

Constitution of the Police Negotiating Board for Scotland

May 2023

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Preamble

1. This is the constitution of the Police Negotiating Board for Scotland, prepared by the Scottish Ministers in accordance with paragraph 5 of schedule 2A of the Police and Fire Reform (Scotland) Act 2012.

Interpretation

2. In this constitution:

“the 2012 Act” means the Police and Fire Reform (Scotland) Act 2012;
“the Board” means the Police Negotiating Board for Scotland;
“the Official Side” means the side of the Board that is made up of the representative members listed in Table 1 at paragraph 8;
References to the “Chairperson”, include a “Temporary Chairperson”, unless otherwise provided;
“the Staff Side” means the side of the Board that is made up of the representative members listed in Table 2 at paragraph 8;
“the Sides” means the Official Side and the Staff Side combined.

The Board

3. The Board will meet as appropriate to consider matters affecting all police ranks.

The Functions of the Board

4. The Board will have such functions as may be given to it by statute. For the time being these include the functions mentioned in paragraphs 5 to 7.
5. The Board may consider and make representations to the Scottish Ministers on the following matters relating to police constables (other than special constables) and police cadets, all in accordance with sections 55B(1) and 55C(1) of the 2012 Act:
 - (a) draft regulations;
 - (b) draft determinations;
 - (c) pay, allowances and expenses;
 - (d) public holidays and leave;
 - (e) hours of duty;
 - (f) governance, administration and conditions of service.
6. Under section 55B(3) of the 2012 Act the Scottish Ministers may, after consulting the Chairperson, require the Board to make representations relating to the matters set out in section 55B(1) of the 2012 Act.
7. The Board may consider and respond when consulted in relation to regulations about police pensions under section 1 of the Police Pensions Act 1976. These regulations relate to the Police Pension Scheme 1987 and the Police Pension Scheme 2006.

Board Representation

8. The Board will consist of an Official Side and a Staff Side representing, and appointed by, the authorities and bodies ('the constituent bodies') listed in tables 1 and 2 below. Each constituent body will have the number of representatives shown.

Table 1 – OFFICIAL SIDE	
Constituent body	Total
The Scottish Ministers	1
The Scottish Police Authority	3
The Chief Constable of the Police Service of Scotland	2
TOTAL	6

Table 2 – STAFF SIDE	
Constituent body	Total
The Scottish Chief Police Officers Staff Association	1
The Association of Scottish Police Superintendents	1
The Scottish Police Federation	4
TOTAL	6

Chairperson and Temporary Chairperson

9. The Chairperson of the Board is appointed by the Scottish Ministers under paragraph 2(2) of schedule 2A of the 2012 Act and in accordance with the Public Appointments and Public Bodies etc. (Scotland) Act 2003. The Chairperson is to be paid such remuneration and expenses as are agreed by the Scottish Ministers.
10. The Chairperson, acting independently of the Board, presides at all meetings of the Board and may, by agreement of the Board, preside at sub-committees and working groups.

11. The Board may have a temporary Chairperson if (for the time being), there is no Chairperson, or the Chairperson is unavailable to act. A reference to the Chairperson is to be read as meaning or including (as the context requires) the temporary Chairperson. However, where there is a failure to agree by the Sides the temporary Chairperson may not make any decisions on conciliation or arbitration matters.
12. A temporary Chairperson must be a member of the Board. A member can be nominated for the role by either the Official or Staff Side, and is appointed by agreement of the Board. There is no additional remuneration for the temporary Chairperson role, apart from any relevant expenses for members agreed by Scottish Ministers.
13. Sub-committees or working groups may nominate any of their number to chair sub-committees or working group meetings, where the Chairperson has not been nominated as chair.

Secretariat

14. The Secretariat, acting independently of the Board and answerable to the Chairperson, will be provided by the Scottish Government and is responsible for:
 - (a) The administrative arrangements for meetings of the Board and its sub-committees and working groups;
 - (b) Taking the minutes and notes of such meetings;
 - (c) Providing information to the Sides, either on request from the Sides or as the Secretariat in consultation with the Chairperson considers appropriate;
 - (d) Administrative tasks in relation to requests made under the Freedom of Information (Scotland) Act 2002;
 - (e) The preparation and publication of Board circulars and the Annual Report;
 - (f) Other matters determined by the Board.
15. On request, the Secretariat may provide either Side with such other assistance as is consistent with the Secretariat's independent status.
16. Where necessary the Secretariat will prepare, in consultation with the Official and Staff Sides, explanatory memoranda giving agreed interpretations of:
 - (a) Police Regulations which give effect to agreements reached by the Board;
 - (b) Agreements reached by the Board which are not embodied in Police Regulations.

