) Any person may disclose information to the Commissioner if the disclosure is made for the purposes of the carrying out of any of the Commissioner's functions.
- (7) A disclosure under this clause does not breach—
 - (a) any obligation of confidence owed by the person making the disclosure; or
 - (b) any other restriction on the disclosure of information (however imposed).
- (8) Nothing in paragraph 16 affects the Commissioner's obligation under paragraph 6(3) to provide the complainer and the appropriate authority with the information specified in paragraph 6(3)(a) and (b).

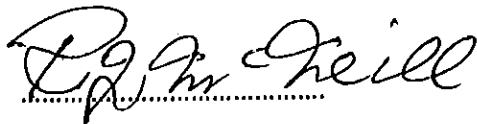
17 RELEVANT AMENDMENTS TO THE ORDER

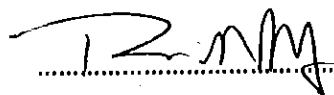
- (1) This Agreement shall be read and applied in accordance with the provisions of the Act and any regulations made by the Scottish Ministers under sections 35(5) and (6) of the Act.
- (2) Any variation of this Agreement requires the approval of the parties to the Agreement and the Scottish Ministers. The parties to this Agreement agree that it should be reviewed if:
 - (a) amendments are to be made to—
 - (i) the Act; or to
 - (ii) the Order; or
 - (b) relevant regulations are made under the Act.


18. AGREEMENT

- (1) The arrangements set out in this Agreement and the attached funding annex are made in furtherance of powers conferred by sections 104, 112(1) and 113 (2) (3) and

(4) of the Scotland Act 1988 and have been approved by the Secretary of State, the Director of Border Revenue and the Cabinet Secretary for Justice in Scotland.

Signed by 
.....
Police Investigations and Review Commissioner
Date 28 July 2014

Signed by 
.....
Secretary of State for the Home Department
Date 26 September 2014

Signed by 
.....
Director of Border Revenue
Date 14 July 2014

PIRC– Home Office Agreement: Funding Annex

1. In reaching the agreement, the PIRC, the Secretary of State and the Director of Border Revenue recognise that this is a cross-jurisdictional arrangement in the interests of consistent service provision across the UK.
2. All signatories to this agreement recognise that occasions may arise where the PIRC will incur significant costs when dealing with a complaint about officers of the Home Office specified in this agreement.
3. This annex sets out a means by which the signatories agree to discuss, negotiate and agree reimbursement in such cases.
4. If the PIRC considers that the costs of dealing with a complaint about officers of the Home Office will exceed or has exceeded an agreed trigger amount, then the PIRC will open discussions with officials in the Home Office about reimbursement.
5. The trigger amount shall be seven thousand five hundred pounds.

In the interest of good customer service, consideration of a complaint about officers of the Home Office by the PIRC will be continued whilst reimbursement negotiations are ongoing.

6. Whilst the PIRC will determine the costs incurred in any complaints handling review, whether supervised or otherwise, the reimbursement agreement itself must be agreed by both parties.
7. If there is no agreement reached within 60 days on an appropriate level of reimbursement, the matter will be referred to the Secretary of State and the Scottish Ministers.
8. This annex may be reviewed at such frequency as the signatories to this agreement see fit.

