

POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Police (Ethics, Conduct and Standards) (Scotland) Bill, introduced in the Scottish Parliament on 6 June 2023.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 29–EN);
- a Policy Memorandum (SP Bill 29–PM);
- a Delegated Powers Memorandum (SP Bill 29–DPM);
- statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 29–LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

4. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the policy intention behind the Bill. This Financial Memorandum sets out the estimated costs associated with the measures introduced by the Bill and, as such, it should be read in conjunction with the Bill and the other accompanying documents. The Financial Memorandum is structured as follows:

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5. Each section details the sources, assumptions and the estimated costs and savings in relation to the different elements of the Bill. These are then broken down by:

- 1. The Scottish Administration**
- 2. Local authorities**
- 3. Other bodies, individuals and businesses. This includes the Scottish Police Authority (SPA), Police Scotland (PS), the Police Investigations and Review Commissioner (PIRC) and His Majesty's Inspectorate of Constabulary in Scotland (HMICS), among other bodies.**

BACKGROUND TO THE BILL

6. In 2018 the Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS) jointly commissioned Dame Elish Angiolini, a former Lord Advocate and now known as Lady Angiolini, to carry out an independent review of complaints handling, investigations and misconduct in relation to policing (“the Review”)¹. The purpose of the Review was to bring greater fairness, transparency, accountability and proportionality to policing, while protecting the human rights of everyone involved.

7. In undertaking the Review, Dame Elish took evidence from policing partners, current and former officers, and a broad range of stakeholders. Her Preliminary Report was published in June 2019 and made 30 recommendations. The Final Report, published in November 2020, outlined a further 81 recommendations, taking the total to 111. Then Cabinet Secretary for Justice Humza Yousaf, and then Lord Advocate James Wolffe KC committed to broadly accept the majority of the recommendations. Most are intended to be implemented as specifically set out, but for some there was scope to explore further options to achieve the desired outcome.

8. Since then, the Scottish Government and policing partners have delivered significant change and reform to the police complaints system. Extensive work has been undertaken to implement the recommendations which do not require legislative change, and 58 out of 72 non-legislative recommendations for improvement have been delivered to-date, with progress set out in the regular thematic reports, the most recent of which was published on 18 May 2023².

¹ [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing: Final Report \(www.gov.scot\)](http://www.gov.scot)

² [Complaints, investigations and misconduct in policing: implementation progress report - gov.scot \(www.gov.scot\)](http://www.gov.scot)

9. The improvements made to-date bring greater transparency, fairness and accessibility to systems, policies and processes that underpin the police complaints and misconduct process. These improvements are helping to make the police complaints system easier to navigate for members of the public, as well as increasing consistency, efficiency and swifter resolution for all those involved in complaints, investigations or misconduct. They provide a firm foundation on which to deliver legislative improvements. The legislation will embed good practice, such as putting the code of ethics into statute, and underline the importance of maintaining and exceeding the high standards expected of Scotland's police officers. This will include ensuring there are robust, clear and transparent mechanisms and accountability in place to investigate police complaints and misconduct.

SUMMARY OF THE BILL POLICY INTENT

10. The Policy Memorandum sets out the full policy of the Bill. There are four broad areas contained within the Bill. These are:

Ethics of the police

11. These provisions aim to underline the importance of police officers maintaining and exceeding the high standards of behaviour and conduct expected of them. They:

- Establish a statutory code of ethics for police officers and staff (by requiring the preparation and publication of a code of ethics).
- Introduce an explicit duty of candour to: the standards of professional behaviour against which a constable's professional conduct is measured; the constable's declaration; and the policing principles to which due regard must be had in the policing of Scotland.
- Add to the policing principles a requirement that the Police Service will aim to improve the safety and wellbeing of persons and places in Scotland by being candid and co-operative in proceedings, including investigations against constables.

Police Conduct

12. The changes that are enabled in respect of the procedures for conduct aim to improve them by increasing the independence of those involved in decision-making, to make it more likely that fair process and justice are achieved, and that the public has confidence in our police by ensuring that police officers are held to the highest standards. They also improve the coherence and consistency of the legal treatment of certain types of conduct by making changes to the consequences of and liability for them. The provisions:

- Amend existing enabling powers to pave the way for a panel independent of the SPA to determine senior officer misconduct cases.
- Allow the conferral of functions on the PIRC in respect of procedures for misconduct.
- Enable procedures for misconduct to be applied to former constables. Police officers are held accountable for their actions when they were serving, even if they leave the force. This will enable all misconduct hearings to reach a conclusion.
- Require the SPA to establish and maintain a Scottish police barred list and a Scottish police advisory list to make available information about those officers who have left

but are subject to ongoing disciplinary procedures or findings of dismissal. The framework around these lists will be set up in regulations and the Bill gives Scottish Ministers broad regulation-making powers to make the necessary provision. It is expected that the regulations will include provision preventing the employment or other appointment of a person on the barred list to other policing roles in Scotland, as well as provision requiring policing bodies in Scotland to consult the lists before appointing or employing a person to a policing role in Scotland.

- Establish liability on behalf of the SPA for any unlawful conduct by the Chief Constable. This is to standardise the law with the position of unlawful conduct by constables.

Functions of the Police Investigations and Review Commissioner

13. These provisions add to the functions of the PIRC and clarify certain issues in the operation of the legal framework identified in the Review. They:

- Give to the PIRC a power to audit complaints via the use of the police case management system.
- Allow the PIRC to take over the investigation of a complaint from the police or the SPA (the Bill clarifies an existing regulation making power to allow the Scottish Ministers to put provision in place).
- Give to the PIRC a power to review police policies and practices.
- Allow the PIRC to investigate the actions of officers from other forces in the UK operating in Scotland.
- Allow the PIRC to make recommendations to the Chief Constable and the SPA about a variety of matters, including around handling of an individual complaint.
- Provide the PIRC with a power to audit the handling of whistleblowing complaints raised within Police Scotland or the SPA.
- Clarify definitions to remove some of the ambiguity and uncertainty that exists in the complaints and investigations legal framework.