Members

17. The constituent bodies listed in paragraph 8, Tables 1 and 2, will nominate those who are to represent them on the Board and where a casual vacancy arises in a constituent body's representation on the Board it is for the constituent body to fill that vacancy.

18. A constituent body may nominate a replacement for a representative who is absent from a meeting by informing the Secretariat. At each meeting, the Chairperson will note the representatives from the constituent bodies and note whether the meeting is quorate.
19. Members of the Board will not receive any remuneration but may receive relevant expenses agreed by Scottish Ministers.

Officers

20. The Official Side and the Staff Side of the Board will each appoint a Side Secretary.
21. A person may be appointed as a Side Secretary whether or not that person is a member of the Board.

Quorums

22. The Board must be quorate for agreements of the Board to be made. To be quorate there must be 8 members present at a meeting, with at least 4 members from each of the official side and staff side. If a meeting of the Board is found not to be quorate the Chairperson may either suspend the meeting or continue with the meeting, with any decisions of the Board postponed to the next quorate Board meeting.

Meetings, Sub Committees and Working Groups

23. All meetings of the Board, and any sub-committees or working groups, will be called by or on behalf of the Chairperson. The Chairperson may call a meeting at the request of either Side, on the Chairperson's own initiative, or in such other circumstances as the Board may determine.
24. The proceedings of the Board, or a sub-committee, or working group will not be invalidated if it is subsequently discovered that there was some defect in the appointment of a member or of a replacement for a member.
25. Subject to the other provisions of this constitution, it is for the Chairperson to decide how meetings of the Board will be conducted. When the Chairperson does not preside at a sub-committee, or working group, it will be for the members of that sub-committee, or working group, to decide how meetings are conducted.

Agreements, Conciliation and Arbitration

26. The members of the Board will at all times strive to reach agreement on matters under consideration, and the Chairperson will take all reasonable steps to ensure that the Board reaches agreement.

27. Matters under consideration may be referred to a sub-committee or working group for discussion. Following discussion, the sub-committee or working group may refer any matter back to the Board for agreement.
28. An agreement of the Board will be reached by the concurrence of both Sides of the Board.
29. Agreements of the Board will be set out in circulars drafted by the Secretariat for agreement by the Board.
30. Where the Board cannot reach agreement on matters, other than those set out in section 55B(1) of the 2012 Act, the Chairperson will prepare a report on the views of the Board and make representations to the Scottish Ministers on the basis of that report. Such matters may not be referred to conciliation or arbitration.
31. Where the Board cannot reach agreement on representations to be made to the Scottish Ministers regarding the matters set out in section 55B(1) of the 2012 Act, either the Official Side or the Staff Side may formally register a failure to agree through the Chairperson, which will trigger the following conciliation and arbitration process.
32. Where a Temporary Chairperson is in place, and either the Official Side or the Staff Side has formally registered a failure to agree, the secretariat may refer the matter to Acas Scotland (Acas) for conciliation, on behalf of the Board.

First-Stage Conciliation

33. First-stage conciliation will commence as soon as reasonably practicable and in any event within one month of the date of the failure to agree being recorded, unless the secretariat has referred the case to Acas, on behalf of the Board. The Chairperson, acting as conciliator, will meet the Sides either separately or together and will seek to promote a voluntarily agreed recommendation to be reported back to the Board as a possible basis for agreement.
34. Should agreement not be reached as a result of the first-stage conciliation, the Chairperson will refer the matter to a second-stage conciliation process provided by Acas.
35. Where Acas conciliation fails to result in agreement, the section 55B(1) matter:
 - (a) must be referred to arbitration if the Board agree[s] to do so;
 - (b) may be referred to arbitration by the Chairperson without the agreement of the Board.
36. The terms of reference for any dispute referred to arbitration will be agreed:

- (a) by the Board, taking account of the views of both Sides, if the referral is under paragraph 37(a);
- (b) by the Chairperson, taking account of the views of both Sides, if the referral is under paragraph 37(b).

