



Police Investigations &  
Review Commissioner



SCOTTISH  
PRISON  
SERVICE

**MEMORANDUM OF UNDERSTANDING**

between

**THE POLICE INVESTIGATION & REVIEW COMMISSIONER**

and

**The Scottish Prison Service**

## **1. Introduction**

This memorandum recognises the provisions of the Police Public Order and Criminal Justice (Scotland) Act 2006 Act as amended by the Police and Fire Reform (Scotland) Act 2012, the establishment under that Act of the Police Investigations and Review Commissioner (PIRC), and her powers and duties in regard to the prescribed categories of investigation where she may have an investigatory role. The memorandum also recognises the commitment of both organisations to the Human Rights Act 1998, and in particular, Articles 2 and 3 of the European Convention on Human Rights (ECHR).

## **2. Statutory role of the Police Investigation & Review Commissioner for Scotland**

The general functions of the Police Investigation & Review Commissioner (PIRC) are to:

- secure the maintenance by the Scottish Police Authority (SPA) and the Chief Constable of the Police Service of Scotland (PSS) of suitable arrangements for the handling of relevant complaints,
- examine the handling of relevant complaints and reconsider such complaints,
- 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,
- determine whether to investigate, where requested to do so by the SPA or the Chief Constable, certain serious incidents involving the police, and
- investigate other matters relating to the SPA or the PSS where the PIRC considers that it would be in the public interest to do so.

## **3. Statutory role of the Scottish Prison Service**

The Scottish Prison Service (SPS) is an Agency of Scottish Government and was established in 1993. SPS has a vision of:

- helping to build a safer Scotland;
- unlocking Potential; and
- transforming Lives.

The mission of SPS is to provide services that help to transform the lives of people in its care so they can fulfil their potential and become responsible citizens.

In delivering its vision and mission, the SPS operating task is to help to protect the public and reduce reoffending through the delivery of safe and secure custodial services that empower offenders to take responsibility and to fulfil their potential.

SPS delivers this through:

- Custody - Managing safe and secure custodial environments
- Order - Providing stability and order that helps offenders to transform their lives
- Care - Supporting wellbeing and treating with respect and humanity all in its care

- Opportunity - Providing opportunities which develop the potential of its staff, its partnerships and the people in its care.

SPS currently has 13 publicly managed prisons and 2 privately managed prisons.

#### **4. Powers of the Police Investigations & Review Commissioner**

The Act invests PIRC investigators with '*all the powers and privileges of a constable throughout Scotland*' while conducting investigations on behalf of the PIRC. Supporting regulations make a number of requirements of the PSS and the SPA. These include:

- producing, in a form acceptable to the PIRC, any document, record or other information that she may require, and
- providing such other assistance as the PIRC may reasonably require.

#### **5. A framework for collaborative working**

The PIRC and SPS have distinct responsibilities but there are key areas where their interests may overlap, namely when there has been:

- a death in police custody, following which the Procurator Fiscal may contact the PIRC and direct her to investigate;
- a serious injury in police custody, following which the Chief Constable must refer the circumstances to the PIRC who may decide to conduct an investigation;
- a death following police contact, following which the Procurator Fiscal may contact the PIRC and direct her to investigate;
- a serious injury following police contact, following which the Chief Constable must refer the circumstances to the PIRC who may decide to conduct an investigation.

SPS may have had contact with some of these individuals prior, or subsequent to, the matter under investigation. The Procurator Fiscal or the PIRC may determine that it would be useful to the investigation to interview relevant members of SPS staff or to view relevant documentation or other evidence held by SPS. SPS is fully committed to ECHR and to the spirit of independent scrutiny intended by the Act. SPS agrees to support investigations by:

- providing any document, record or other information requested by investigators acting on behalf of the PIRC, and
- providing any other assistance that investigators may reasonably require. This will include, where appropriate, making relevant staff or prisoners available for interview, providing access to vehicles used for the transport of prisoners, and providing evidence if requested.

The PIRC undertakes that she will request only documentation she considers necessary for the purposes of the investigation and will request assistance only when relevant to the investigation. The PIRC will securely store any information or evidence she receives and treat it as confidential within the parameters of its legal responsibilities. SPS recognises that such information may be disclosed to the Crown Office and Procurator Fiscal service.

## 6. Resolving disagreements

The PIRC and SPS 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.

## 7. Reviewing the Memorandum of Understanding

We will review this Memorandum every three years to ensure both organisations are working within the agreed framework, and consider whether the framework needs to be revised to meet changing circumstances. Either party may request a review at an earlier point, if required.

Signed  .....

Date..... 21.1.15 .....

**Police Investigations & Review Commissioner for Scotland**

Signed  .....

Date..... 29.1.2015 .....

**Chief Executive, Scottish Prison Service**