Governance of the Police Investigations and Review Commissioner

14. This provision strengthens the governance of the PIRC. It:

- Provides for a statutory advisory board to advise on corporate governance matters.

CONSULTATION

15. It has been vital to hear from all those with an interest in the police complaints process when developing our legislative proposals. To understand the impact of the proposed changes as fully as possible, the Scottish Government launched a public consultation for 12 weeks in summer 2022 and held online public engagement sessions with both individuals and organisations. The Scottish Government has also continued to engage with policing partners and stakeholders throughout the Bill development process to understand the implications of legislative plans for policing organisations.

16. Policy development has taken place in a landscape of high-profile police conduct and complaints incidents. Furthermore, the evidence arising from reports published since Dame Elish's Review, including the Independent Review Group's interim report³ and HMICS thematic inspections⁴, alongside the Chief Constable's recent acknowledgement⁵ that Police Scotland is institutionally racist and discriminatory, highlights the need for further change. The Scottish Government has engaged with those with lived experience of the system and who have a strong desire to effect change based on their experiences.

17. However, legislation is only part of the process for improvement. It will provide the framework and help focus attention on the cultural and behavioural changes that are necessary at all levels of policing. Subsequent secondary legislation and written guidance will help to support those changes.

18. *Police Complaints, Investigations and Misconduct: A Consultation on Legislation* ran between May and August 2022. The consultation sought views on the policies contained within the Bill as opposed to financial assumptions. The consultation received 55 responses, 33 from individuals and 22 on behalf of organisations. Three engagement events were also held with organisations representing victims of crime, justice groups, voluntary sector organisations and groups representing different communities. These responses were grouped together, anonymised and included as a single response.

19. The consultation analysis report was completed by an independent social research organisation and was published, along with all the responses (where permission was given), in November 2022. The key findings from the report were:

- Broad support for measures which seek to ensure and raise standards of behaviour within Police Scotland and amongst officers, including; a statutory requirement for the Code of Ethics and a duty to consult on its contents; statutory duties of candour and co-operation for police officers, albeit there was less consensus on whether it should apply to former officers.
- Individuals were more supportive than organisations of changes which promoted public transparency, visibility, and impartiality of oversight processes.
- Many of the individual responses emphasised the importance of an independent oversight organisation to maintain standards in policing and expressed a view that this should not be the Police Investigations and Review Commissioner (PIRC). The Scottish Government assess from context that this may indicate a lack of understanding of the PIRC's role.
- Support for recommendations relating to changes to the PIRC structure to enhance its powers and independence. This will need further consideration to ensure that the distinct roles and responsibilities of the PIRC and HMICS are made clear.

³ <https://www.spa.police.uk/spa-media/ohkcuxfm/item-6-police-scotland-equality-diversity-and-inclusion-independent-r.pdf>

⁴ [HMICS | Thematic Inspection of Police Scotland Training and Development - Phase 1](#)

⁵ [Police Scotland Chief Constable Sir Iain Livingstone addresses institutional discrimination. - Police Scotland](#)

- Most respondents were supportive of recommendations which improve accountability, transparency, independence and the improvement of processes for handling misconduct issues in policing. For example:
 - Accelerated gross misconduct hearings should take place when evidence is incontrovertible.
 - Assurances were sought around allegations of misconduct during officer probation periods.
- A key theme running through the responses was independence in regard to assessing allegations of misconduct. Most respondents agreed that the PIRC should take on responsibility for key aspects of misconduct and gross misconduct proceedings for senior officers, including the preliminary assessment of misconduct allegations.
- There are, however, nuances relating to gross misconduct hearings being held in public in order to promote transparency and public confidence, with individuals being more supportive than organisations.
- Most agreed that it should be possible to begin and continue gross misconduct proceedings against former officers of any rank after they have left the service.
- Broad agreement that the Scottish Government should adopt Barred and Advisory Lists.

20. In addition to the consultation responses, follow up engagement took place with the public. Four dedicated group sessions were conducted with policing bodies, and follow up individual meetings took place with them.

METHODOLOGY FOR DEVELOPING THE FINANCIAL MEMORANDUM

21. Given the complexity and breadth of the Review, with 30 recommendations in the Preliminary Report and 81 recommendations in the Final Report, clear governance structures were put in place to oversee, direct and report on progress in implementation. The governance framework was designed to provide assurance and accountability to the Cabinet Secretary for Justice and Lord Advocate.

22. The framework consists of a three-tier governance structure to oversee and provide assurance on progress towards implementation of recommendations across all partners:

- the Ministerial Group (MG)
- the Strategic Oversight Group (SOG)
- the Practitioner Working Group (PWG)

23. The overall purpose of the PWG is to co-ordinate progress across a range of detailed cross-cutting recommendations from both the Preliminary and Final reports by Dame Elish Angiolini. It plays a key role in managing risks and interdependencies between partners. Membership includes representatives from PS, the SPA, the PIRC, the COPFS and HMICS. Three meetings of the PWG were convened in August, September and October 2022 to specifically consider the legislative proposals, and at each meeting stakeholders were asked to provide data that would help to clarify the financial implications of proposals.