- 37. For the purposes of the arbitration, the Sides are to be considered the ‘parties’ to the arbitration.
- 38. Acas conciliation and arbitration will be carried out by Acas in accordance with the ‘Conciliation and Arbitration Procedure of the Police Negotiating Board for Scotland’, set out in Annex A.
- 39. In accordance with section 9 and schedule 1 of the of the Arbitration (Scotland) Act 2010 (“the 2010 Act”), the ‘parties’ have agreed to disapply the default rules of the 2010 Act, and as set out under regulation 3 of the Police Negotiating Board for Scotland (Constitution, Arbitration and Qualifying Cases) Regulations 2023, the mandatory rules in schedule 1 of the 2010 Act do not apply, to arbitration carried out under this constitution.
- 40. A decision made through an arbitration award is deemed to be an agreement of the Board on the representations to be made to the Scottish Ministers, however, the Board may subsequently agree not to make representations based on the arbitration award.
- 41. Should the Board not make representations based on an arbitration award the Board must either make a separate agreement on the disputed issues or agree that the disputed issues are no longer in dispute.

Arbitration – Qualifying Cases

- 42. When representations under section 55B(1) of the 2012 Act are made to Scottish Ministers in terms settled through arbitration in a “qualifying case”, Scottish Ministers must, in accordance with section 55D of the 2012 Act, take all reasonable steps appearing to them necessary for giving effect to those representations.
- 43. A “qualifying case” refers to representations made in circumstances set out in regulations made by the Scottish Ministers under section 55D(2) and paragraph 8(2) of schedule 2A of the 2012 Act.
- 44. There may be two qualifying cases in any one reporting year. One of these cases will involve the ‘annual pay award’, unless the PNBS agrees there is no requirement for an ‘annual pay award’ in that reporting year (for example in the event that a multi-year pay settlement has previously been agreed by PNBS and continues to apply).

Annual Report

45. The Chairperson will make an annual report to Scottish Ministers at the end of each reporting year, to include:
 - (a) business processed and length of time taken, with an explanation if any matter has taken over 12 months to be concluded;
 - (b) attendance, and continuity of representation;
 - (c) numbers attending meetings;
 - (d) reference to information provided to the Sides by the Secretariat, either on its own initiative or at the request of the Sides;
 - (e) the use of arbitration;
 - (f) evidence that the Board is monitoring its own effectiveness and improving its business processes where justified.
46. The annual report must be submitted to the Scottish Ministers and published within 3 months after the end of each reporting year.
47. "Reporting year" means the period of 12 months up to and including 31 December each year.
48. Before submitting and publishing the Annual Report as mentioned above, the Chairperson must make available to the Sides a draft of the Annual Report and must take into account any comments which the Sides may make on it.

Conciliation and Arbitration Procedures of the Police Negotiating Board for Scotland

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Preamble

1. This document records the procedures and processes to be followed when the Police Negotiating Board for Scotland refers a matter to Acas Scotland (“Acas”) for conciliation and arbitration.
2. To the extent that this document deals with arbitration, it forms part of the terms of reference when a matter goes to arbitration.

Interpretation

3. In this document:

“the Board” means the Police Negotiating Board for Scotland;

“the Chair” means the Chair of the standing panel, appointed in accordance with Part 3 of this document;

“the Chairperson” means the chairperson of the Board appointed by Scottish Ministers under paragraph 2(2) of schedule 2A of the Police and Fire Reform (Scotland) Act 2012;

“the constitution” means the Board’s constitution, prepared by the Scottish Ministers in accordance with paragraph 5 of schedule 2A of the Police and Fire Reform (Scotland) Act 2012;

“the Official Side” means the side of the Board representing and appointed by the Scottish Ministers, the Scottish Police Authority and the Chief Constable of the Police Service of Scotland;

“the PNBS Secretariat” means the secretariat to the Board, as set out in the constitution;

“the Staff Side” means the side of the Board representing and appointed by the Scottish Chief Police Officers Staff Association, the Association of Scottish Police Superintendents and the Scottish Police Federation;

“days” - all references to “days” shall mean calendar days;

“documents” and “statements” set out in this document must be provided in “writing” and for the purpose of this document “writing” shall include e-mail, fax, electronic or other means, provided that it is legible and capable of being reproduced for subsequent reference.

Part One – Conciliation Process

4. When a failure to agree has been formally registered in accordance with the constitution, the Chairperson or the PNBS Secretariat may remit the matter to Acas for conciliation. With a view to seeking a voluntarily agreed recommendation to be reported back to the Board as a basis for reaching a settlement.
5. The Official Side and the Staff Side will be the parties to the conciliation and should separately record the issues in dispute on the prescribed form [see Appendix 1].