24. These bodies are funded as such:

- SPA is funded by the Scottish Government. SPA in turn fund PS.
- HMICS is funded by the Scottish Government
- PIRC are funded by the Scottish Government

25. The Scottish Police Consultative Forum (SPCF) is an existing body and provides an opportunity for police staff associations and other policing bodies to fully engage on the issues that affect them including implementation of Dame Elish's Review. Engagement with the SPCF also fulfils Scottish Ministers' statutory duty to consult policing bodies before making regulations under section 54(2) of the Police and Fire Reform (Scotland) Act 2012. Work with the SPCF has taken place to consult policing stakeholders on these recommendations. It has provided a forum for staff associations to discuss the 'front-line' issues impacting their members and on future proposals for legislative amendments. Two sessions with the SPCF were convened in September and October 2022 to specifically consider the legislative proposals including their financial implications.

26. Information on costings and financial implications was requested and gathered via desk-based research and direct engagement with PS, SPA, PIRC, HMICS, the Home Office, the College of Policing, the London Mayors Office for Policing and Crime, and the Scottish Police Federation. Scottish Government financial information on policing (including funding to PIRC and the SPA) was also reviewed and analysed. A range of information was sought including:

- The number of gross misconduct hearings for senior officers and conduct assessments undertaken (from SPA);
- Costs associated with preliminary assessments (from SPA);
- Data on the speed at which gross misconduct hearings are held (from SPA);
- Police Scotland's Professional Standards Department's annual and quarterly performance reports;
- Anticipated staffing costs associated with changes to the PIRC's governance and accountability arrangements (from the PIRC);
- Remuneration and expenses associated with Police Appeals Tribunals (from SPA);
- Data requests for similar delivery models for example a hearing sitting with a legally qualified chair (from the London Mayor's Office);
- Information on contracts from PS;
- Information (from PS) on the volume of hearings and,
- Information on conduct hearings (from PS) that would allow us to extrapolate the effect of changes made by the Bill.

27. This dialogue and data gathering exercise helped inform the contents of the Bill, alongside assessing the financial and other impacts on specific policing organisations. The figures contained within this Financial Memorandum are the Scottish Government's best estimates of the costs of the provisions of the Bill, and where possible have been quantified the range of associated costs. Where it is not possible to quantify these fully, the Scottish Government make clear the costs are

unknown due to the unprecedented nature of the provision. Furthermore, the Scottish Government understand the resource implications for some policing partners in implementing these provisions and will continue to work with them in considering these costs.

LIMITATIONS AND LEVELS OF MATERIALITY

28. There are limitations in our ability to assess the full impact of the legislative changes we are taking forward before they are delivered. Many of the provisions in the Bill are enabling provisions that provide a framework for powers to be taken forward in regulations and guidance. This means that the financial impacts of the Bill are likely to be felt indirectly and as a consequence of the way that the regulations are taken forward.

29. Many provisions in the Bill put current practice onto a statutory footing, clarify definitions, move and clarify responsibilities or make small changes that will potentially impact on the number of cases which require action of some sort.

30. Where costs are not expected to exceed £10,000, full costed estimates have not been provided. The figure of £10,000 has been used as a default if there will be an immaterial but positive increase in resources. This takes into account the relative cost of changes in proportion to the overall budget of the affected organisations, as detailed below, and the difficulty in being precise when dealing with smaller estimates.

Organisation	Annual Budget in 2022/23 £m	Materiality (£10,000) as a % of annual budget
SPA/ PS	1,449.4	0.001%
PIRC	6.3	0.159%
COPFS	196.6	0.005%
Scottish Government	59,813.0	0.000%

SUMMARY OF THE NET COSTS FOR THE BILL

31. Regulations will require drafting and will be developed in conjunction with policing partners, through the Scottish Police Consultative Forum. It is unlikely that it will be possible to draft these until after the Bill is enacted, when any further work required can be fully considered. The changes to regulations will not come into force any earlier than financial year 2025/26.

32. It is anticipated that the Bill will lead to an overall increase in costs for policing bodies, in particular PIRC and Police Scotland. This may be offset in part by savings for the SPA as some responsibilities transfer from the SPA to the PIRC. Costs in the form of legal fees may also be incurred by former police officers and staff associations, as a result of a greater number of hearings taking place, and proceedings continuing until an outcome is reached.

33. Many of the Bill's provisions will require secondary legislation to be fully implemented. These are discussed individually at the end of the Financial Memorandum and are not considered

specifically within the Bill provision costs. The provisions in the Bill will enable Scottish Ministers to make or revise regulations to take these forward, and therefore it is not possible to provide a full assessment of costs or savings until the regulations have been agreed. However, to ensure transparency and help aid understanding of the overall costs and savings, where possible the relevant details and estimated data have been included in this Financial Memorandum.

Table 1: Estimated⁶ costs for provisions.

Overall	Annual <i>Ongoing</i> costs	
	Minimum	Maximum (including immaterial costs)*
Scottish Courts and Tribunal Service (SCTS)	£0	£10,340
Scottish Government	£0	£0
Total Scottish Administration	£0	£10,340
Total Local Authorities	£0	£0
SPA (includes Police Scotland)	£131,340	£259,000
PIRC	£389,134	£576,134
Other (Staff Associations)	£0	£177,000
Individuals (collectively)	£0	£392,000
Total other bodies, individuals & businesses	£520,474	£1,404,134
Total	£520,474	£1,414,474

* The first column in table 3 (net affect of a + b + c) are included in this table.

COSTS TO THE SCOTTISH ADMINISTRATION

34. The Bill has insignificant financial implications for the Scottish Administration. Subject to parliamentary scrutiny and approval, it is assumed implementation will take place from 2025 onwards.

COSTS TO LOCAL AUTHORITIES

35. There are no costs to Local Authorities.

COSTS TO OTHER BODIES, INDIVIDUALS AND BUSINESSES

36. The majority of the costs are incurred by policing partners. Through engagement with those partners, and taking account of data submitted by them about the practical implications of changes, estimated costs associated with the provisions in the Bill have been developed and are discussed under each of the provisions below.

Table 2: Estimated likely *material* costs for provisions and where they are incurred.

Provision and Organisation	Cost
Ethics of the police provision total	NIL
Police conduct provisions total	Ongoing costs of £131,340 to £985,340

⁶ A breakdown of immaterial costs is given from page eight.

Incurring by SPA/Police Scotland	£121,000 - £229,000
Incurring by the PIRC	£0 to £177,000
Incurring by the Staff associations	£0 to £177,000
Incurring by individuals*	£0 to £392,000
SCTS	£10,340
Functions of the PIRC provisions total	Ongoing costs of £386,384 One-off costs of £15,000
Incurring by the PIRC	Ongoing costs of £386,384 One-off costs of £15,000
Governance of the PIRC provisions total	Ongoing costs of £2,750
Incurring by the PIRC	Ongoing costs of £2,750
TOTAL	Ongoing costs £520,474 to £1,374,474 plus One-off costs of £15,000

NB no immaterial costs are included in this table. *This is the collective amount if the individuals (assessed at 14 per annum) all seek legal advice at £28,000, which is the average, based on costs from legal advice for other police conduct hearings over 5 years.

IMMATERIAL COSTS

37. There are 7 immaterial costs that, added together, could lead to material costs for organisations.

38. With regard to costs for other bodies, the Scottish Government anticipate that there are other provisions which individually can be categorised as:

- a. Immaterial (i.e. under £10,000);**
- b. Immaterial and transfer from one body to another (i.e. from SPA to PIRC);**
- c. Immaterial and absorbed (for example in changes to Police Scotland training for duties of candour);**
- d. Have no cost (as the current situation does not change, but is clarified in legislation); or,**
- e. There is the possibility that some provisions could lead to a small saving as some cases are excluded from further investigation due to their vexatious nature.**

39. If the cumulative effect of the costs listed above in paragraph a to paragraph e were incurred (i.e. each cost £10,000), and would not transfer to another body, or be a saving, then the costs for other bodies in total would rise by the total of columns a, b and c = £60,000. This is broken down in Table 3:

Table 3: Immaterial Costs

Organisation (Total of a+b+c) net effect *	Immaterial (a)	Immaterial and will transfer to another body (b)	Immaterial and will be absorbed (c)	No cost (d)	Potential saving (e)
Police Scotland £30,000	1		2	1	
PIRC £10,000	1		1	1	1
SPA £0	1	-1		1	
Total for all organisations, that is (a+b+c) £40,000	£30,000	-£10,000	£30,000	£0	-£10,000

*Columns a ,b and c are included in the maximum range in table 1. Column (d) not costed. Where a cost will transfer away, this is a saving.

Table 4: Summary of Material and Immaterial costs

	Material Costs	Immaterial costs (each valued at £10,000 for prudence).
Bill Part 1	Nil	Two which amount to £20,000
Bill Part 2	Ongoing costs of £877,340 to £985,340	Three which nets to £10,000 (one is a potential saving and one transfers from SPA to PIRC)
Bill Part 3	Ongoing costs of £386,384 One-off costs of £15,000	One which amounts to £10,000
Bill Part 4	Ongoing costs of £2,750 plus intermittent costs of £12,398 to £26,000 Nil	Nil

DETAILED CONSIDERATION OF COSTS

Part 1 – Ethics of the police

Code of ethics

40. The policy objective for this part of the Bill is to provide a statutory footing for a PS Code of Ethics.

41. Provision within the Bill creates a duty on the Chief Constable of Police Scotland to prepare a Code of Ethics in collaboration with the SPA. It will also create a duty to consult on the content with stakeholders including Scottish Ministers, HMICS, the Lord Advocate, trade unions, staff associations and any other parties deemed appropriate by the Chief Constable.

42. The Bill also includes a duty to publish the Code of Ethics and to review the Code from time to time, but no later than 5 years from the date of the current version.

43. From engagement with PS, any training costs around the code are likely to be absorbed as part of a wider ongoing training programme for police which will incorporate changes made by this Bill. The Scottish Government consider that this cost will be absorbed and is immaterial (Column (c) in Table 3).

Duty of candour

44. There is an expectation that constables will positively assist in proceedings, including criminal proceedings and investigations by the PIRC. While there is also already an assumption that officers will co-operate in these circumstances, the policy objective here is to make the position clear to police officers and the public that officers will give every assistance after a serious incident. To the extent that there is behavioural change caused by the explicit duty, it will be unlikely to result in outcomes which will result in costs being different to what they currently are.

45. The Bill will amend the 2012 Act to include explicit reference to candour in the standards of professional behaviour against which both constables' and senior officers' professional conduct is measured; the constable's declaration; and the policing principles to which due regard must be had in the policing of Scotland.

46. While this change is likely to incur training costs for police, from engagement with PS these will likely be absorbed as part of their wider training programme that will be updated to accompany the implementation of provisions in the Bill.

47. The Scottish Government consider that additional costs to update training materials and deliver training will be absorbed and is immaterial. (Column (c) in Table 3).

Costs for the *Ethics of the police* provisions

48. For the two provisions in this part of the Bill, there are two costs that are likely to be below £10,000 and absorbed by PS. Assuming the immaterial costs are £10,000 each, then this would cost £20,000.