6. Acas will convene a second-stage conciliation meeting with the parties within 21 days of the matter being remitted to them by the Chairperson or the PNBS Secretariat.
7. The conciliation commencement may be extended by a further 14 days by mutual agreement of the parties.
8. Acas will liaise with the parties to determine a suitable date and location for conciliation.
9. Three rooms should be available for use during the conciliation process. One of the rooms should be large enough to accommodate the parties should a joint meeting be necessary.
10. The conciliation will commence with the conciliator being apprised of the nature of the dispute. The conciliator will determine whether this session is conducted jointly with the parties or separately with each.
11. In conciliation, Acas will discuss the issues as recorded on the prescribed form with the parties. The purpose of these conciliation talks will be to determine whether any modification of the positions outlined by the parties can be achieved to enable a consensus or agreement to be reached.
12. It is essential that each party ensures that personnel with the necessary authority to make decisions attend conciliation.
13. Acas will regulate the procedure for conciliation and have sole discretion on the conduct of the meeting.
14. At the end of the conciliation process, Acas will summarise and agree the position with the parties. The summary will include:-
 - a) Whether the issue(s) in dispute is/are resolved;
 - b) Whether conciliation is suspended to allow the parties to review their position;
 - c) Whether some of the issues in dispute are resolved;
 - d) Whether the parties agree that the matter be referred to arbitration.
15. A copy of the summary of the conciliation process should be sent by Acas to the Chairperson.
16. If the outcome of the conciliation is that the parties agree that the matter is to be referred to arbitration, the Board must agree the referral, or the Chairperson of the Board may refer the matter to arbitration without the agreement of the Board. The parties must agree draft Terms of Reference for the arbitration as part of the conciliation process.

Part Two – Arbitration Process

17. Arbitration will be provided by Acas and conducted in accordance with the following provisions.
18. The parties to the arbitration will be the Official Side and the Staff Side.
19. The default arbitration rules referred to in section 9 and schedule 1 of the Arbitration (Scotland) Act 2010 will not apply to the arbitration, as agreed by the Board. The mandatory arbitration rules referred to in section 8 and schedule 1 of that Act have been disapplied by regulations made by the Scottish Ministers under paragraph 7(2) of schedule 2A of the Police and Fire Reform (Scotland) Act 2012.
20. A standing panel (“the panel”) of three arbitrators will be appointed in accordance with Part Three of this document.
21. Disputes will generally be dealt with by the panel. however, a sole arbitrator or a reserve arbitrator may deal with a dispute in the circumstances referred to in Part Three of this document.
22. The Terms of Reference for the arbitration will be provided by the Board or, as the case may be, by the Chairperson of the Board, in accordance with the constitution and taking account of the draft Terms of Reference agreed by the parties at conciliation.
23. The Terms of Reference will incorporate the procedures and conditions set out in Parts Two and Three of this document.
24. The hearing date will be agreed with the parties and will normally take place no later than 8 calendar weeks from the date of the agreed Terms of Reference.
25. The hearing will be held in the Acas offices in Glasgow, or at another agreed location in Scotland.
26. No later than seven calendar days prior to the hearing, the parties will each supply the arbitrator / panel with a copy of a written Statement of Case (SoC) and will exchange between themselves at least two copies of their respective written SoC. The SoC must address the question agreed for arbitration and not introduce new issues.
27. In their SoC the parties may present whatever information and arguments they see fit to the arbitrator / panel.
28. The SoC will contain all submissions upon which the party relies in support of or in opposition to the claim and will include the following:
 - The ranks involved and the number of officers in each rank.
 - The nature of the claim.
 - The existing situation.