Part 2 – Police conduct

Liability of the Scottish Police Authority for unlawful conduct of the chief constable

49. The policy objective for this part of the Bill is to amend the 2012 Act to ensure that a Chief Constable has the same protections in place under section 24 as all other constables. This amendment would also further protect the victims of unlawful conduct by the Chief Constable by ensuring that the SPA is liable for any damages or other awards made against the Chief Constable.

50. The Bill will include provision which ensures that the SPA is liable in respect of any unlawful conduct on the part of the Chief Constable in the carrying out (or purported carrying out) of their functions in the same manner as an employer is liable in respect of any unlawful conduct on the part of an employee in the course of employment.

51. This has the potential to expose the SPA to the risk of additional costs if the Chief Constable was to engage in unlawful conduct. It is difficult to estimate the future liability to the SPA, as any additional costs would depend on the circumstances of future cases, where the SPA had a choice to not pay damages or expenses under 24(5)(a) of the 2012 Act.

52. For the Financial Memorandum, the Scottish Government have made no change in costs as there is no evidence that the SPA would not cover the liability for the Chief Constable's actions. This provision provides protection to the chief constable and future victims of unlawful conduct that the SPA will pay damages or expenses. This means that the estimated overall material financial effect of changes is nil (column (d) in Table 3).

Misconduct procedures: functions of the Police Investigations and Review Commissioner

53. The underlying aim of the provisions in the Bill which allow the conferral of functions on the PIRC in relation to procedures for misconduct is to provide greater clarity in secondary legislation around the process of the statutory preliminary assessment function, enhance independent scrutiny, and to remove any perception of familiarity, as well as avoid any duplication of functions or associated delay. It is also to make the scrutiny of misconduct complaints during the preliminary assessment more consistent. Currently, under conduct regulations, if the SPA receives a complaint alleging senior officer misconduct, it will assess whether there is a case to answer. If so, it will be referred to the PIRC for an assessment by the Commissioner. If following the initial assessment by the SPA it is determined the alleged actions may be criminal, the case will be referred to COPFS. It is suggested by Dame Elish that this would be achieved by transferring the function from the SPA to the PIRC, with the assessment to be carried out by the PIRC or a senior staff member on delegated authority, as well as adding mandatory considerations as part of the process to the regulations.

54. The Bill will allow Scottish Ministers to confer functions on the PIRC in relation to procedures for misconduct. This will allow the changes set out above to be implemented.

55. The costs associated with the statutory preliminary assessment currently sits with the SPA and will transfer from the SPA to the PIRC. This is captured in column (a) in Table 3.

56. There is the possibility that by adding the mandatory considerations of whether a complaint is vexatious or not, it could lower the number of cases taken forward from a preliminary hearing and therefore incur a saving. It is not possible to quantify this, but the unknown is captured in column in (b) for SPA and in (e) for PIRC in Table 3.

Misconduct procedures: former constables

57. Ensuring gross misconduct proceedings can continue or commence in respect of persons who have ceased to be constables will help to improve public confidence in the police complaints and misconduct process. Ensuring proceedings reach a conclusion will also promote learning and

continuous improvement measures within PS, whilst supporting a culture shift in the organisation, allowing for greater transparency, fairness and accountability.

58. Enabling powers will allow disciplinary procedures set out in regulations made under section 48 of the 2012 Act to apply to persons who have ceased to be constables in certain circumstances where gross misconduct allegations are concerned.

59. The procedures would apply where a preliminary assessment of the misconduct allegation made by the PIRC finds that the conduct of the person while the person was a constable would, if proved, amount to gross misconduct.

60. In order to avoid stale allegations from being pursued against former constables, the Bill includes a power to state a period of time from the date of resignation after which no steps or only certain steps in the procedures can be applied unless additional criteria are met. The Scottish Government expect 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.

61. Currently, disciplinary proceedings for gross misconduct per year are halted if the constable resigns or retires. In future, these will continue to a conclusion. This will mean that there are longer hearings as they continue to a conclusion and that there are more proceedings that previously would not have gone ahead as an officer would retire.

62. The estimated cost of a gross misconduct investigation is £7,646 and the estimated cost of a gross misconduct hearing is £7,979 from Police Scotland figures for staff time. Fourteen⁷ non-senior officers retired or resigned before the conclusion of gross misconduct proceedings on average over the years 2020 and 2021.

63. Assuming this average stays the same and that all cases would have continued if the officer had not retired or resigned, the material cost on Police Scotland would be between £103,000 (if the officer retires after the investigation but before the hearing) and £211,000 (if the officer retired/resigned before the investigation AND the hearing) per year due to the additional hearing costs.

64. These costs could be incurred as soon as the provisions in the Bill come into force. This is assessed to be in 2025.

65. Additionally, there could be costs incurred by individuals who seek legal support to attend a hearing after they have retired that are not likely to be covered by police staff associations. This would mean that individual retired officers who sought legal representation would incur costs of approximately £28,000⁸ based on the average cost of fees for legal representation from previous hearings averaged over 5 years. Constables would not be entitled to get civil legal aid or criminal assistance by way of representation for such hearings but may be eligible for advice and assistance

⁷ 27 officers over 2020 and 2021 averages 13.5, which is rounded to 14.

⁸ Former officers who cannot afford legal representation may be able to seek legal for advice and assistance, but not representation. We expect this to be immaterial to the Legal Aid Fund as it would be below £10,000.

only. That would allow them legal advice but no representation. Given that fact and the small numbers involved, the overall impact would be minimal. It is assessed that this would be under £10,000 per annum and therefore, immaterial to the legal aid fund. As stated above, averaged over 2020 and 2021, 14 officers retired with active proceedings against them, that is 14 per year. When the changes proposed in the Bill are put in place this totals £392,000.

Scottish police advisory list and Scottish police barred list

66. The Bill provides that the SPA must establish and maintain a Scottish police barred list and a Scottish police advisory list, with wide enabling powers allowing the Scottish Ministers to make provision in regulations in respect of those lists.

67. The Bill sets out the criteria for entry into each of the lists. In relation to the advisory list, the SPA must enter a person on the list (1) if disciplinary proceedings have been brought against the person for gross misconduct, and the person resigns or retires as a constable before those proceedings are concluded, or (2) after the person has ceased to be a constable, disciplinary proceedings are brought against the person for gross misconduct. The definition of disciplinary proceedings used in the Bill means that such proceedings include any investigation in respect of alleged misconduct under regulations and a reference to proceedings being brought is a reference to the person being notified of proceedings.

68. In relation to the barred list, the SPA must enter a person on the list if the person is dismissed as a constable for gross misconduct, or a finding is made in disciplinary proceedings for gross misconduct against the former constable that the former constable would have been dismissed if still a constable at that time.

69. Costs associated with this are minor additional administration costs for PS related to the vetting process, and collaborating with the College of Policing on the maintenance of the list by SPA. The Scottish Government assess these two costs to be immaterial (column (a) in Table 3 for both PS and SPA).

Misconduct procedures: senior officers

70. For this part of the Bill, the policy objective is to have a senior officer misconduct process that is open and transparent, and can provide public confidence that senior officer misconduct cases are taken forward through an impartial process. In effect, this means a newly structured misconduct panel would hear evidence of misconduct and determine whether the conduct forming the allegation is related to that of a senior officer and whether that conduct constitutes misconduct, gross misconduct or neither.

71. The Bill will include provision to replace the requirement in section 52(3) of the 2012 Act, which currently provides that the SPA must determine senior officer conduct cases, with a requirement for a panel independent of the SPA to determine senior officer conduct cases. In so far as performance is concerned, the status quo is maintained so that the SPA will continue to decide cases relating to senior officer performance.

72. Data from the London Mayor's Office, where they have legally qualified chairs for hearings, suggests that having hearings in public would cost £3,000 per hearing. This is based on hearings lasting on average of 3 days. Venue costs are assumed to be approximately £1000 per

day. Costs of the Legally Qualified Chair are assumed to be £1000 per day or £3000 per case. Legal costs are based on figures from previous police misconduct hearings, which is estimated to be £28,000 for PIRC who would present the case and £28,000 for staff associations representing officers. It would therefore be estimated as £59,000 in total per case.

73. Since the inception of the SPA and PS, no senior officer misconduct hearings have taken place. However, with more public scrutiny and other conduct changes being implemented, there is the potential that more hearings will take place and the average number of sitting days could increase. Therefore, the Scottish Government assess that there should be contingency of 0-3 cases per year, expecting it to be very infrequent.

74. These material costs, set out in paragraph 72 and 73 above, would be new costs incurred by the SPA (up to £18,000 for venues and panel), PIRC (up to £177,000 for legal fees) and staff associations (up to £177,000 for legal fees) totalling up to £372,000 per year. These costs will not be incurred until regulations setting out the full policy intent are in place. This is assessed to be in 2026 at the earliest.

The role of the Police Appeals Tribunal

75. The policy objective for this part of the Bill is that the current internal appeal processes set out in conduct regulations under section 48 of the 2012 Act will be revoked in respect of senior officers and that new regulations will be made containing provision which will provide senior officers with a right of appeal to a police appeals tribunal, in conduct cases only, in relation to any finding of disciplinary action against them.

76. The legislation will continue to have appeal rights for senior officers and non-senior officers in terms of appealing a disciplinary decision arising out of a misconduct case to a police appeals tribunal. However, the Bill makes some amendments to the appeal rights contained in section 56 of the 2012 Act as a result of the policy position to have an independent panel determine senior officer conduct cases. Provisions in the Bill therefore give a right to senior officers to appeal to a police appeals tribunal against any decision to take disciplinary action against them in pursuance of conduct regulations made under section 48. An amendment to section 58(2) is also made so that it effectively provides that any decision overturning the original decision is effective from the date of the original decision.

77. Appeals are currently managed under the Police Appeals Tribunal (Scotland) Rules 2013. Taking information from the three most recent appeals, the SPA estimate the average cost of a Police Appeals Tribunal (PAT) is £5,170. This is based on a hearing lasting one day and includes external venue hire and administrative support. Since 2013 there have been 14 appeals to the PAT with an average of less than 2 per year. None of these cases have involved senior officers. It is not anticipated that there would be any new costs for the Scottish Administration because of these provisions but, to be prudent, to capture the new potential for senior officers to appeal the Scottish Government have included £10,340 costs as a contingency for two cases per annum⁹. This will transfer from the SPA to SCTS as the PAT transfers to the SCTS¹⁰. The proposed change is not expected to impact on the number of appeals. Whilst it will now be easier for senior officers to appeal to the PAT because there will no longer be a threshold of dismissal to overcome, it is not

⁹ From SPA estimates

¹⁰ Tribunals (Scotland) Act 2014

expected that there will be an increase in the number of appeals in reality. There are only 14 senior officers. There have been no misconduct cases against senior officers since the establishment of PS and therefore no appeals. The average cost of two appeals has been provided to provide a maximum estimate for the Bill. There will be further costs incurred as a result of subsequent work on secondary legislation to support changes to conduct, which will be taken forward with delivery partners and therefore cannot be quantified at this stage.