- The grounds in support of or opposition to the claim.
 - Where reference is made to any document or documents, copies or extracts thereof will be provided.
 - The names and status of the representative or representatives who will appear before the arbitrator / arbitration panel.
29. Although the parties will be free to elaborate and explain their case to the arbitrator / panel at the hearing, oral submissions will be with reference to the written SoC only.
30. The parties may represent themselves at the hearing or may appoint a spokesperson.
31. If one of the parties requests that the case should be adjourned from the date fixed to a later date, the following will apply:
- Consent to an adjournment must be sought and agreed by the other party.
 - If the consent is forthcoming, then notice of such agreed adjournment shall be sent to the arbitrator / panel as soon as possible and they will fix a new hearing date.
 - If one party refuses consent to the request for an adjournment, the party seeking the adjournment may make formal application to the arbitrator / panel whose decision will be final.
32. The arbitrator / panel must conduct the arbitration impartially, fairly, without unnecessary delay, without incurring unnecessary expense and with due regard to the requirements of confidentiality.
33. The arbitrator / panel will exercise their judgement as to the weight to be given to the information and arguments before them.
34. The arbitrator / panel may give such directions to the parties as they consider appropriate for the purposes of conducting the arbitration. A party must comply with a direction by such time as the arbitrator / panel specifies.
35. In the event of either party failing without good reason to submit its SoC timeously, provide the required information in its SoC, attend a hearing or comply with a direction of the arbitrator / panel, the arbitrator / panel may proceed to make its award on the basis of the information and arguments before it.
36. The arbitrator / panel's deliberations may be undertaken in private and need not be disclosed to the parties. A panel's decision may be made unanimously or by majority. Where an arbitrator fails to participate in any of a panel's deliberations that fact must be disclosed to the parties.
37. After the arbitration hearing, the arbitrator / panel will produce a written report summarising the main points made by each party, the details of the award and the reasons for their decision.

38. The arbitration report will be provided to the parties within 14 days of the conclusion of the arbitration hearing and will be sent to the parties simultaneously.
39. The arbitration award must be in accordance with the parameters of the agreed question for arbitration.
40. Any decision of the arbitrator / panel will be treated as though it were an agreement of the parties.
41. Acas will provide Secretariat / clerking support to the standing panel.

Part Three – Appointment of Arbitrators to Standing Panel

42. There is to be a standing panel of three arbitrators.
43. The standing panel is to be appointed, and any vacancies in the standing panel filled, as follows:
 - a) The Board selects individuals from a list of arbitrators provided by Acas Scotland;
 - b) The Board recommends individuals to the Scottish Ministers;
 - c) If the Scottish Ministers consider those individuals suitable for resolving PNBS disputes the Scottish Ministers may appoint them to the standing panel.
44. The Board, together with the Scottish Ministers, is to identify which member of the panel will act as the Chair of the panel. The Chair will regulate the procedure at the arbitration hearing.
45. Where there is a failure in this appointment procedure, the Scottish Ministers will select and appoint three arbitrators to form the standing panel from an Acas list, and will identify which arbitrator will act as Chair.
46. If one or more of the arbitrators on the standing panel is unavailable at the required time, a reserve (or reserves) may be recommended by Acas and appointed by the Scottish Ministers with the agreement of both Sides.
47. A sole arbitrator may determine the outcome of a dispute if both Sides agree that this will suffice to deal with a matter under referral. The sole arbitrator will generally be the Chair of the standing panel. If the Chair is unavailable, one of the other two members may fulfil this role.
48. Acas will require arbitrators on their selection lists, or appointed to the standing panel, to disclose to the Board any conflict of interest which might give rise to doubt as to their impartiality or independence in relation to Board disputes.

49. If either of the Sides objects to an arbitrator on the grounds of conflict of interest, Acas may consider removing the arbitrator from the standing panel, or from the arbitration of a particular dispute.
50. An arbitrator ceases to be a member of the standing panel if the arbitrator:
- a) resigns by giving three months' notice to Acas;
 - b) is removed from the panel on conflict of interest grounds;
 - c) becomes an incapable adult within the meaning of section 1(6) of the Adults with Incapacity (Scotland) Act 2000; or
 - d) dies.
51. Arbitration proceedings involving a panel of arbitrators may continue with the agreement of the Sides, notwithstanding the fact that up to two of the arbitrators are no longer available to act and no reserve arbitrators have been appointed.
52. Acas will be responsible for the efficient management and administration of recoverable fees and expenses in respect of the services of the arbitrators. The Scottish Ministers will pay the reasonably incurred fees and expenses of the arbitrators, but is not responsible for the costs of the parties. Acas will generally invoice the Scottish Ministers once the arbitrator / panel has made their award, or earlier if for any reason no award is made or the arbitrator's appointment comes to an end before the award is made.

Appendix 1

Registration of a Failure by the Board to Agree

This form will be used by the parties to identify the issues which constitute the Failure to Agree.

The parties should separately record, in short bullet form, the details of the issues which they believe are in dispute. Each party should record the issues separately.

Official Side: Points in Dispute

1.

2.

3.

Signed and dated by Official Side:

Staff Side: Points in Dispute

1.

2.

3.

Signed and dated by Staff Side:

Chairperson confirmation that the issues outlined above have been the subject of first-stage conciliation by the Chairperson and that the FTA persists.

Signed and dated by the Chairperson of the Board:



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