Costs for the *Police conduct* provisions

78. These material costs as described above are presented here:

1. PS continuing gross misconduct proceedings are in the range of £103,000 if the officer retires after the investigation but before the hearing and, £211,000 after.
2. Hearings with the changes proposed for secondary legislation: SPA (up to £18,000), PIRC (up to £177,000) and staff associations up to £177,000) totalling up to £372,000 per year.
3. Former officers seeking legal representation (who have retired with active proceedings against them) assessed to be 14 x £28,000 totalling £392,000.
4. PAT contingency for two cases per year: £10,340.

This totals: £877,340 to £985,340

79. There are no costs associated with the provision for liability for the SPA for unlawful conduct of the Chief Constable (this is included in Table 3 column (d)). There is one immaterial cost that could be incurred by PS and one that could be incurred by the SPA and by the PIRC (these are captured in Table 3 column (a)). The immaterial cost that transfers from the SPA to the PIRC is captured from the SPA in Table 3 column (b) as potential vexatious factors at preliminary assessment are considered and those clearly not worthy of including are not taken forward this could then lead to an immaterial net saving for PIRC (Table 3 column (c)).

Part 3 – Functions of the police investigations and review commissioner

Investigations into possible offences by persons serving with the police

80. The policy aim here is to clarify that the PIRC's investigatory powers into criminal offending (as distinct from complaint handling, investigations into serious incidents or senior officer misconduct functions) are to apply to individuals who held the office of constable or were employed as police or SPA staff at the time of the act being investigated who have since resigned, retired or were off-duty on said occasion.

81. The Bill clarifies that the PIRC's investigations into criminal conduct can continue and occur when the police officer concerned has since left the service or was not on duty at the time of the relevant incident.

82. The Scottish Government assess that this clarification is unlikely to result in a significant change in the amount of cases the PIRC handles, and so significant additional costs have not been raised by partners and are not anticipated. The Scottish Government therefore assess this to be immaterial (Column (d) in Table 3 for the PIRC).

Investigations of complaints made by persons serving with the police

83. The aim here is to make clear that police officers who experience a poor service from the police are able to make a complaint about the police. The other aim is to make clear that police and SPA staff can make a complaint about relevant matters that occur inside or outside their hours of work. The Scottish Government do not assess that this will amount to a large number of extra cases per annum¹¹.

84. Provisions in the Bill will amend the relevant provisions in the 2006 Act which specify who may make a relevant complaint to the PIRC, to clarify that those who can complain include police constables who were off-duty when the act or omission complained of occurred. A relevant complaint does not include matters which occurred while officers were on duty, matters which amount to a criminal offence, and complaints about police constables' terms and conditions. A relevant complaint does not include a complaint made by a member of police or SPA staff about their terms and conditions.

85. The costs associated with this are not expected to be material or significant. (Column (d) in Table 3 for PS).

Call-in of relevant complaints, recommendations about handling of complaints & review of practice or policy of Police Scotland

86. The purpose of this part of the Bill is to build public confidence in policing by providing reassurance that there is an independent oversight body, the PIRC, who can conduct an independent investigation in the most serious non-criminal complaints at any time, if there is sufficient evidence that the complaint in question has not been properly considered by PS or the SPA.

87. Provisions in the Bill will add a power to the 2006 Act for the PIRC to make recommendations to the SPA and the Chief Constable in relation to individual complaints. This will support PS's compliance in implementing recommendations made in complaint handling reviews and audits. This would reduce the number of PIRC statutory reconsideration directions and the significant resource implications on PS to implement them.

88. There will be a duty on the Chief Constable and the SPA to provide a written response to any recommendations directed at them within a set time frame. Where the recommendation relates to an audit there is a duty to provide an update on progress in implementing recommendations within a certain amount of time from the recommendation being made. There will also be a duty on the PIRC to publish the responses to their recommendations.

89. Finally, in order to support PS to improve guidance and practice in response to recommendations made by PIRC, PIRC will have a specific power, similar to that of the Police Ombudsman for Northern Ireland (PONI), to review a policy or practice of PS, the SPA or the chief constable, where the PIRC considers that it would be in the public interest to do so.

¹¹ For context, the SPA Annual report for 2021-22 shows that over the past five years the average number of complaints received by Police Scotland is 6,483

90. In order for PIRC to be able to execute these additional powers, it is assessed that additional staffing would be required. This would be in the form of a stand-alone team consisting of 1 x Head of Complaints (£88,123), 2 x Senior Investigators (£134,622) and 5 x Grade B2 investigators (£153,639). This equates to £376,384 recurring based on 2022 – 2023 pay scales.

Review of investigation of whistleblowing complaints

91. The policy objective for this part of the Bill is to ensure that the PIRC can audit whistleblowing complaints dealt with at first instance by PS and the SPA. This would enhance protection for whistle-blowers (though not about employment rights, which is dealt with in UK Parliament legislation), encourage them to speak up when they see wrong-doing and help ensure that whistleblowing referrals are dealt with appropriately and transparently. It also provides an opportunity for PS and the SPA to take on board learning and address any concerns raised.

92. The Bill will include an obligation on 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, and a power for the PIRC to make recommendations or give advice to them on the arrangements for the handling of whistleblowing complaints. The PIRC will also be given the option to publish a report on the audit if they consider it to be appropriate. In the financial year 2021-22, eight individuals in Police Scotland were formally recognised as whistle-blowers.

93. It is likely that the PIRC will be able to undertake this audit function without additional resource, although this will be kept under review. The costs will therefore be immaterial and absorbed by the PIRC (column (c) in Table 3).

Investigations involving constables from outwith Scotland

94. The objective of this part of the Bill is to respond to the cross-jurisdictional issues highlighted within the Review by giving the PIRC the power to investigate

- (1) criminal conduct,
- (2) some fatal accidents or sudden deaths, and
- (3) serious incidents such as the discharge of a firearm,

involving officers from other territorial forces when undertaking a policing function in Scotland.

95. Provisions in the Bill will ensure that the PIRC can investigate potential criminal offending of English, Welsh and Northern Irish police officers of territorial forces operating in Scotland. Provisions will also allow the PIRC to investigate a serious incident involving these officers.

96. This will provide legal certainty for policing partners. If there was an increase in case numbers, then it would potentially require the PIRC to increase staff numbers. This should be monitored but no additional costs have been factored in at this stage.

Provision of information to the Commissioner

97. The policy objective for this part of the Bill is to ensure the PIRC's independence by introducing powers for the Scottish Ministers to make regulations allowing the PIRC to have direct access to PS's complaints database to audit and review files necessary to their function. This will also improve efficiency, transparency and public confidence in the police complaints process by:

- Ensuring the PIRC can meet their statutory functions independently and remotely
- Facilitating early PIRC awareness of criminal allegations, if a complaint is assessed and it is clear that the conduct involved was criminal.

98. The Bill will provide an enabling power to Scottish Ministers to require remote access to PS's complaints management system to be given to PIRC. It will then require the Chief Constable to facilitate remote access to the system.

99. This will incur initial IT costs for the PIRC to procure licences for the IT system that PS use, and there will be ongoing licensing costs.

100. As part of an upgrade to the IT system in 2023, which will give the PIRC direct access, PIRC sought indicative costs to pay for a licence. This was done in anticipation of this legislation. The PIRC estimate costs to be £15,000 for the initial set-up, to validate the system and for licence fees, with ongoing costs of £10,000 for annual licence renewal. From 2023 the PIRC will need to pay for any future upgrades and ongoing licensing costs of this are likely to be incurred in when the Bill is enacted.

Costs for the *Functions of the Police Investigations and Review Commissioner* provisions

101. There are two costs which are assessed to be below £10,000 and potentially negligible; to clarify the definition of a person serving with the police; and that an off-duty officer is a member of the public who is entitled to make a relevant complaint. These are captured in Table 3, column (d). There is another cost that is likely to be below £10,000 and absorbed by the PIRC (seen in Table 3, Column (c)) in relation to the review of investigations of whistleblowing complaints. Assuming the immaterial costs are £10,000 each, then these three provisions would cost £30,000.

102. Material costs that the Scottish Government anticipate will be incurred by the PIRC include:

1. IT set up £15,000 + licence £10,000 (ongoing)
2. Additional powers for the PIRC £376,384 (ongoing)

Total material costs = £15,000 initial costs
= £386,384 ongoing costs

Part 4 – Governance of the police investigations and review commissioner

Advisory board to the Commissioner

103. The intention of this part of the Bill is to strengthen the PIRC's governance structure.

104. Taking account of current remuneration to SPA Board members, the payment to the Chair and members would align. The PIRC estimate that this incurs an increase of £2,750 on the assumption it has the same number of members and sits quarterly.

Costs for the *Governance of the Police Investigations and Review Commissioner* provisions

105. Material costs that the Scottish Government anticipate will be incurred by the PIRC include:

1. Statutory Board costs £2,750 (ongoing)

Total = £2,750 ongoing costs¹²

There are no immaterial costs included here.

UNKNOWN INDIRECT COSTS

106. There are still some remaining aspects where the Scottish Government cannot, at this stage, be definitive on the potential costs.

107. The Bill will enable the PIRC to make recommendations to the Chief Constable, which the Chief Constable must respond to by considering and writing back to the PIRC, not necessarily enacting - which maintains the Chief Constable's operational independence. If there is a cost in implementing the recommendation then this indirect cost cannot be quantified.

108. Similarly, work can only begin to amend existing regulations when the provisions are enacted which will allow a holistic consideration of the changes required. There may be costs associated with implementing these regulations, which will be considered at the appropriate time. It is expected that all secondary legislation will be subject to the affirmative procedure enabling parliamentary scrutiny.

SECONDARY LEGISLATION

109. To implement the policy intent from the recommendations, powers already held by Scottish Ministers will be used to amend regulations in addition to the implementation of powers enabled within the Bill.

ANTICIPATED AMENDMENTS TO REGULATIONS

110. Amendments to conduct regulations for all ranks of constable are anticipated to deal with circumstances where the evidence is incontrovertible and where that evidence means that without further evidence it is possible to prove gross misconduct, or where the subject officer admits to their behaviour being gross misconduct. This could potentially result in a small saving to PS.

¹² This has been included as costed as is a known quantity, even though it is below the £10,000 threshold for materiality.

111. Regulations governing probation (the Police Service of Scotland Regulations 2013) should be amended so that fair and speedy consideration of any allegation of misconduct can be undertaken during the probation period. This could potentially result in a small saving to PS.

112. It is anticipated that that temporary redeployment to alternative duties or an alternative location should be considered as a statutory suspension condition as an alternative to suspension. This would be included in Scottish regulations for all ranks of constable. Provision should also be made for regular review of the suspension of an officer. This is unlikely to change the costs to PS.

113. The outcome of gross misconduct proceedings should be made public. The Chair's report, subject to any necessary redactions, should be published by the SPA on its website for a period of no less than 28 days. This is unlikely to incur material costs.

This document relates to the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill (SP Bill 29) as introduced in the Scottish Parliament on 6 June 2023

POLICE (ETHICS, CONDUCT AND SCRUTINY) (SCOTLAND) BILL

FINANCIAL MEMORANDUM

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